

IN THE SUPREME COURT

On Appeal from the Michigan Court of Appeals
O'Brien, PJ, and Gleicher and Stephens, JJ

THE COUNTIES OF INGHAM, JACKSON, and
CALHOUN, Municipal corporations and bodies politic
and corporate,

Plaintiffs-Appellees,

v

THE MICHIGAN COUNTY ROAD COMMISSION
SELF-INSURANCE POOL, an unincorporated
voluntary association,

Defendant-Appellant.

Supreme Court Docket No. 160186

Court of Appeals Docket No. 334077

Ingham County Circuit Court
Case No. 15-432-NZ

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DEFENDANT-APPELLANT'S APPENDIX TO SUPPLEMENTAL BRIEF

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Dated: November 4, 2020

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APPENDIX 1

DECLARATION OF TRUST

AGREEMENT made and entered into effective the 1st day of April, 1984 by and among _____

_____ (hereinafter "Members") and the Trustees who have heretofore or who may hereafter be appointed to serve as provided herein.

WITNESSETH:

WHEREAS, Members and Trustees desire to establish a group self-insurance fund pursuant to the provisions of Act 138 of the Michigan Public Acts of 1982 for the mutual benefit and protection of the Members; and

WHEREAS, it has been determined that it is in the best interests of the Members to establish a Trust for the purpose of receiving, protecting and disbursing monies paid pursuant to such fund;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, the Michigan County Road Commission Self-Insurance Pool be and is hereby established as follows:

ARTICLE ICREATION OF THE TRUST

There is hereby established and created a Trust Fund which shall be known as the "MICHIGAN COUNTY ROAD COMMISSION SELF-INSURANCE POOL" and the Trustees may hold property, enter into contracts and in all matters as hereinafter set forth act in behalf of the Trust Fund in that name. This Trust Fund shall be used only for the purposes as hereinafter set forth.

ARTICLE IIPURPOSE

This Trust Agreement is made and executed for the purpose of forming a group self-insurance pool to provide for joint and cooperative action relative to Members' financial and administrative resources for the purpose of providing to participating Members risk management and coverage for pool Members and employees of pool Members, for acts or omissions arising out of the scope of their employment, including any or

all of the following:

- (a) Casualty insurance, including general and professional liability coverage;
- (b) Property insurance, including marine insurance and inland navigation and transportation insurance;
- (c) Automobile insurance, including motor vehicle liability insurance coverage and security for motor vehicles owned or operated, as required by section 3101 of the Insurance Code of 1956, Act No. 218 of the Public Acts of 1956, as amended, being section 500.3101 of the Michigan Compiled Laws, and protection against other liability and loss associated with the ownership of motor vehicles;
- (d) Surety and fidelity insurance coverage; and
- (e) Umbrella and excess insurance coverages.

ARTICLE III

DESIGNATION OF TRUSTEES

SECTION 1. Number of Trustees; Designation of Governing Body. The operation and the administration of the Trust shall be the joint responsibility of a Board of Directors consisting of not less than nine (9) Trustees. All Trustees shall serve as members of the Board of Directors.

SECTION 2. Appointment of Initial Board of Directors. The initial Board of Directors, as appointed by the Members, shall be:

	<u>Term</u>
Herbert O. Larkin	3
Kenneth R. Apsey	3
E.R. Amble	2
Thomas Brouwer	1
James M. Falk	1
Donald Gillard	3
D. Mack Rabourn	1
W.V. Wentela	2
Doris J. Younts	2

SECTION 3. Election of Directors; Terms of Office. The election of Directors, their term of office, and all related matters shall be governed by the By-Laws adopted by the Members in accordance with the terms and provisions of this Trust.

ARTICLE IVBY-LAWS

SECTION 1. Adoption of By-Laws. By two-thirds (2/3) vote, the Board of Directors shall adopt By-Laws governing the operation and administration of the Trust; provided, however, that the By-Laws so adopted shall not become effective and binding until they have been approved by not less than two-thirds (2/3) of the Members.

SECTION 2. Amendment of By-Laws. Any amendment of the By-Laws must be approved by not less than two-thirds (2/3) of the Board of Directors and, in addition, by not less than two-thirds (2/3) of the Members before it shall become effective and binding.

SECTION 3. Binding Effect. The By-Laws and any amendments thereto properly adopted pursuant to the terms and provisions of this Trust shall be binding upon the Trustees acting as the Board of Directors of the Trust and the Members.

ARTICLE VRULES AND REGULATIONS

The Board of Directors may prescribe such rules and regulations as may, in their judgment and discretion, be proper and necessary for the sound and efficient administration of the Trust; provided, however, that the rules and regulations shall not be inconsistent with the provisions of this Declaration of Trust, the By-Laws or applicable Federal and/or State laws and/or regulations.

ARTICLE VIPOWERS AND DUTIES OF THE BOARD OF DIRECTORS

SECTION 1. General Powers. The Board of Directors shall have the power and authority and shall be charged with the duty of general supervision and operation of the Trust and shall conduct the business and activities of the Trust in accordance with this Declaration of Trust, the By-Laws adopted pursuant to the terms and provisions of this Trust, rules and regulations adopted by the Trustees, and applicable Federal and/or State laws and/or regulations.

SECTION 2. Deposit of Funds. The Board of Directors shall cause to be immediately deposited to the account of the Trust, at any bank or banks designated by the Board of Directors, all

premiums as and when collected. Said monies shall be disbursed only as provided by the terms and provisions of this Trust, the By-Laws, rules and regulations adopted by the Board of Directors, agreements entered into by the Trust and applicable Federal and/or State laws and/or regulations.

SECTION 3. Appointment of Administrator. The Board of Directors may designate a fiscal agent and/or administrator to administer the operational and financial affairs of the Trust. Any fiscal agent and/or administrator so appointed shall furnish a fidelity bond with the Board of Directors as obligees, in an amount sufficient to protect the Trust and its assets against the misappropriation or misuse of any monies or securities held by or in the name of the Trust. The amount of the bond shall be determined by the Board of Directors and evidence of such bond shall be filed with the appropriate entities.

SECTION 4. Office of the Trust. The Board of Directors shall establish and maintain an office of the Trust, the exact location of which shall be made known to the parties interested in or participating in the Trust and to other interested parties. The books and records pertaining to the Trust and its administration shall be kept and maintained at the office of the Trust.

SECTION 5. Actions to Protect Against Losses. The Board of Directors is authorized and directed to take all reasonable precautions which it deems appropriate to protect the Members from losses. The Board of Directors shall provide for excess insurance coverage designed to protect said Members against excess losses as the Board of Directors may deem appropriate and reasonable under the circumstances.

SECTION 6. Admission of New Members. The Board of Directors may admit as new members of this Trust whomever it determines, by not less than a two-thirds (2/3) vote, is acceptable and financially sound. The Board of Directors shall be the sole judge of whether or not an applicant for membership shall be admitted to membership.

SECTION 7. Suspension and Expulsion of Members. The Members may suspend or expel any Member from the Trust upon thirty (30) days advance written notice by not less than a two-thirds (2/3) vote. No liability shall accrue to the Trust or to its Members as a result of any claim asserted against any suspended or expelled Member arising out of any accident or other incident occurring after thirty days from the date the notice of suspension or expulsion has been given to the Member.

SECTION 8. Acceptance of Resignation of Member. The Board of Directors may accept the resignation or withdrawal of a Member; provided, however, that no liability shall accrue to the Trust or any Members other than the resigning or withdrawing Member with respect to a member who has resigned or withdrawn

from the Trust arising out of any accident or other incident occurring on or subsequent to the effective date of the Member's resignation or withdrawal.

SECTION 9. Use of Funds. The Board of Directors shall set aside from the premiums collected during each fiscal year a reasonable sum for the operating expenses or administrative expenses of the Trust for that year. All remaining funds coming into its possession or under its control with respect to that fiscal year of the Trust shall be set aside and shall be used only for the following purposes:

- (a) Fee for any service agent(s) for that year of the Trust;
- (b) Payment of all claims and judgments for occurrences covered by the Trust for that Trust year.
- (c) Payment of the cost of all bonds and auditing expense required of the Trust or its agents;
- (d) Payment of all premiums and costs of excess insurance for protection obtained from outside carriers for exposure beyond that assumed by the Trust;
- (e) Payment of all costs associated with the operation and maintenance of the Trust;
- (f) Distribution among the members during that fiscal year in such manner as the Members and the Board of Directors shall deem to be equitable, of any excess monies remaining after payment of claims and claims expenses and after provision has been made for open claims and outstanding reserves and a reserve for claims incurred but not reported; provided, however, that no such distributions shall be made earlier than twelve (12) months after the end of each Trust Year; and provided further, that undistributed funds from previous Trust Years may be distributed at any time if not required for loss funding and if approved for distribution by the Board of Directors. The Board of Directors may treat members who withdraw from future Trust Years differently and less favorably than they treat members who continue in the Trust for future years.
- (g) The Board of Directors may establish from time to time a reasonable amount of reimbursement for expenses to cover attendance at meetings of the Board of Directors and the performance of the normal duties of a member of the Board of Directors. The reimbursement shall only include reimbursement of necessary expenses incurred.

ARTICLE VIILIABILITY

SECTION 1. Good Faith Actions. No member of the Board of Directors shall be liable for any action taken pursuant to this Trust Agreement in good faith or for an omission, except for gross negligence, or for any act of omission or commission by any other member of the Board of Directors or by any employee of the Board of Directors.

SECTION 2. Liability Insurance. The Board of Directors is hereby authorized and empowered to obtain, at the expense of the Trust, liability insurance fully protecting the members of the Board of Directors jointly and severally and the Trust from any loss or expense incurred, including reasonable attorney's fees, for all acts of the Board of Directors, except bad faith and gross negligence on the part of the Board of Directors. The Trust hereby agrees to save, hold harmless and indemnify each member of the Board of Directors from any loss, damage or expense incurred by the Board of Directors while acting in its official capacity, excepting bad faith and gross negligence.

SECTION 3. Advice of Legal Counsel. The Board of Directors may consult with legal counsel concerning any questions which may arise with reference to the duties and powers or with reference to any other matter pertaining to this agreement or the Trust hereby created; and the opinion of such counsel shall be full and complete authorization and protection in respect to any action taken or suffered by the Board of Directors hereunder in good faith in accordance with the opinion of such counsel and the Board of Directors shall not be liable therefore.

ARTICLE VIIIDUTIES AND OBLIGATIONS OF MEMBERS

SECTION 1. Compliance with By-Laws, Rules and Regulations. Each member shall comply with and be bound by all By-Laws, Rules and Regulations adopted pursuant to the terms and provisions of this Trust.

SECTION 2. Additional Obligations. Each Member shall also comply with and be bound by each of the following additional obligations.

- (a) Each Member shall follow the safety and general recommendations of the Board of Directors and the service agent.

- (b) In the event of an accident or a reported claim, each Member shall give immediate notification of the accident or reported claim to the service agent on the prescribed forms.
- (c) Each Member shall promptly pay all premiums and assessments as required by the Board of Directors, which premiums are to be determined by applying applicable experience modification to the standard rates for the exposure to risk. Further, the premium shall include loss and expense constants and minimum premiums, where applicable. Finally, the premium may be reduced by any discount allowed by the Board of Directors. Each Member shall indemnify the Trust for all punitive or exemplary damages to the extent said damages are not covered by any issued insurance contract.
- (d) Each Member shall, and by signing this Trust Agreement or its counterpart, or by ratifying same, does appoint the current service agent of the Trust and any successor service agent from time to time appointed by the Board of Directors as its agent and attorney-in-fact to act in its behalf and execute all contracts, reports, waivers and agreements, or arrange for payment of claims, medical expenses, and all other things required or necessary insofar as they affect its liability under Michigan law and as covered by the terms of this Trust Agreement and the rules and regulations as now provided or as hereafter promulgated by the Board of Directors.
- (e) The Member agrees that in the event of the payment of any loss by the Trust under this Trust, the Trust shall be subrogated to the extent of such payment to all the rights of the member against any person or other entity legally responsible for damages for said loss, and in such event the member hereby agrees to render all reasonable assistance, other than pecuniary, to effect recovery; provided, however, that any sums recovered pursuant to subrogation shall be divided between the Member and the Trust in the same proportions as the amount of the expenses and judgment paid by the Member pursuant to its deductible and the amount of the expenses and judgment paid by the Trust (directly and through re-insurance).
- (f) The Board of Directors of the Trust, the Service Agency, and any of their agents, servants, employees or attorneys shall be permitted at all reasonable times to inspect the work places,

plants, works, machinery, and appliances covered by this agreement, and shall be permitted at all reasonable times and within three (3) years after the final termination of the membership to examine Member's books, vouchers, contracts, documents, and records of any and every kind which show or tend to show or verify the premium which is payable under the terms hereof.

ARTICLE IX

OBLIGATIONS OF TRUST TO MEMBERS

The Trust shall defend in the name of and on behalf of the Member any suits or other proceedings which may at any time be instituted against it on account of injuries or death within the purview of the Trust, or on the basis of Member's liability, including suits or other proceedings alleging such injuries and demanding damages or compensation therefor, although such suits, other proceedings, allegations or demands are wholly groundless, false, or fraudulent, and to pay all costs taxed against this Member in any legal proceeding defended by the service company, all interest accruing after entry of judgment and all expenses incurred for investigation, negotiation or defense.

ARTICLE X

MISCELLANEOUS

SECTION 1. Amendments. This Trust may be amended, in writing, at any time by the concurrence of not less than two-thirds (2/3) of the Board of Directors and the concurrence of not less than two-thirds (2/3) of the then current Members; provided, however, this Trust may not be amended so as to change its purpose as set forth in Article II above or to permit the diversion or application of any of the funds of the Trust for any purpose other than those specified herein. The Board of Directors, upon amending this agreement, shall send a copy of such amendment bearing the necessary signatures to all Members.

SECTION 2. Termination of Trust. This Trust may be terminated at any time by concurrence of all of the parties to this agreement, or their successors. This Trust shall terminate, in any case, upon the death of the last survivor of such persons who are living at the time of the creation of the Trust and who were participating in the Trust, unless, without the benefit of this provision, the Trust does not violate the rule against perpetuity, in which case the Trust may continue in perpetuity unless otherwise terminated. This agreement shall continue in full force and effect as it may be amended and supplemented from time to time, subject, however, to the above termination provision. In the event of termination, the remaining funds

available in the Trust, after providing for all outstanding obligations, shall be distributed to the participating Members through a formula determined by the Board of Directors.

SECTION 3. Situs of the Trust. This Trust Agreement is executed by the parties hereto and accepted by the Trustees in the State of Michigan and all questions pertaining to its validity, construction and administration shall be determined in accordance with the laws of the State of Michigan.

SECTION 4. Execution of Documents. A certification signed by the Chairman and Secretary of the Trust shall be evidence of the action of the Board of Directors and any such certificate or other instruments so signed shall conclusively be presumed to be authentic and all facts and matters stated therein shall conclusively be presumed to be true.

SECTION 5. Fiscal Year of Trust. The Trust shall operate on the fiscal year designated in the By-Laws. Application for continuing membership, when approved in writing by the Board of Directors or its designee, shall constitute a continuing contract for each succeeding fiscal period unless cancelled by the Trust or unless the Member shall have resigned or withdrawn or been expelled from the Trust by written notice.

SECTION 6. Distribution of Dividends or Reserves. There will be no disbursement out of this Trust for any fiscal year by way of dividends or distribution of accumulated reserve to Members until (a) after provision has been made for all known obligations and (b) the Board of Directors shall deem the distribution to be proper.

SECTION 7. New Members. Any entity which subsequently formally applies for membership in this Trust and is accepted by the Board of Directors in accordance with the provisions of this Trust and the By-Laws shall thereupon become a party to this Trust and be bound by all of the terms and conditions hereof by the signing of a copy of the Trust, or the ratification thereof, which shall thereupon constitute a counterpart of this Trust.

SECTION 8. Board of Director Action. Except as otherwise set forth in this Trust, all actions taken by the Board of Directors shall be by majority vote.

SECTION 9. Insolvency. In the event the Trust becomes insolvent, the Board of Directors shall adopt and implement a plan which will cure the insolvency or, in the alternative, shall take such action as is necessary to terminate the Trust. Any action taken pursuant to this Section shall require the approval of two-thirds (2/3) of the Board of Directors and two-thirds (2/3) of the Members.

SECTION 10. Captions. Captions in this Trust are used for convenience only and shall not limit, broaden or qualify the text.

SECTION 11. Severability. Should any provision of this Trust be or become invalid or unenforceable, the remaining provisions shall continue to be fully effective.

SECTION 12. Binding Effect. This Trust shall be binding upon and be fully enforceable as to each Member and the successors and assigns of each Member.

IN WITNESS WHEREOF, this Agreement and Declaration of Trust has been executed the day and year first written above.

COUNTY ROAD COMMISSIONS:

TRUSTEES:

SECTION 10. Captions. Captions in this Trust are used for convenience only and shall not limit, broaden or qualify the text.

SECTION 11. Severability. Should any provision of this Trust be or become invalid or unenforceable, the remaining provisions shall continue to be fully effective.

SECTION 12. Binding Effect. This Trust shall be binding upon and be fully enforceable as to each Member and the successors and assigns of each Member.

IN WITNESS WHEREOF, this Agreement and Declaration of Trust has been executed the day and year first written above.

COUNTY ROAD COMMISSIONS:

TRUSTEES:

INGHAM COUNTY ROAD COMMISSION
Kenneth J. Cook
SECRETARY TO THE BOARD
JUNE 6, 1985

APPENDIX 2

ADOPTED: 10/17/83
REVISED: 08/22/84

**MICHIGAN COUNTY ROAD COMMISSION
SELF-INSURANCE POOL
BY-LAWS**

ARTICLE I

NAME

The name of this organization shall be the Michigan County Road Commission Self-Insurance Pool (hereinafter referred to as the "Pool").

ARTICLE II

PURPOSE AND OBJECTIVES

The Michigan Legislature, during its regular session in 1982, adopted Act 138 which became immediately effective April 27, 1982. Act 138 of 1982 amends the Intergovernmental Contracts Act of 1951, Act 35, PA 1951, as amended, thereby authorizing "contracts between municipal corporations to form group self-insurance pools, and to prescribe conditions to the performance of those contracts." Act 138 went on to define municipal corporations as including county road commissions.

In accordance with the provisions of Act 138, these By-laws govern a road commission self-insurance pool whose general objectives are to formulate, develop, and administer a self-insurance program for members of the pool, to establish the Michigan County Road Commission Self-Insurance Pool, to finance such a program, and to develop suitable financial and management plans. The Pool has been established by a Trust Agreement executed by the initial participating county road commissions and by the initial Board of Directors ("Pool Board"), as Trustees of the Trust, designated by the initial participating county road commissions.

ADOPTED: 10/17/83
REVISED: 08/22/84

ARTICLE III

NATURE OF THE ORGANIZATION

The Pool shall be comprised of county road commissions of the State of Michigan which are authorized and approved under Section 1 of Act 138, PA 1982, as amended (MCL 124.1; MSA 5.4081), to enter into an agreement to pool their loss exposures and which have executed the Pool Trust Agreement. Each participating county road commission shall adopt and execute such written agreements as may be required by law or by the Pool Board. The Pool is not to operate as an insurance company but rather is to be the contracting mechanism by which each Member receives, from the Pool, risk and financial management services and protections.

The Pool shall be established and operated by the Members through the Pool Board. The Pool shall not be a function, service, or agent of the County Road Association of Michigan.

ADOPTED: 10/17/83
REVISED: 08/22/84
AMENDED: 06/18/86
AMENDED: 07/16/87

ARTICLE IV

MEMBERSHIP

1. Members. A Member county road commission (herein referred to as "Member"), shall be a county road commission located in the State of Michigan, which has paid its annual contribution, as determined by the Pool Board, and has met other requirements as may be set by the Pool Board, including execution of the Inter-Local Agreement and the Trust Agreement. All new Members shall be approved by a two-thirds vote of the Pool Board.

For the purpose of voting at meetings, a representative from the Member shall be designated by the respective Board of County Road Commissioners to cast votes on behalf of the Member. An alternate delegate may also be designated by said Board of County Road Commissioners of the Member for the purpose of voting in the absence of the designated voting representative. Both the designated voting representative and the designated alternate delegate shall be either a road commissioner of said Member or a full-time employee of said Member.

2. Associate Members. County road commissions located in Michigan who have not paid a contribution, as designated by the Pool Board, but who express an interest in being associated with the Pool may be designated as Associate Members. Associate Members shall be approved by two-thirds vote of the Pool Board. The Pool Board may determine if fees will be charged to said Associate Members for services provided to the

Associate Members by the Pool. Such fees may be reduced or waived in consideration of the provision of claims data and other information or services useful to the Pool. Associate Members shall not have voting rights, nor shall they be eligible to serve as voting Members of the Pool Board.

3. **Meetings.** There shall be an annual meeting of the Members as soon as practicable after the close of the fiscal year. Additional meetings of the Members may be called by a vote of the majority of the Pool Board. The Pool Board shall establish the time and place for the annual meeting and any special meetings. All meetings of the Pool shall be held in Michigan.

4. **Conduct of Meetings.** The Chairperson of the Pool Board, or in his or her absence, the Vice Chairperson, shall conduct the annual meeting of the Members and any special meetings of the Members. In the absence of both the Chairperson and the Vice Chairperson, a temporary Chairperson for that meeting shall be elected by a majority vote of the Members present. All proceedings shall be conducted in accordance with Robert's Rules of Order.

5. **Notice of Meetings.** Members shall be notified not less than thirty days prior to the date of the annual or any special meeting. The notice shall include the date, time, place, and proposed topics for action or discussion.

6. **Quorum.** A majority of the Membership shall constitute a quorum for any meeting of the Members.

7. **Minutes.** The Secretary of the Pool Board shall keep minutes of the annual and special meetings of the Members.

ADOPTED: 10/17/83
 REVISED: 08/22/84
 AMENDED: 07/16/87

ARTICLE V

BOARD OF DIRECTORS

1. **Election.** The Board of Directors of the Pool (herein referred to as the "Pool Board") shall consist of nine members (herein referred to as "Directors") elected by the members at an annual meeting. The individual Directors shall be either a road commissioner of a Member or a full-time employee of a Member. The Pool Board shall include at least two representatives from each of the three regions of the State of Michigan. For purposes of representation on the Pool Board, the three regions of the State shall be known as the Southern Region, Northern Region and Upper Peninsula Region. The three regions are identified as follows and shall include the following counties:

Southern Region: Allegan, Barry, Bay, Berrien, Branch, Calhoun, Cass, Clinton, Eaton, Genesee, Gratiot, Hillsdale, Huron, Ingham, Ionia, Jackson, Kalamazoo, Kent, Lapeer, Lenawee, Livingston, Macomb, Monroe, Muskegon, Oakland, Ottawa, Saginaw, Sanilac, Shiawassee, St. Clair, St. Joseph, Tuscola, Van Buren, Washtenaw and Wayne.

Northern Region: Alcona, Alpena, Antrim, Arenac, Benzie, Charlevoix, Cheboygan, Clare, Crawford, Emmet, Gladwin, Grand Traverse, Iosco, Isabella, Kalkaska, Lake, Leelanau, Manistee, Mason, Mecosta, Midland, Missaukee, Montcalm, Montmorency, Newaygo, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Presque Isle, Roscommon and Wexford.

Upper Peninsula Region: Alger, Baraga, Chippewa, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon and Schoolcraft.

For purposes of election of any Director by the Members, there shall be at least twice as many nominations as there are open positions. When it becomes necessary to elect a Director from one or more regions, those Director's positions shall be voted on separately. Nominations shall be made up of persons representing Members from the appropriate region. The regional representation requirement may be waived if all members from a region annually agree to waive it.

2. **Term.** The term of each Director shall be three years. The terms shall be staggered so that three Directors are elected at each annual meeting of the Members. To this end, at the first meeting of the Members, three Directors shall be elected to a one year term of office, three Directors shall be elected to a two year term of office, and three Directors shall be elected to a three year term of office.

3. **Officers.** Annually, at the first meeting following the annual meeting of the Members, the Pool Board shall elect a Chairperson and Vice Chairperson. The Pool Board shall also appoint a Secretary and Treasurer to the Pool Board, who need not be a Director.

4. **Meetings.** The Pool Board shall meet not less often than semiannually. The first meeting shall not be more than one week following the annual meeting of the Members, and shall be held in Michigan. Other meetings may be called by either the Chairperson or a majority of the Pool Board, and shall also be held in Michigan. All proceedings shall be conducted in accordance with Robert's Rules of Order.

5. **Minutes.** Minutes of meetings of the Pool Board shall be kept by the Secretary or in the Secretary's absence any other person appointed by the Chairperson.

6. **Quorum.** Five Directors shall constitute a quorum for any meeting of the Pool Board. For emergency situations, five affirmative or five negative votes received by telephone shall be acceptable in determining Pool Board decisions. The Pool Board shall adopt a procedure for telephone votes which shall indicate the conditions under which a telephone vote shall be authorized, who may conduct telephone votes, and other matters considered relevant.

7. **Compensation.** The Directors shall serve without compensation. However, upon the request of a Director, the Pool Board shall reimburse a Director for actual, necessary, and reasonable expenses incurred either for the purpose of attending Pool Board meetings or in the conduct of other Pool business.

8. Resignation and Removal. Any Director who fails to meet the eligibility requirements during that person's term of office shall be considered to have automatically resigned. A Director may be removed from office by a vote of two-thirds of the Members present at an annual meeting of the Members. In the event of such resignation or removal which occurs at any annual meeting of the Members, the Members shall, acting in accordance with all requirements of these Bylaws for the election of a Director, immediately elect a replacement Director. Any newly elected Director filling an unexpired term shall serve only the remainder of the term for the vacated position. Should the vacancy involve an officer of the Pool Board, the Pool Board shall elect a new officer.

9. Vacancies. Should a vacancy occur on the Pool Board, other than at an annual meeting of the Members, the Chairperson with approval of the Pool Board shall appoint a temporary replacement who shall serve until the next annual meeting of the Members. The replacement must meet the requirements of eligibility, including the required representation by CRAM sectional associations.

ADOPTED: 10/17/83
REVISED: 08/22/84

ARTICLE VI

POWERS AND DUTIES OF THE BOARD

The Pool Board in addition to other powers and duties herein conferred and imposed or authorized by law, shall have the following powers and duties:

1. The Pool Board shall be authorized to contract with any qualified individual or organization to perform any of the functions necessary for the carrying out of a self-insured Pool arrangement, including the provision of excess loss insurance, "stop loss," the handling of claims, safety engineering services, administrative services, and any and all other services that the Pool Board shall deem appropriate.

2. The Pool Board shall prepare an Inter-Local Agreement and shall require that each member execute said Inter-Local Agreement as a condition of membership.

3. The Pool Board shall make provision for proper accounting and reporting procedures for each of the Members so that they shall be apprised at all times of the nature of the claims arising within their jurisdiction, the manner in which these claims are being handled, and the impact of the same upon the Pool.

4. The Pool Board shall maintain such accounts, funds, and records as may be required by good accounting practice. The Pool Board shall provide for an annual certified audit of the books of the Pool by a Certified Public Accountant. A copy of the audit report shall be supplied to each of the Members, as required by law.

5. The Pool Board shall arrange for the investing of monies of the Pool to keep the same invested as authorized by law. The Pool Board shall provide for the banking of the monies of the Pool and the proper security of any and all investments.

6. The Pool Board shall adopt a balanced annual budget and shall require that the budget be adhered to. The Pool Board may amend the budget at any time.

7. The Pool Board shall adopt a risk management and loss control plan.

8. The Pool Board shall adopt and equally enforce rules and procedures for the handling, defense, administration, and settlement of claims. Said rules and procedures shall specify each Member's responsibilities and involvement in claims matters. These rules and procedures, including settlement authority, shall be incorporated in the Inter-Local Agreement and executed by each Member.

9. The Pool Board shall perform annual reviews consisting of the following, and shall present the results of these reviews to the Membership at the annual meeting:

- A. Audit and summary financial review;
- B. Risk Management and loss prevention review; and
- C. Claims review.
- D. Annual budget.

10. The Chairperson of the Pool Board may appoint an Executive Committee or Designee of the Pool Board to handle the affairs of the Pool Board in-between the regular meetings or any of the special Pool Board meetings, with such functions as may be designated to the Executive Committee or designee by the Pool Board in a resolution properly adopted. Other special committees or designees may also be appointed by the Chairperson, as needed, with powers spelled out in a resolution properly adopted by the Pool Board.

11. The Pool Board shall require the securing of a fidelity bond on each and all of the employees of the Pool Board or upon other persons charged with the duty of handling any of the monies or investments of the Pool. The Pool shall pay the premium for such a bond.

12. The Pool Board may provide for a suitable seal with the following letters upon its face: "Michigan County Road Commission Self-Insurance Pool." The seal shall be used for the authentication of legal documents, contracts, and other instruments indicating the official action of the Pool Board.

13. The Pool Board shall have the general power to make and enter into all contracts, leases, and agreements necessary or convenient to carry out any of the powers granted under the Trust Agreement, these By-laws or any other laws. All such contracts, leases, and agreements, or other legal documents herein authorized shall be approved by resolution of the Pool Board and shall be executed by those individuals designated in such

resolution. In the absence of such a designation, all approved contracts shall be executed by the Chairperson or Vice Chairperson.

14. The Pool Board shall carry out all the duties necessary for the proper operation and administration of the Pool on behalf of the Members and to that end shall have all of the power necessary and desirable for the effective administration of the affairs of the Pool.

ADOPTED: 10/17/83
REVISED: 08/22/84

ARTICLE VII

ADMINISTRATION

There shall be an Administrator of the Pool (herein referred to as the "Administrator") to administer the financial and administrative affairs of the Pool. The Administrator shall be an employee of the Pool and shall be appointed by, and serve at the pleasure of the Pool Board. The Administrator shall have the power and authority to implement policy matters set forth by the Pool Board as they relate to the ongoing operation and supervision of the Pool and the provisions of the Trust Agreement establishing the Pool, the By-laws, the Inter-Local Agreement, applicable Federal and/or State statutes, and other applicable governmental rules and regulations.

The Pool Board shall establish, maintain, and provide adequate funding for an office of the Pool, also administered by the Administrator. The address of such office shall be made known to the Members and other road commissions interested in participating in the Pool, and to the appropriate governmental agencies and departments of the State of Michigan. The Administrator may hire staff, purchase equipment and supplies, and incur expenses within the limits set in the annual budget.

ADOPTED: 10/17/83
REVISED: 08/22/84

ARTICLE VIII

DETERMINATION OF COVERAGE TO BE PROVIDED

The Pool Board shall determine the terms, conditions, and length of the Inter-Local Agreement, which it shall develop and prepare to be signed by each of the Members as they join the Pool. The Pool Board shall determine the amount of insurance, if any, which shall be purchased by the Pool insofar as catastrophic coverage, excess loss coverage and "stop-loss," fiduciary, error and omissions, or other types of insurance coverages are concerned. The Pool Board shall also make any other arrangements or contracts deemed necessary to meet requirements of law, or which it determines to be necessary for the operation of the Pool. The amount and type of insurance coverages to be provided to members shall be identified in the Inter-Local Agreement to be signed by each Member.

ADOPTED: 10/17/83
REVISED: 08/22/84

ARTICLE IX

INDEMNIFICATION OF OFFICERS, TRUSTEES, AND EMPLOYEES

The Pool shall indemnify each person now or hereafter a Director, trustee, officer, employee or agent of the Pool, and the heirs, executors, administrators, or other legal representatives of such Director, trustee, officer, employee, or agent, from and against reasonable expenses and losses incurred or suffered by them in connection with any claim, action, suit, or proceeding, civil or criminal, actual or threatened, in which he or she may be involved by reasons of his or her being or having been such Director, trustee, officer, employee, or agent, or by reason of his or her alleged acts or omissions as such a Director, trustee, officer, employee, or agent, regardless of whether he or she is such a Director, trustee, officer, employee, or agent at the time of incurring such expenses and losses, except with respect to any matter as to which he or she shall have been adjudicated in any proceeding to have been guilty of gross negligence or shall have been adjudicated in any proceeding not to have acted in good faith in the reasonable belief that his or her action was in the best interest of the Pool; provided, however, that the Pool, by vote of the Pool Board, may compromise and settle any such claim, action, suit, or proceeding and pay such expenses and losses, if such settlement and payment appear to be in the best interest of the Pool. Such indemnification may include payment by the Pool of expenses incurred in defending a civil or criminal action or proceeding in advance of the final disposition of such action or proceeding, upon receipt of an agreement executed by the person to be indemnified agreeing to repay such payment if he or she shall be adjudicated to be not entitled to indemnification.

ADOPTED: 10/17/83
REVISED: 08/22/84

ARTICLE X

DETERMINATION OF CONTRIBUTIONS BY MEMBERS
OR REFUNDS TO MEMBERS

The Pool Board shall determine the amount of contribution to be paid annually by each Member. Such contribution shall be calculated based on past experience, projected future losses, excess and stop loss insurance costs, administrative costs, loss prevention costs, and any other projected expenses to be incurred in the operation and administration of the Pool. Should deficiencies or surpluses occur within the funding of the Pool, the Pool Board shall determine the method of addressing these deficiencies or surpluses through the annual contribution mechanism. The Pool Board may employ actuarial services or other professional assistance in determining the appropriate contribution. The contributions by the individual members shall be clearly spelled out in an annual contribution notice.

ARTICLE XI

FISCAL YEAR

The fiscal year of the Pool shall be from April 1 through March 31.

ADOPTED 10/17/83
REVISED 08/22/84

ARTICLE XII

WITHDRAWAL OR TERMINATION OF MEMBERSHIP

Any Member may withdraw from the Pool by giving at least sixty days written notice to the Pool Board of its desire to so withdraw. The Pool Board shall develop procedures for addressing accumulated equity, if any, or accumulated funding deficiency. The Pool Board shall determine the short rate cancellation penalty for terminating prior to the annual renewal date. A Member may be terminated from membership by a two-thirds vote of the Members present at an annual or special meeting of the Members. Reasons for termination of Members may include, but are not limited to, the following:

1. Failure to follow the rules designated by the Pool Board in claims handling or other matters as set forth by the Pool Board.
2. A loss of eligibility.
3. Willful and continuous refusal to follow the recommendations of the Pool Board or Administrator regarding loss prevention and other Risk Management programs.
4. Acting in a manner which is counter to the interests of the Pool and its Members.

ADOPTED: 10/17/83
REVISED: 08/22/84
AMENDED: 07/16/87

ARTICLE XIII

AMENDMENTS

The By-laws may be amended by a two-thirds vote of the Pool Board with the additional approval of a two-thirds vote of the Members casting ballots thereon, provided that said amendment shall comply to applicable statutes regarding the establishment and operation of a self-insurance pool. Any Member may propose an amendment to the By-laws by submitting a copy of the proposed amendment in writing to the Pool Board not less than thirty days prior to the end of the fiscal year of the Pool. The Pool Board shall consider the proposed amendment at the first regular or special meeting of the Pool Board following the close of the fiscal year in which the proposed amendment was submitted. If the proposed amendment receives a two-thirds affirmative vote of the Pool Board, a copy of the proposed amendment to the By-laws shall be provided to all Members with the meeting notice announcing the next annual meeting of the Members. The proposed By-law amendment shall be presented and discussed at the annual membership meeting. Not later than thirty days after the annual meeting, each Member shall be provided with a written secret ballot on the proposed amendment, with the ballot to be returned to the Pool Board no more than thirty days after the date of mailing to the membership. The Pool Board shall open, count and tabulate the ballots cast at the first regular or special meeting of the Pool Board following the voting deadline. The proposed amendment shall be adopted if it receives an affirmative vote on not less than two-thirds of the ballots cast and shall take immediate effect upon certification of the affirmative vote by the Pool Board.

APPENDIX 3

INTER-LOCAL AGREEMENT

This is the instrument that is required by law to complete your participation in the Michigan County Road Commission Self-Insurance Pool.

It has already been signed on behalf of the Pool. One copy must be signed and returned to the Pool office at:

Michigan County Road Commission Self-Insurance Pool
P.O. Box 14119
~~Square~~
Lansing, MI 48901

MICHIGAN COUNTY ROAD COMMISSION SELF-INSURANCE POOLINTER-LOCAL AGREEMENTPREAMBLE

This Contract and Inter-Local Agreement is entered into by and between the Michigan County Road Commission Self-Insurance Pool (hereinafter "Pool"), and the undersigned road commission of the State of Michigan (hereinafter "Member") for the purpose of making a self-insurance pooling program available which includes, but is not limited to, general liability coverages, auto liability coverages, property insurance coverages, stop loss insurance protection, claims administration, and risk management and loss control services pursuant to Act 138 of 1982.

WITNESSETH

The undersigned Member, in consideration of the commitment by the Pool to make pooled self-insurance coverages and services available to the Member, including comprehensive general liability, auto liability, and property coverages, and, in further consideration of other road commissions executing identical Inter-Local Agreements, does hereby agree to become one of the Members of the Pool. The conditions of membership agreed upon by and between the parties are as follows:

1. Pool as Separate Legal Entity; Board of Directors as Trustees; Admission as Member. Member hereby agrees to participate in the formation and/or operation of the Michigan County Road Commission Self-Insurance Pool. The Pool shall be a separate legal entity consisting of a Trust Agreement (hereinafter "Trust") and such By-Laws, rules and regulations as are from time to time adopted pursuant to the Trust. The Trust creating the Pool shall be in the form attached as Exhibit 1 hereto. The persons designated by the founding county road commissions as the Board of Directors charged with establishing the Pool shall be the initial trustees of the Trust and shall

hereafter be referred to as the "Board of Directors" of the Trust or the "Pool Board". The responsibility of the Pool with regard to fixing contributions to the Pool, maintaining reserves, levying and collecting assessments for deficiencies, disposing of surpluses and administering the Pool in the event of termination or insolvency shall be as set forth in the Trust creating the Pool, the Pool By-Laws, rules, regulations, coverage agreements and Inter-Local Agreements entered into between the Pool and participating county road commissions. Any county road commission in the State of Michigan may join the Pool by execution of the Trust and an Inter-Local Agreement and otherwise agreeing to become bound by and complying with the By-Laws, rules and regulations of the Pool. Member and all other participating members of the Pool shall execute such further agreements, forms and authorizations as are from time to time requested by the Pool.

2. Term of Agreement. The duration of this Inter-Local Agreement shall be for a one year term commencing at 12:01 a.m. on _____ and subject to automatic renewal each year thereafter unless written notice is given by either party to the other not less than sixty days prior to its anniversary date. The Pool or the Pool Board may terminate this agreement immediately upon termination of the Member for non-payment of contribution or upon termination for any other reason as provided in this Agreement, in the Trust or in the By-Laws of the Pool.

3. Member Contributions to Pool. The Member agrees to pay contributions which shall be calculated according to the method determined by the Pool Board. All contributions are payable according to the schedule established by the Pool Board attached hereto as modified from time to time by the Pool Board. The Pool shall set aside from the premiums collected during each fiscal year a reasonable sum for the operating expenses or administrative expenses of the Pool for that year. All remaining

funds coming into the possession of the Pool with respect to that fiscal year of the Pool shall be set aside and shall be used only for the following purposes:

- A. Fee for any Service Agent duly appointed by the Pool for that year of the Pool.
- B. Payments of those benefits provided for by coverages afforded by the Pool.
- C. Payment of legal fees and costs associated with all claims related to that fiscal year of the Pool.
- D. Payment of assessments as required by applicable law.
- E. Payment of cost of all bonds and auditing expense required of the Pool or its agents or employees.
- F. Payment of all premiums and costs of excess insurance for protection for protection obtained from outside carriers for exposure beyond that assumed by the Pool.
- G. Payment of all costs associated with banking transactions in which the Pool is, or becomes, involved.
- H. Distribution among the members during that fiscal year in such manner as the Pool shall deem to be equitable, of any excess monies remaining after payment of claims and claims expenses and after provision has been made for open claims and outstanding reserves and a reserve for claims incurred but not reported; provided, however, that no such distribution shall be made than earlier than twelve (12) months after the end of each Pool Year; and provided, further, that undistributed excess funds from previous Pool Years may be distributed at any time if not required for loss funding and if approved for distribution by applicable Boards and

authorities. The Pool may treat members who withdraw from future Pool Years differently and less favorably than the Pool treats members who continue in the Pool for future years.

- I. Payment of such other costs, fees and expenses as are incurred in furtherance of the operation and administration of the Pool in accordance with the Trust.

4. Investment and Administration of Funds. The Pool shall invest and administer any and all funds that are on deposit with the Pool. The investment earnings from these funds shall be used for the benefit of all Members and, where appropriate, Associate Members.

5. Insurance. The Pool shall purchase both specific and aggregate stop-loss insurance to the limits determined necessary by the Pool Board subject to the minimum limits specified in Appendix A. All Members are subject to the terms and conditions of the stop-loss insurance agreements. Copies of said stop-loss insurance agreements shall be provided to any Member upon request. The Pool reserves the right to adjust the provisions and limits of the stop-loss insurance agreements in the event that, in the opinion of the Pool Board, the fiscal soundness of the Pool will justify such an adjustment and/or result in a savings or other benefits to the Members.

6. Compliance with Trust, By-Laws and other Rules. Member agrees that it will comply with any and all provisions of the Trust, the By-Laws, and all other rules, regulations, procedures, requirements, and other measures established by the Pool Board now or hereafter existing. In the event that the measures submitted by a servicing contractor on behalf of the Pool seem unreasonable, the Member has the right to appeal to the Pool Board. The decision of the Pool Board shall be final.

7. Compliance with Coverage Documents. Member agrees to comply with all conditions and requirements of the coverage documents issued to Member by the Pool, including, but not limited to, co-insurance requirements and appraisal requirements.

8. Coordinator. Member agrees that it shall appoint a coordinator and that the Pool and its servicing contractor(s) shall not be required to contact any other individual except the coordinator designated by Member. Any notice to or any agreements with the coordinator shall be binding upon the Member. The Member reserves the right to change the coordinator from time to time by giving a written notice to the Pool Board and to the servicing contractor(s).

9. Claims. The Pool agrees, subject to the following conditions, to handle any and all claims presented, where there is valid and collectible coverage provided by the Pool to the Member:

- A. The Pool may provide the services necessary to fulfill its obligations under this section by whatever means it deems most appropriate. This may include, but is not limited to, servicing contractors employed by the Pool, or direct employees of the Pool.
- B. Member hereby appoints the Pool and servicing contractor(s), if any, as its agent and attorney-in-fact to act in all matters pertaining to processing, handling and settling of claims. Member shall cooperate fully in supplying any information needed or helpful in processing, handling and settling claims.
- C. The Pool shall have the right and duty to defend any suit against the Member where coverage is provided by the Pool, even if any of the allegations of the suit are groundless,

false, or fraudulent. In furtherance thereof, the Pool may make such investigation and settlement of any claim or suit as it deems expedient, but the Pool shall not be obligated to pay any claims or judgment or to defend any suit after the applicable limit of the Pool's liability has been exhausted by payment of judgments or settlements.

- D. All decisions on individual cases shall be made by the Pool and/or the servicing contractor(s), if any. However, any Member shall have the right to appeal any claim decision to the Pool Board. The decision of the Pool Board shall be final.
- E. The servicing contractor(s), if any, shall provide all of the services as provided in the service contract entered into and between the servicing contractor(s) and the Pool on behalf of the Member.
- F. There shall be supplied periodically to each Member reports containing claims payment information. The Pool may modify or improve these reports for the benefit of the Pool or Members and may change the format of these reports as the Pool Board determines necessary.
- G. Member agrees to keep all claim information and reports confidential.
- H. Member, upon written request of the Pool, shall tender such portion of its deductible as the Pool may deem necessary to complete the settlement of any claim or suit.
- I. Member shall report all claims, suits, or occurrences likely to give rise to claims in a timely manner and in compliance with the Pool's requirements, as detailed in Appendix B.

10. Failure to Make Contribution or Required Payments. Member shall pay contributions in a timely manner. Any Member who is not more than ten (10) days in arrears shall be considered to be in compliance with this Section. In the event that Member fails or refuses to make payments of contributions or fees as herein provided, the Pool reserves the right to terminate such member by giving ten (10) days written notice and to collect any and all contributions and other required payments that are earned for the period preceeding termination.

11. Yearly Audit. All Pool transactions shall be audited annually by a certified public accountant.

12. Ancillary Services. The Pool may provide services to Members or Associate Members without requiring corresponding Pool participation. The Pool Board shall establish the fees to be charged and other requirements for such services.

13. Coverage. Member shall agree to the coverages and limits provided by the Pool. Initially, the mandatory coverages shall be general liability, auto liability, umbrella liability and public officials errors and omissions liability. Member shall designate the deductible it wishes to apply to each category subject to the minimum deductibles established by the Pool and/or approval of the Pool Board. The Pool Board reserves the rights to expand the types and scope of coverage; provided, however, that all types of coverage shall be in compliance with Act 138 of the Michigan Public Acts of 1982 as amended from time to time.

14. Modification of Trust and By-Laws. The Members may modify the Trust and the By-Laws of the Pool from time to time as provided in the Trust and in the By-Laws.

15. Modification of Rates, Coverage and Procedures. The Pool Board may change any of the Appendixes attached hereto or hereafter added hereto provided thirty (30) days notice is given to all affected members. The modifications shall be effective and binding upon all members thirty (30) days after the written notice is mailed to Members.

16. Amendments. Member agrees that it will execute any amendment to this Agreement presented to it by the Pool Board unless the Pool Board specifically agrees to exempt Member from the requirement of execution of the amendment. Compliance with the terms of this provision shall be a condition of continued participation in the Pool by Member. In the event Member fails or refuses to comply with the terms of this provision, the Pool Board may terminate the Member's participation in the Pool upon thirty (30) days advance written notice.

17. Failure to Comply with Trust Agreement, By-Laws, Guidelines, Duties and/or Procedures Established by the Pool. In the event Member fails or refuses to comply with the terms and provisions of the Trust Agreement, By-Laws, guidelines, duties and/or procedures established by the Pool, the Pool Board may terminate Member's participation in the Pool upon thirty (30) days advance written notice.

18. Inspections. The Pool shall be permitted but not obligated to inspect the property and operations of Member at any time. Neither the Pool's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of Member or others, to determine or warrant that such property or operations are safe or healthful, or are in compliance with any law, rule or regulation.

19. Audit of Member Books and Records. The Pool may examine and audit the Member's books and records at any time during the policy period and extensions thereof and within three years after the final termination of any Pool coverages for purposes relating to the subject matter of any Pool coverage.

20. Maintenance of Records. Member shall maintain records of such information as is necessary for premium computation, and shall send copies of such records to the Pool at such times as the Pool Board may direct.

21. Subrogation. In the event of any payment by the Pool, the Pool shall be subrogated to all the Member's rights of recovery therefor against any person or organization and the Member shall execute and deliver instruments and papers and do whatever else is necessary or otherwise requested by Pool to secure such rights; provided, however, that any sums recovered pursuant to subrogation shall be divided between the Member and the Pool in the same proportions as the amount of the expenses and judgment paid by the Member pursuant to its deductible and the amount of the expenses and judgment paid by the Pool (directly and through re-insurance). Member shall not engage in or otherwise commit acts after loss which prejudice such rights in any manner whatsoever.

22. Applicable Law. This Agreement shall be governed by the laws of the State of Michigan.

23. Captions. The caption headings for each provision of this Agreement are included for informational purposes only and shall not be used to construe the provision more broadly or narrowly than the text would indicate.

24. Binding Effect. This Agreement is binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, this Agreement has been entered into the 10 day of June, 1984.

WITNESSES:

MICHIGAN COUNTY ROAD
COMMISSION SELF-INSURANCE POOL

Annere Aalt

By: Robert J. Field

INGHAM. County Road Commission

Kenneth J. Cook

By: Thomas M. Mitchell

APPENDIX 4

**MCRC SIP
Refund Overview**

For all liability refunds authorized by the Board of Directors, the following steps are used to determine the proper allocation of the distribution to the members:

1. Apportion the refund among eligible years according to Board direction.
 - a) Eligible years are open years that show a cumulative excess of revenue over expense that is > \$0 in the most recent fiscal year audit report.
 - b) Sum the excess revenue amounts shown in the audit for all eligible years that have been selected by the Board to use for the refund allocation, and determine each year's percentage of the total.
 - c) Use that percentage to allocate the refund dollars to each year.

2. Apportion each year's refund to eligible members.
 - a) Eligible members are members that paid liability premiums in the year being considered, that stayed in the Pool continuously since that year and that are members at the date the refund is approved.
 - b) Split each year's dollar amount into two parts:
 1. 25% to be allocated proportionately between all eligible members.
 - And.
 2. 75% to be allocated based on experience.

3. Apportion the 25% part of the refund among all eligible members, using each member's relative contribution to that year's loss fund determined as follows:
 - a) Using the loss fund contribution percentage (revenue budgeted for the loss fund divided by total revenue), find the dollar amount of each member's contribution to the loss fund.
 - b) Determine each member's percentage of total loss fund contributions.
 - c) Apply the percentage of total loss fund contributions to the dollars allocated for the 25% portion of the refund for that year.

State of Michigan, Department of Insurance, Michigan Insurance Guaranty Fund

MCRC SIP 0000a

MCRCSIP
Refund Overview
Page 2 of 2

4. Apportion the 75% experience part of the refund as follows:
 - a) Update the totals for claims paid using closed claim totals as of 3/31 of the previous policy year.
 - b) Subtract the total claims paid for each member from their loss fund contribution deduced in section 3.d. above to find the loss fund contribution remaining. If the value is <0, use 0.
 - c) Determine the member's relative percentage of loss fund contributions remaining.
 - d) Apply the member's relative percentage to the dollar amount apportioned to the 75% experience portion of the refund for that year.
5. Split the two portions of the refund amount.
6. Repeat steps 2-3 for each eligible year selected by the Board to be included in the refund.
7. Sum each eligible year's total refund amounts for each member to obtain that member's total share of the refund.
8. Calculate the amount of the refund due to MDOT according to the 2003 GRAM/MDOT agreement.
9. Repeat step 8 for each eligible year.
10. Allocate the MDOT refund amount to the members based on their relative percentage of total truckline contributions for each year.
11. Total the MDOT refund amounts for each year to obtain that member's total MDOT refund.
12. Determine the member's total Net Refund amount by subtracting the total MDOT refund from the total Refund amount.

<http://www.mcrsipa.com/mcrsipa-refund-overview.aspx>

MCRCSIP 0000

APPENDIX 5

ADOPTED - DECEMBER 13, 2011
Agenda Item No. 8

Introduced by the County Services Committee of the:

INGHAM COUNTY BOARD OF COMMISSIONERS

**RESOLUTION OF INTENT TO DISSOLVE THE INGHAM COUNTY
BOARD OF ROAD COMMISSIONERS AND CREATE AN INGHAM COUNTY
DEPARTMENT OF TRANSPORTATION AND ROADS**

RESOLUTION #11-379

WHEREAS, the Legislature is considering HB 5125 and HB 5126 which would allow the powers, duties, and functions that are otherwise provided by law for a Board of County Road Commissioners to be transferred to the County Board of Commissioners by a majority vote of the County Board of Commissioners elected and serving; and

WHEREAS, HB 5125 and HB 5126 authorize the county board of commissioners to receive and expend funds as allowed under 1951 PA 51, MCL 247.651 to 247.675; and

WHEREAS, HB 5125 and HB 5126 allow for the Board of County Road Commissioners to be dissolved if the powers, duties, and functions are transferred to the County Board of Commissioners; and

WHEREAS, this option will provide Ingham County with at least \$51,740 due to the elimination in salaries and per diems for Road Commissioners, which will be used for road maintenance and improvements; and

WHEREAS, Ingham County has had a history with problems regarding the Board of Road Commissioners; and

WHEREAS, there is currently dysfunction at the road commission resulting in mistrust and anger by Road Commissioners, management, and employees of the road commission; and

WHEREAS, the Ingham County Board of Commissioners wish to mitigate the internal problems at the Road Commission and instead focus on the maintenance and improvement of the county roads.

THEREFORE BE IT RESOLVED, the Ingham County Board of Commissioners hereby expresses its intent to transfer the powers, duties, and functions provided by law for the Ingham County Board of Road Commissioners to the Ingham County Board of Commissioners.

BE IT FURTHER RESOLVED, the Ingham County Board of Commissioners hereby expresses its intent to dissolve the Ingham County Board of Road Commissioners.

BE IT FURTHER RESOLVED, that the Ingham County Board of Commissioners hereby expresses its intent to create an Ingham County Department of Transportation and Roads which will utilize the dollars available to Ingham County under 1951 PA 51, MCL 247.651 to 247.675 or any successor Act for the purposes allowed under 1951 PA 51, MCL 247.651 to 247.675 or any successor Act.

ADOPTED - DECEMBER 13, 2011
Agenda Item No. 8

RESOLUTION #11-379

BE IT FURTHER RESOLVED, the Ingham County Board of Commissioners hereby expresses its intent to have the Road Commission management and employee structure be maintained as it was under the Board of Road Commissioners, except managers will report to the managing director and the managing director will report to the County Controller/Administrator.

BE IT FURTHER RESOLVED, that it is the intent of the Board of Commissioners once HB 5125 and HB 5126 are signed into law by the Governor, the Board of Commissioners will adopt the necessary resolutions and implement a plan presented by the County Controller/Administrator.

COUNTY SERVICES: Yeas: De Leon, Copedge, Celentino, Schor, Vickers, Dragonetti
Nays: None **Absent:** None **Approved 11/29/11**

APPENDIX 6

William Conklin

From: William Conklin
Sent: Monday, December 12, 2011 4:56 PM
To: mlannoye@ingham.org
Cc: 'Gayle Pratt'
Subject: Road Commission General Liability Insurance.
Attachments: MCRCSIP Coverage.pdf, MCRCSIP Bylaws.pdf

Mary,

As we discussed today, attached is ICRC's general liability insurance coverage document provided by the Michigan Road Commission Self Insurance Pool (MCRCSIP). Also attached as we discussed is the By-Laws that govern MCRCSIP, which in Articles 3 and 4 indicates the pool members must be road commissions.

I've copied Gayle Pratt, MCRCSIP Administrator, on this email. Gayle indicated to me the MCRCSIP Board which consists of various road commissioners from around the state, and its legal counsel are looking into updating the MCRCSIP by-laws to include county road departments, but this may take some time.

This or an alternative general liability coverage should be in place prior to the County taking over the road commission as a county department.

Please feel free to reply to Gayle or me if you have any questions on this.

I will also send you similar information on our Workers Compensation insurance.

Bill Conklin

1/22/2016

Appendix 6 - Ingham County emails regarding need for By-Law Amendment
Jackson, Ingham, and Calhoun Counties v MCRCSIP - mattnordi@gmail.com - Gmail

From: Gayle Pratt <GPratt@mcrsip.org>
 To: William Conklin <IMCEAEX-
 _O=INGHAMCRC_OU=FIRST+20ADMINISTRATIVE+20GROUP_CN=RECIPIENTS_CN=WCONKLIN@ingham.org>
 Cc:
 Date: Mon, 12 Dec 2011 21:49:22 +0000
 Subject: RE: Emailing: MCRCSIP Bylaws.pdf
 Bill:

We are working with legal counsel to find a way to serve Road Departments. Hopefully there is something available to do so quickly, but if we need to amend the by-laws, we may need some time. I am available, as is our legal counsel to discuss with you and your Board as necessary.

Good Luck...

Gayle Pratt
 Administrator

Michigan County Road Commission Self-Insurance Pool
 417 Seymour St., Suite 2, Lansing, MI 48933
 4: 517.482.9166 | 0: 517.485.4809 | :: gpratt@mcrsip.org ||: 800.842.4971

---Original Message---

From: William Conklin [mailto:WConklin@inghamcrc.org]
 Sent: Monday, December 12, 2011 4:28 PM
 To: Gayle Pratt
 Subject: RE: Emailing: MCRCSIP Bylaws.pdf

Gayle,

Thanks so much for this heads up. By-laws are pretty clear MCRCSIP is a pool of road commission's and not just units or county depts that do roads. I have placed a call to the Ingham County Administrator to discuss this.

Thanks,
 Bill Conklin

---Original Message---

From: Gayle Pratt [mailto:GPratt@mcrsip.org]
 Sent: Monday, December 12, 2011 1:34 PM
 To: William Conklin
 Subject: Emailing: MCRCSIP Bylaws.pdf

<<MCRCSIP Bylaws.pdf>>
 Bill: per your request....

MCRCSIP Bylaws.pdf

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RECEIVED by MSC 11/4/2020 4:34:25 PM

Conklin, William

From: Gayle Pratt <GPratt@mcrs-ip.org>
Sent: Monday, December 12, 2011 4:49 PM
To: William Conklin
Subject: RE: Emailing: MCRCSIP Bylaws.pdf

Bill:

We are working with legal counsel to find a way to serve Road Departments. Hopefully there is something available to do so quickly, but if we need to amend the by-laws, we may need some time. I am available, as is our legal counsel to discuss with you and your Board as necessary.

Good Luck....

Gayle Pratt
Administrator

Michigan County Road Commission Self-Insurance Pool
417 Seymour St., Suite 2, Lansing, MI 48933
4: 517.482.9166 | 7: 517.485.4809 | :: gpratt@mcrs-ip.org | | 800.842.4971

-----Original Message-----

From: William Conklin [<mailto:WConklin@inghamcrc.org>]
Sent: Monday, December 12, 2011 4:28 PM
To: Gayle Pratt
Subject: RE: Emailing: MCRCSIP Bylaws.pdf

Gayle,

Thanks so much for this heads up. By-laws are pretty clear MCRCSIP is a pool of road commission's and not just units or county depts that do roads. I have placed a call to the Ingham County Administrator to discuss this.

Thanks,
Bill Conklin

-----Original Message-----

From: Gayle Pratt [<mailto:GPratt@mcrs-ip.org>]
Sent: Monday, December 12, 2011 1:34 PM
To: William Conklin
Subject: Emailing: MCRCSIP Bylaws.pdf

<<MCRCSIP Bylaws.pdf>>
Bill: per your request....

MCRCSIP Bylaws.pdf

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APPENDIX 7

Approved as Submitted
05/02/12

FINANCE COMMITTEE
April 18, 2012
Minutes

Members Present: Mark Grebner, Brian McGrain, Deb Nolan, Rebecca Bahar-Cook, Todd Tennis and Steve Dougan

Members Absent: None

Others Present: Mary Lannoye, Teri Morton, Board Chairperson Copedge, Vince Dragonetti, Travis Parsons, Michelle Rutkowski, Richard McNulty, Doug Stover, Rick Terrill, Chuck Gray, Deb Brinson, Mark Stevens, Jim Dravenstatt-Moceri, Willis Bennett, Brett Kaschinske, and others

The meeting was called to order by Chairperson Grebner at 6:03 p.m. in the Personnel Conference Room "D & E" of the Human Services Building, 5303 S. Cedar Street, Lansing.

Approval of the April 4, 2012 Minutes

The April 4, 2012 Minutes were approved as submitted.

Additions to the Agenda

- 0a. Late – Resolution to Adopt the 2012 County Equalization Report as Submitted with the Accompanying Statements.
- 0b. Late – Resolution Designating County Representatives at State Tax Commission Hearings.
- 4. Substitute - Resolution Authorizing the Creation of a Full Time Human Resources Specialist Position within the Human Resources Department.
- 7. Substitute - Resolution Establishing Priorities to Guide the Development of the 2013 Budget and Activities of County Staff.
- 8a. Substitute - Resolution to Terminate the Agreement Between the City of Lansing and the County of Ingham for Maintenance of Certain City Parks.
- 8b. Additional Materials - Resolution Dissolving the Ingham County Road Commission and Transferring all of its Powers, Duties & Functions to the Ingham County Board of Commissioners, Creating a Department of Transportation, and Adopting a 2012 Budget for the Department.
- 8c. Pulled - Resolution Acknowledging the Existing ICRC MERS Divisions as Ingham County Divisions (*Materials to be Distributed Under Separate Cover*)

Limited Public Comment

None.

MOVED BY COMM. DOUGAN, SUPPORTED BY COMM. MCGRAIN, TO APPROVE A CONSENT AGENDA FOR THE FOLLOWING ITEMS:

- 0a. Resolution to Adopt the 2012 County Equalization Report as submitted with the Accompanying Statements.
- 0b. Resolution Designating County Representatives at State Tax Commission Hearings.
- 2. Medical Care Facility - Resolution Granting Meridian Township an Easement for a Relocated Water Main Necessary for the Dementia Unit Addition under Construction at the Medical Care Facility
- 3. Health Department
 - a. Resolution to Authorize an Amendment to the Agreement with Capital Area Community Services to Serve Early Head Start Children Through the Family Outreach Services Program
 - b. Resolution to Authorize an Agreement for a Part Time Internal Medicine Physician
 - c. Resolution to Authorize a Memorandum of Understanding between St. Vincent Catholic Charities, Microenterprise Childcare Program of Michigan and the Ingham County Health Department to Serve Refugee Families
- 4. Human Resources - Resolution Authorizing the Creation of a Full Time Human Resources Specialist Position within the Human Resources Department
- 5. Facilities - Resolution Authorizing Entering into an Agreement with ICOMM for the Purpose of Replacing the Control Panel at the Ingham County Youth Center
- 6. Fair Board - Resolution Authorizing a Temporary Position at the Ingham County Fairgrounds

MOTION CARRIED UNANIMOUSLY.

MOVED BY COMM. DOUGAN, SUPPORTED BY COMM. MCGRAIN, TO APPROVE THE ITEMS ON THE CONSENT AGENDA.

MOTION CARRIED UNANIMOUSLY.

- 1. Sheriff's Office - Resolution Authorizing the Ingham County Sheriff's Office to Contract with Delhi Township for Parks Police Services with Seasonal Part-Time Deputies

MOVED BY COMM. MCGRAIN, SUPPORTED BY COMM. DOUGAN, TO APPROVE THE RESOLUTION AUTHORIZING THE INGHAM COUNTY SHERIFF'S OFFICE TO CONTRACT WITH DELHI TOWNSHIP FOR PARKS POLICE SERVICES WITH SEASONAL PART-TIME DEPUTIES.

MOVED BY COMM. DOUGAN, SUPPORTED BY COMM. BAHAR-COOK, TO AMEND THE RESOLUTION BY ADDING "BE IT FURTHER RESOLVED, THE BOARD OF COMMISSIONERS ASKS THAT THE SHERIFF'S DEPARTMENT MAKE EVERY EFFORT WHERE POSSIBLE TO CONSIDER HIRING ANY RECENTLY LAID OFF CITY OF LANSING OFFICERS"

MOTION TO APPROVE THE RESOLUTION, AS AMENDED, CARRIED UNANIMOUSLY.

7. Controller's Office - Resolution Establishing Priorities to Guide the Development of the 2013 Budget and Activities of County Staff

MOVED BY COMM. MCGRAIN, SUPPORTED BY COMM. NOLAN, TO APPROVE THE RESOLUTION ESTABLISHING PRIORITIES TO GUIDE THE DEVELOPMENT OF THE 2013 BUDGET AND ACTIVITIES OF COUNTY STAFF.

Ms. Morton noted that the changes by the Liaison Committees are underlined.

MOVED BY COMM. MCGRAIN, SUPPORTED BY COMM. DOUGAN, TO AMEND THE 4TH BE IT FURTHER RESOLVED BY ADDING BACK "INCLUDING THE POSSIBILITY OF A HYBRID PENSION PLAN".

COMM. MCGRAIN WITHDREW HIS MOTION. COMM. DOUGAN WITHDREW HIS SUPPORT OF THE MOTION.

MOVED BY COMM. MCGRAIN, SUPPORTED BY COMM. NOLAN, TO AMEND THE RESOLUTION BY ADDING "INCLUDING A HYBRID PENSION PLAN" as follows:

BE IT FURTHER RESOLVED, that the County will **pursue in the collective bargaining process develop and implement** long-term strategies to restructure retirement benefits that are financially sustainable and appropriate for all new-employees including a hybrid pension plan.

MOTION CARRIED with Comm. Tennis Voting "no".

Comm. Tennis asked to divide the question. Chairperson Grebner divided the question.

MOTION EXCLUDING ITEM F., THE 4TH BE IT FURTHER RESOLVED carried unanimously.

MOTION INCLUDING ITEM F., THE 4TH BE IT FURTHER RESOLVED, CARRIED with Comm. Tennis voting no.

8. Board of Commissioners
 a. Resolution to Terminate the Agreement Between the City of Lansing and the County of Ingham for Maintenance of Certain City Parks

MOVED BY COMM. NOLAN, SUPPORTED BY COMM. BAHAR-COOK, TO APPROVE THE RESOLUTION TO TERMINATE THE AGREEMENT BETWEEN THE CITY OF LANSING AND THE COUNTY OF INGHAM FOR MAINTENANCE OF CERTAIN CITY PARKS.

Comm. Nolan asked how much has been invested in equipment. Mr. Bennett answered \$130,000. Comm. Nolan stated it is her belief it is not in the best interest of the County to terminate the contract.

Comm. Tennis echoed Comm. Nolan adding his concern for the employees. Comm. Tennis stated after listening to Mr. Kaschinske at the County Services meeting he believes terminating the contract would not have any effect on recalling seasonal employees. Comm. Tennis stated it is his impression that the spirit of the contract agreed not to lay off personnel and this was not met by the city of Lansing when they did not recall 20 or so seasonal employees. Comm. Tennis stated during renewal he will look at the contract with skepticism.

Comm. McGrain stated he is also unhappy with the contract.

The Committee discussed changing the language because they are concerned about the rights city of Lansing seasonal employees plus they would like to have further discussions for the annual renewal. Comm. Nolan asked if the County has the ability to hire city of Lansing seasonal employees. Mr. Bennett answered yes if there are open positions. The Committee acknowledged the pay and benefits are different for County employees. Mr. Kaschinske agreed that could happen.

The Committee asked staff to revise the resolution to clarify the aspects of the layoffs.

Comm. Bahar-Cook stated that the concern goes beyond the employees and there is concern of the spirit of the contract.

MOVED BY COMM. MCGRAIN, SUPPORTED BY COMM. NOLAN TO TABLE THE RESOLUTION ASKING STAFF TO COME BACK WITH A REVISED RESOLUTION.

MOTION CARRIED UNANIMOUSLY.

- b. Resolution Dissolving the Ingham County Road Commission and Transferring all of its Powers, Duties & Functions to the Ingham County Board of Commissioners, Creating a Department of Transportation, and Adopting a 2012 Budget for the Department (*Materials to be Distributed Under Separate Cover*)

Chairperson Grebner stepped down as Chairperson and Vice-Chairperson McGrain resumed the meeting.

MOVED BY COMM. DOUGAN, SUPPORTED BY COMM. NOLAN, TO APPROVE THE RESOLUTION DISSOLVING THE INGHAM COUNTY ROAD COMMISSION AND TRANSFERRING ALL OF ITS POWERS, DUTIES & FUNCTIONS TO THE INGHAM COUNTY BOARD OF COMMISSIONERS, CREATING A DEPARTMENT OF TRANSPORTATION, AND ADOPTING A 2012 BUDGET FOR THE DEPARTMENT.

Ms. Lannoy noted that the 2012 budget and position list are included in the Blue Sheet.

Comm. Tennis provided a substitute resolution.

MOVED BY COMM. TENNIS, SUPPORTED BY COMM. BAHAR-COOK, TO APPROVE THE SUBSTITUTE RESOLUTION: RESOLUTION AUTHORIZING CONTRACTS WITH THE INGHAM COUNTY ROAD COMMISSION BOARD (ICRCB) FOR CERTAIN ADMINISTRATIVE FUNCTIONS: ESTABLISHING A REVIEW DATE FOR THE OPERATIONS OF THE ICRCB; AND ESTABLISHING A LIST OF PROVISIONS THAT WILL BE IMPLEMENTED SHOULD THE BOARD OF COMMISSIONERS VOTE TO DISSOLVE THE ICRCB.

Comm. Tennis stated it is his opinion that since the events in December 2011 the Road Commission Board leadership has changed and they are moving forward in a positive way.

(Board Chairperson Copedge left at 6:28 p.m.)

Comm. Tennis shared his original trepidations as: exposure to liability, what an advisory board would look like, who has authority to make final decisions, pot hole complaints, and design flaws to traffic flow. He noted that the Board of Commissioners may lack experience needed to handle some of the issues that may arise.

Comm. Tennis stated that the Board of Commissioners has already inserted itself into the Road Commission and he does not see how that was a good thing. He questioned if there would be a Liaison Commission solely focused on Road Commission Issues and if so which issues.

Comm. Tennis stated that if the Board of Commissioners did its due diligence and looked harder at the problems they may have taken care of themselves and some problems already have. Comm. Tennis noted that assumptions were made and there have been some regrets through this process but lessons have been learned.

Comm. Tennis stated that over the past few months he is pleased with the direction of the Road Commission and instead of reacting by abolishing a system of administration that has been around for decades the Commissioners should look at the appointment process and appoint people who are more road savvy than political.

Comm. Tennis explained that this substitute leaves the transfer language and does not change the initial resolution. It does give a state of execution (November) to allow the Road Commission Board to get things in order to deal with their problems. If the Commissioners at that time still wish to move forward it can be voted on in November.

Comm. Tennis stated he believes that the Road Commission Chairperson has earned a reprieve to an initial reaction.

(Board Chairperson Copedge returned at 6:35 p.m.)

Comm. Grebner stated that he sees an Advisory Board similar to the 911 Advisory Board made up by Township Supervisors or their appointees and requiring a unanimous vote prior to acting on a resolution. The Advisory Board would discuss allocation of funds and projects. General complaints would be handled by a different entity.

Comm. Grebner reiterated his statements over the past months that the problem is dysfunction. He questioned who has the ability to make decisions, who is in charge, who has control over the personnel and is a 3-2 Board vote functioning. He stated the Road Commission Board does not support the Managing Director. He provided examples supporting his questions then stated the Board of Commissioners has confidence in the Controller, and the employees do not go around the Controller because they know the Controller has the Board of Commissioners confidence.

Comm. Dougan believed that the 16 members of this Board of Commissioners were elected with certain skills and understanding of how things work, further, that after being on the Board they have continued to learn things since being elected. He stated that over time as a Board Member it has been necessary to become better educated, make adjustments and provide the best possible decisions for the constituents. Comm. Dougan stated that the Board of Commissioners is fully capable of assuming the Road Commission maybe not as well as the current Road Commission Board, but, some of them can not tell you where sections of roads are. Comm. Dougan stated he supports Comm. Grebner's statements.

Comm. Tennis stated that he is unaware of some of the examples Comm. Grebner provided but this is not the same Road Commission Board as a year ago. He expressed his concern of who would answer complaints and that having organized government running the Road Commission does not insulated it from issues. Comm. Tennis expressed his concern that the Board of Commissioners is moving to fast and by slowing this down there may be improvement.

Comm. McGrain expressed his concern that the substitute can not control who may or may not resign from the Road Commission Board and dissolving the Road Commission Board puts in a chain of command.

MOTION FAILED with Comm. Tennis voting yes.

Comm. Bahar-Cook asked for clarification on the public comment made by a CRAM representative. Ms. Lannoye explained she was looking at various liability vendors and is waiting for estimates; furthermore, if the County were to look at using Michigan County Road Commission Self Insurance Pool (MCRCSIP) their bylaws will not be ready until approximately July 2012 when they have their annual meeting. She noted there is language in the resolution to allow for flexibility. Ms. Lannoye stated the County has worker's compensation coverage. Comm. Bahar-Cook would like language in the resolution that County General Fund Dollars will not be used if there is a shortfall.

MOVED BY COMM. BAHAR-COOK, SUPPORTED BY COMM. DOUGAN, TO AMEND THE RESOLUTION BY ADDING TO THE 5TH BE IT FURTHER RESOLVED "THE COUNTY GENERAL FUND DOLLARS WILL NOT BE USED TO SUPPLEMENT THE ROAD COMMISSION BUDGET" as follows:

BE IT FURTHER RESOLVED, that the Ingham County Board of Commissioners hereby adopts the attached \$20.69 million line-item budget of the Transportation and Roads Fund for the January 1, 2012 through December 31, 2012 Fiscal Year. The County General Fund Dollars will not be used to supplement the Transportation and Roads Fund.

Ms. Lannoye noted that the County can use surplus fund to supplement the Road Commission. Comm. Tennis supports the amendment because it would allow for a road millage. Comm. Grebner noted the millage would then be Countywide. He noted that there have been times in the past when the Board of Commissioners has helped out the Road Commission by resolution and this would not hinder that. Comm. Dougan noted that it has been done for other County Departments from time to time.

Comm. Tennis expressed his concern that it would take the pressure off the State to provide funding to the County because they could say you can do it yourself.

MOTION CARRIED UNANIMOUSLY.

(Chairperson Copedge left at 7:03 p.m.)

The Committee discussed concerns and solutions to Road Commission complaints.

MOTION TO APPROVE THE RESOLUTION, AS AMENDED, CARRIED with Comm. Tennis Voting "no"

Vice-Chairperson McGrain stepped down and Chairperson Grebner resumed with the meeting.

Announcements

None.

Public Comment

Tom Gamez, ICRC, stated that the State Police respond to stop sign and signal changes plus people call in with their cell phones to complain about pot holes so those issues would not be typically handled by the Board. He thanked Comm. Tennis for his comments about not being fully informed of the events last December.

Mr. Gray, UAW, was disappointed with the amendment of Item #7 and appreciates Comm. Schor and Comm. Tennis' position on the amendment.

The meeting adjourned at approximately 7:13 p.m.

Respectfully submitted,

Julie Buckmaster

APPENDIX 8

1/22/2016

Jackson, Ingham, and Calhoun Counties v MCRCSIP - matinordi@gmail.com - Gmail

RECEIVED by MSC 1/4/2020 4:34:25 PM

Gayle Pratt
Administrator

Michigan County Road Commission Self-Insurance Pool
417 Seymour Ave., Suite 2, Lansing, MI 48933
(: [517.482.9166](tel:517.482.9166) | 7: [517.485.4809](tel:517.485.4809) | *: gpratt@mcrsip.org | (: [800.842.4971](tel:800.842.4971)

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----- Forwarded message -----

From: Gayle Pratt <GPratt@mcrsip.org>
To: William Conklin <IMCEAEX-__O=INGHAMCRC_OU=FIRST+20ADMINISTRATIVE+20GROUP_CN=RECIPIENTS_CN=WCONKLIN@ingham.org>
Cc: "Rhode, Jill" <JRhode@ingham.org>, "Lannoye, Mary" <co_lannoye@ingham.org>
Date: Fri, 24 Feb 2012 17:46:30 +0000
Subject: Re: Insurance information
We can have that for you by Tuesday.

On Feb 24, 2012, at 12:24 PM, "William Conklin" <WConklin@inghamcrc.org> wrote:

Hi.Gayle,

Please see below. Ingham County needs to see 10 years of ICRC's MCRCSIP loss runs and premiums. Is this something you can provide? Also has our premium for the next year (April '12 to April '13) been figured yet, and any rebate plans yet for this year?

Just so all know who's copied here:

Gayle Pratt is the MCRCSIP Administrator
Jill Rhode is the Ingham County Finance Director
Mary Lannoye is the Ingham County Controller (chief administrator)

Thanks much,
Bill Conklin,
ICRC

From: Rhode, Jill [mailto:fs_rhode@ingham.org]
Sent: Friday, February 24, 2012 11:49 AM
To: William Conklin
Cc: Lannoye, Mary
Subject: Insurance information

Bill

Can you please provide 10 years of loss history? In addition, can you please provide 10 years of annual premiums?

0063a

1/22/2016

Jackson, Ingham, and Calhoun Counties v MCRC SIP - mattnord@gmail.com - Gmail

It would be helpful if we had this information by the end of the day Tuesday.

Thanks - Jill

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----- Forwarded message -----

From: Gayle Pratt <GPratt@mcrsipp.org>
 To: William Conklin <IMCEAEX-
 _O=INGHAMCRC_OU=FIRST+20ADMINISTRATIVE+20GROUP_CN=RECIPIENTS_CN=WCONKLIN@ingham.org>,
 "Rhode, Jill" <JRhode@ingham.org>
 Cc: "Lannoye, Mary" <co_lannoye@ingham.org>
 Date: Tue, 28 Feb 2012 18:33:12 +0000
 Subject: RE: Insurance information
 Bill, Mary and Jill:

Attached is my letter with the information you requested. We have not yet discussed this year's refunds. I will not have the information to consider the 2012 refunds until mid-June.

If you need anything further, please let me know.

Gayle

Gayle Pratt
 Administrator

Michigan County Road Commission Self-Insurance Pool
 417 Seymour Ave., Suite 2, Lansing, MI 48933
 (: 517.482.9166 | 7: 517.485.4809 | *: gpratt@mcrsipp.org | (: 800.842.4971)

From: William Conklin [mailto:WConklin@inghamcrc.org]
 Sent: Friday, February 24, 2012 12:23 PM
 To: Rhode, Jill; Gayle Pratt
 Cc: Lannoye, Mary
 Subject: RE: Insurance information

Hi Gayle,

Please see below. Ingham County needs to see 10 years of ICRC's MCRC SIP loss runs and premiums. Is this something you can provide? Also has our premium for the next year (April '12 to April '13) been figured yet, and any rebate plans yet for this year?

Just so all know who's copied here:

Gayle Pratt is the MCRC SIP Administrator

0064a

Conklin, William

From: Gayle Pratt <GPratt@mcrsip.org>
Sent: Tuesday, February 14, 2012 11:17 AM
To: William Conklin
Subject: coverage

Bill:

As discussed at the Council Meeting last week, we are going to ask the Members to amend our bylaws to provide coverage to Road Departments of Counties.

With the bills passing last week, I wanted you to know that we would be interested in continuing to provide Road Liability coverage and maybe even Physical Damage coverage for your road vehicles and equipment, if Ingham County continues with their efforts to absorb the RC. Even though our bylaws have not yet been changed, our reinsurers have agreed to support us in our endeavors to continue our coverage through the transition periods.

With any major change in service delivery parameters, we may need to have some time to obtain all of the agreements necessary to appropriately cover the risks. Please keep us apprised of developments as necessary. And if you think we can help, let me know. We have many very experienced people available to get us through this time.

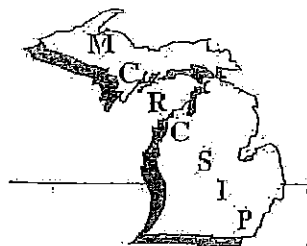
Take care....

Gayle Pratt
Administrator

Michigan County Road Commission Self-Insurance Pool
417 Seymour Ave., Suite 2, Lansing, MI 48933
(: 517.482.9166 | 7: 517.485.4809 | *: gpratt@mcrsip.org |(: 800.842.4971

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**MICHIGAN
COUNTY
ROAD
COMMISSION
SELF-
INSURANCE
POOL**

Board of Directors

Chairman
Timothy J. Hingsma
Kent

Vice Chairman
Darrel A. Spragg
Alpena

Anna D. Cooper
Hessford

Brian A. Gutowski
Emmet

Lopny L. Lutke
Missaukee

Dorothy G. Pohl
Ionia

Michael A. Power
Huron

Carl J. Shojaender
Iron

Joseph F. Valente
Marquette

Administrator
Board Treasurer
Gayle A. Pratt

Assistant Administrator
Director of Loss Control
Michael E. Shultz

Member Services
Coordinator
Board Secretary
Kay Newberry

February 28, 2012

Mr. William Conklin, P.E.
Managing Director
Ingham County Road Commission
301 Bush Street
PO Box 38
Mason, MI 48854-0038

Dear Bill:

Per your request, I am sending to you 10 years of Ingham CRC Loss and Contribution History. I have included the annual refund amounts paid to Ingham CRC, the years covered by those refunds, and the total amount of that year's refund in the Contribution History.

On February 23, 2012, our Board approved the distribution of the April 1, 2012 contributions. Following are the proposed invoice amounts for the Ingham CRC for coverage with the MCRCSIP for April 1, 2012- March 31, 2013:

• General Liability	\$ 209,125
• Auto Liability	34,488
• EPLI/Public Officials D&O	61,609
• Excess Umbrella	21,928
• Crime/Employee Dishonesty	250
• PD- Licensed Vehicles	11,197
• PD-Off-Road Equipment	6,331
• PD-Building & Contents	32,194
Total (before state assessments)	\$377,122

Invoices will be mailed in early March.

417 N. Seymour Ave.
Suite 2
Lansing, MI 48933

www.mcrsip.org
(517) 482-9166
(800) 842-4971
Fax: (517) 485-4809

Ingham County Road Commission
February 28, 2012
Page 2

If the Ingham County Board of Commissioners transfers to themselves the Road Commission responsibilities, we would not offer coverage for EPLI/Public Officials D&O exposure, nor Crime/Employee Dishonesty exposure. Those coverages would likely be already in place at the county. However, the GL, AL and Excess Umbrella coverages would all be made available to the County for their Road Operations Only. Coverage for Road Liability and Road Operations is a highly specialized area with exposures not found in other areas of County Government. We were formed to manage those exposures at a stable cost and have been successfully doing so for the last 28 years.

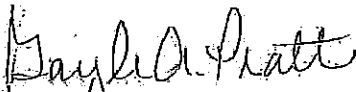
We can also discuss providing Physical Damage coverage for Road Department vehicles and equipment, if necessary. Equipment and vehicles used in Road Operations have a history of being difficult to insure. If that is something we can continue to help you with, please let me know. We currently cover the Road Commission buildings. If we need to discuss covering those buildings, please let me know.

My last comment is with respect to the right to be included in MCRCSIP Refunds. Our Board currently has a policy that states that any Member leaving the Pool loses their right to participate in future refunds. We currently have open years for liability beginning with 2002. However, our Board has said that it is their intent to transfer the Road Commission's right to refunds to the County if their Membership in the Pool is uninterrupted.

Allowing a County Road Department into our Pool as a member appears to require a by-law change that will go before our members on July 19, 2012. Until then, our Board has committed to providing coverage to counties that transfer the road commission responsibilities. We believe that we are the experts in Road Law that this state's Road Commissions and Counties need to manage these exposures.

If you have any questions, please let me know.

Sincerely,



Gayle Pratt
Administrator

4/20/20 4:34:25 PM

Michigan County Road Commission Self-Insurance Pool

CONTRIBUTION HISTORY - INGHAM COUNTY ROAD COMMISSION

10 Year Contribution Summary (excluding State Assessments)

	2002/2003	2003/2004	2004/2005	2005/2006	2006/2007	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012
Employee Fidelity (Crime)	250	250	250	250	250	250	250	250	250	250
Auto Liability	35,990	41,069	44,152	40,756	41,435	37,602	34,985	35,023	33,238	32,354
General Liability	265,556	290,662	304,623	279,830	282,559	267,469	232,206	232,353	220,346	213,654
Umbrella	29,953	29,737	31,906	30,502	31,001	28,120	24,712	24,590	23,052	22,339
CEO/EPL	30,901	48,899	53,490	65,796	71,621	72,211	72,636	70,877	61,492	61,293
Equipment Phys. Damage	13,380	17,527	18,942	18,563	19,417	18,198	17,041	18,169	17,479	15,815
Property Phys. Damage	15,517	20,692	23,142	24,318	26,043	28,159	29,211	29,211	29,211	32,036
Total Contribution	391,547	448,836	476,505	460,015	472,326	452,009	411,041	410,473	385,068	377,741
Refund Allocations	54,876	-	128,010	171,205	288,370	293,343	153,076	36,733	234,376	190,194
Covering Policy Yrs:	1992-1999	N/A	1992-2001	1989-2003	1993-2004	1995-2005	1997-2006	1998-2007	1999-2007	2000-2007
Total Member Refunds	2,500,000	-	6,100,000	6,500,000	14,000,000	10,500,000	8,000,000	1,500,000	10,000,000	10,000,000

Michigan County Road Commission Self-Insurance Pool

LOSS RUN FOR POLICY YEARS 01/31/02 THRU 01/31/12
 ALL CLAIMS FOR Ingham County Road Commission AS OF 01/31/12

AL

Reserve Balance Total:	\$0.00
Paid Total:	\$5,463.80
Collection Total:	\$3,000.00
Incurred Total:	\$2,463.80

Event Year	2002	Reserve Balance	\$0.00
Claim Number	AL33002002004749	Paid	\$1,729.91
Event Date	6/16/2002	Collection	\$1,000.00
Claim Status	Closed	Incurred	\$729.91
Desc 8000 Chars	CRC TRUCK-STRUCK DRIVE-UP CANOPY		

Event Year	2009	Reserve Balance	\$0.00
Claim Number	AL33002008006187	Paid	\$2,486.76
Event Date	1/4/2009	Collection	\$1,000.00
Claim Status	Closed	Incurred	\$1,486.76
Desc 8000 Chars	RCV STRUCK PARKED VEHICLE IN DRIVEWAY		

Event Year	2009	Reserve Balance	\$0.00
Claim Number	AL33002009006412	Paid	\$1,247.13
Event Date	10/2/2009	Collection	\$1,000.00
Claim Status	Closed	Incurred	\$247.13
Desc 8000 Chars	RCV STRUCK PARKED VEHICLE		

CRI

Reserve Balance Total:	\$59,000.00
Paid Total:	\$0.00
Collection Total:	\$0.00
Incurred Total:	\$59,000.00

Event Year	2010	Reserve Balance	\$59,000.00
Claim Number	CRI33002010006833	Paid	\$0.00

Michigan County Road Commission Self-Insurance Pool

LOSS RUN FOR POLICY YEARS 01/31/02 THRU 01/31/12
ALL CLAIMS FOR Ingham County Road Commission AS OF 01/31/12

Event Date	4/12/2010	Collection	\$0.00
Claim Status	Open - reported to Board	Incurred	\$59,000.00
Desc 8000 Chars	FRAUD/EMBEZZLEMENT COMMITTED BY RG EMPLOYEE		

E&O

Reserve Balance Total:	\$233,477.22
Paid Total:	\$100,154.47
Collection Total:	\$475.00
Incurred Total:	\$333,156.69

Event Year	2005	Reserve Balance	\$0.00
Claim Number	E&O33002005005337	Paid	\$80,654.38
Event Date	4/19/2005	Collection	\$475.00
Claim Status	Closed	Incurred	\$80,179.38
Desc 8000 Chars	VIOLATION OF MI OPEN MEETINGS ACT ALLEGED		

Event Year	2009	Reserve Balance	\$0.00
Claim Number	E&O33002009006317	Paid	\$4,271.59
Event Date	5/13/2009	Collection	\$0.00
Claim Status	Closed	Incurred	\$4,271.59
Desc 8000 Chars	DISCRIMINATION BASED ON NATIONAL ORIGIN ALLEGED		

Event Year	2010	Reserve Balance	\$0.00
Claim Number	E&O33002009006439	Paid	\$1,475.83
Event Date	2/1/2010	Collection	\$0.00
Claim Status	Closed	Incurred	\$1,475.83
Desc 8000 Chars	EMPLOYEE LAID-OFF - AGE DISCRIMINATION ALLEGED		

Event Year	2010	Reserve Balance	\$0.00
Claim Number	E&O33002010006489	Paid	\$2,229.89
Event Date	4/5/2010	Collection	\$0.00
Claim Status	Closed	Incurred	\$2,229.89
Desc 8000 Chars	RACE DISCRIMINATION ALLEGED		

Michigan County Road Commission Self-Insurance Pool

LOSS RUN FOR POLICY YEARS 01/31/02 THRU 01/31/12

ALL CLAIMS FOR Ingham County Road Commission AS OF 01/31/12

Event Year	2010	Reserve Balance	\$33,812.18
Claim Number	E&O33002010006492	Paid	\$1,187.82
Event Date	4/19/2010	Collection	\$0.00
Claim Status	Open	Incurred	\$35,000.00
Desc: 8000 Chars	AGE DISCRIMINATION ALLEGED		

Event Year	2011	Reserve Balance	\$33,220.84
Claim Number	E&O33002011006812	Paid	\$1,779.16
Event Date	10/10/2011	Collection	\$0.00
Claim Status	Open	Incurred	\$35,000.00
Desc: 8000 Chars	RACIAL DISCRIMINATION ALLEGED		

Event Year	2011	Reserve Balance	\$166,444.20
Claim Number	E&O33002011006847	Paid	\$8,555.80
Event Date	12/1/2011	Collection	\$0.00
Claim Status	Open Litigated	Incurred	\$175,000.00
Desc: 8000 Chars	WRONGFUL TERMINATION ALLEGED - DISCRIMINATION		

EPD

Reserve Balance Total:	\$8,500.00
Paid Total:	\$29,699.84
Collection Total:	\$7,913.55
Incurred Total:	\$30,286.29

Event Year	2004	Reserve Balance	\$0.00
Claim Number	EPD33002004005144	Paid	\$4,347.53
Event Date	6/22/2004	Collection	\$500.00
Claim Status	Closed	Incurred	\$3,847.53
Desc: 8000 Chars	RCV BACKED INTO OTHER VEH		

Event Year	2005	Reserve Balance	\$0.00
Claim Number	EPD33002004005262	Paid	\$3,138.55

Michigan County Road Commission Self-Insurance Pool

LOSS RUN FOR POLICY YEARS 01/31/02 THRU 01/31/12

ALL CLAIMS FOR Ingham County Road Commission AS OF 01/31/12

Event Date	1/15/2005	Collection	\$3,138.55
Claim Status	Closed	Incurred	\$0.00
Desc:8000/Chars	OTHER VEHICLE STRUCK RCV		
Event Year	2006	Reserve Balance	\$0.00
Claim Number	EPD33002006005625	Paid	\$2,513.00
Event Date	8/2/2006	Collection	\$500.00
Claim Status	Closed	Incurred	\$2,013.00
Desc:8000/Chars	RCV STRUCK RCV		
Event Year	2006	Reserve Balance	\$0.00
Claim Number	EPD33002006005662	Paid	\$5,363.04
Event Date	10/26/2006	Collection	\$500.00
Claim Status	Closed	Incurred	\$4,863.04
Desc:8000/Chars	RCV STRUCK ANIMAL		
Event Year	2006	Reserve Balance	\$0.00
Claim Number	EPD33002006005677	Paid	\$2,125.30
Event Date	11/21/2006	Collection	\$500.00
Claim Status	Closed	Incurred	\$1,625.30
Desc:8000/Chars	RCV STRUCK ANIMAL		
Event Year	2007	Reserve Balance	\$0.00
Claim Number	EPD33002007005927	Paid	\$2,275.87
Event Date	12/29/2007	Collection	\$500.00
Claim Status	Closed	Incurred	\$1,775.87
Desc:8000/Chars	RCV STRUCK ANIMAL		
Event Year	2008	Reserve Balance	\$0.00
Claim Number	EPD33002008006266	Paid	\$0.00
Event Date	12/4/2008	Collection	\$0.00
Claim Status	Closed	Incurred	\$0.00
Desc:8000/Chars	RCV STRUCK OV		

Michigan County Road Commission Self-Insurance Pool

LOSS RUN FOR POLICY YEARS 01/31/02 THRU 01/31/12

ALL CLAIMS FOR Ingham County Road Commission AS OF 01/31/12

Event Year	2009	Reserve Balance	\$0.00
Claim Number	EPD33002008006250	Paid	\$0.00
Event Date	2/7/2009	Collection	\$0.00
Claim Status	Closed	Incurred	\$0.00
Desc: 8000 Chars	OV STRUCK RCV		

Event Year	2009	Reserve Balance	\$0.00
Claim Number	EPD33002008006248	Paid	\$982.40
Event Date	2/12/2009	Collection	\$500.00
Claim Status	Closed	Incurred	\$482.40
Desc: 8000 Chars	RCV STRUCK ANIMAL		

Event Year	2010	Reserve Balance	\$0.00
Claim Number	EPD33002010006526	Paid	\$6,462.00
Event Date	6/22/2010	Collection	\$1,275.00
Claim Status	Closed	Incurred	\$4,187.00
Desc: 8000 Chars	OTHER VEHICLE STRUCK RCV		

Event Year	2010	Reserve Balance	\$0.00
Claim Number	EPD33002010006733	Paid	\$3,492.15
Event Date	12/14/2010	Collection	\$500.00
Claim Status	Closed	Incurred	\$2,992.15
Desc: 8000 Chars	RCV STRUCK RCV		

Event Year	2011	Reserve Balance	\$8,500.00
Claim Number	EPD33002011006853	Paid	\$0.00
Event Date	12/22/2011	Collection	\$0.00
Claim Status	Open	Incurred	\$8,500.00
Desc: 8000 Chars	RCV stolen		

GL

Michigan County Road Commission Self-Insurance Pool

LOSS RUN FOR POLICY YEARS 01/31/02 THRU 01/31/12

ALL CLAIMS FOR Ingham County Road Commission AS OF 01/31/12

Reserve Balance Total:	\$0.00
Paid Total:	\$422,008.52
Collection Total:	\$6,015.00
Incurred Total:	\$415,993.52

Event Year	2002	Reserve Balance	\$0.00
Claim Number	GL33002002005110	Paid	\$334,165.51
Event Date	5/3/2002	Collection	\$1,015.00
Claim Status	Closed	Incurred	\$333,150.51
Desc(8000)Chars	OTHER VEHICLE BLEW THRU INTERSECTION STRIKING PLTF		

Event Year	2006	Reserve Balance	\$0.00
Claim Number	GL33002006005627	Paid	\$4,073.65
Event Date	8/9/2006	Collection	\$1,000.00
Claim Status	Closed	Incurred	\$3,073.65
Desc(8000)Chars	EXCESSIVE STONES FROM CHIP SEAL OPERATION DAMAGED CLAIMANT VEHICLE		

Event Year	2006	Reserve Balance	\$0.00
Claim Number	GL33002006006145	Paid	\$73,936.79
Event Date	10/26/2006	Collection	\$1,000.00
Claim Status	Closed	Incurred	\$72,936.79
Desc(8000)Chars	MOTORCYCLIST LOST CONTROL. - LOOSE STONE ON PAVED ROAD.		

Event Year	2008	Reserve Balance	\$0.00
Claim Number	GL33002008006094	Paid	\$4,955.31
Event Date	7/28/2008	Collection	\$1,000.00
Claim Status	Closed	Incurred	\$3,955.31
Desc(8000)Chars	TAR AND LOOSE GRAVEL ON ROAD		

Event Year	2010	Reserve Balance	\$0.00
Claim Number	GL33002010006551	Paid	\$3,126.08
Event Date	8/9/2010	Collection	\$1,000.00
Claim Status	Closed	Incurred	\$2,126.08
Desc(8000)Chars	CLAIMANT VEHICLE DAMAGED - SEALCOAT OPERATION		

Michigan County Road Commission Self-Insurance Pool

LOSS RUN FOR POLICY YEARS 01/31/02 THRU 01/31/12
 ALL CLAIMS FOR Ingham County Road Commission AS OF 01/31/12

Event Year	2011	Reserve Balance	\$0.00
Claim Number	GL33002011006804	Paid	\$1,751.18
Event Date	8/16/2011	Collection	\$1,000.00
Claim Status	Closed	Incurred	\$751.18
Desc (8000 Chrs)	CLAIMANT VEHICLE DAMAGED		

Grand Total

Reserve Balance	\$300,977.22
Paid	\$557,326.63
Collection	\$17,403.55
Incurred	\$840,906.30

APPENDIX 9

1/22/2016

Jackson, Ingham, and Calhoun Counties v MCRCSIP - mattnordi@gmail.com - Gmail

Jill Rhode is the Ingham County Finance Director
Mary Lannoye is the Ingham County Controller (chief administrator)

Thanks much,
Bill Conklin,
ICRC

From: Rhode, Jill [mailto:fs_rhode@ingham.org]
Sent: Friday, February 24, 2012 11:49 AM
To: William Conklin
Cc: Lannoye, Mary
Subject: Insurance information

Bill

Can you please provide 10 years of loss history? In addition, can you please provide 10 years of annual premiums?

It would be helpful if we had this information by the end of the day Tuesday.

Thanks - Jill

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----- Forwarded message -----

From: Gayle Pratt <GPratt@mcrsnp.org>
To: William Conklin <IMCEAEX-
_O=INGHAMCRC_OU=FIRST+20ADMINISTRATIVE+20GROUP_CN=RECIPIENTS_CN=WCONKLIN@ingham.org>,
Kay Newberry <KNewberry@mcrsnp.org>
Cc: Tina Henry <IMCEAEX-
_O=INGHAMCRC_OU=FIRST+20ADMINISTRATIVE+20GROUP_CN=RECIPIENTS_CN=THEHRY@ingham.org>
Date: Tue, 27 Mar 2012 15:57:15 +0000
Subject: RE: MCRCSIP 2012/13 Renewal Packet
Hi Bill

Our agreements state that you are entitled to a prorated refund of contribution if you leave. The agreements require a 60 day notice of intent to leave the pool and then the contribution is pro-rated back. Hopefully you would be able to give us 60 days notice, but if you are not able to do that, we will work with you as much as possible to be fair.

Of course, we are responsible for any claims incurred (reported if under the E&O coverage) while we retain coverage, so the Pool also has incentive to resolve the coverage issue. If Ingham leaves us.

Hopefully things are going well....

Please let us know if there is anything else you need from us....

Gayle Pratt
Administrator

Michigan County Road Commission Self-Insurance Pool
 417 Seymour Ave., Suite 2, Lansing, MI 48933
 (: [517.482.9166](tel:517.482.9166) | 7: [517.485.4809](tel:517.485.4809) | *: gpratt@mcrsip.org | (: [800.842.4971](tel:800.842.4971)

From: William Conklin [mailto:WConklin@inghamcrc.org]
 Sent: Tuesday, March 27, 2012 11:17 AM
 To: Kay Newberry; Gayle Pratt
 Cc: Tina Henry
 Subject: RE: MCRC SIP 2012/13 Renewal Packet

Thanks Kay.

Gayle or Kay, I asked this before, but once again so I'm clear, if we get taken over and drop out of the pool, (change would likely occur at the beginning of a month), would the premium refund be exactly prorated to that date of change or is any part of it not refundable?

Thanks,
 Bill Conklin

From: Kay Newberry [mailto:KNewberry@mcrsip.org]
 Sent: Tuesday, March 27, 2012 9:48 AM
 To: William Conklin
 Subject: MCRC SIP 2012/13 Renewal Packet
 Importance: High

Good morning, Bill.

Attached is your 2012/2013 Renewal Packet. Your contribution invoice is included in the packet.

Please let me know if you have any questions.

Thank you!

Kay

Kay Newberry
 Board Secretary
 Member Services Coordinator
 Michigan County Road Commission Self-Insurance Pool
 417 Seymour Ave., Suite 2
 Lansing, MI 48933
 Phone: [517-482-9166](tel:517-482-9166) Fax: [517-485-4809](tel:517-485-4809)

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APPENDIX 10

12 MAR 06 CS
Item #9c.

**PROPOSED CALENDAR
TRANSITION ROAD COMMISSION FUNCTIONS**

<u>DATE</u>	<u>RESPONSIBILITY</u>	<u>DESCRIPTION</u>
March 6, 2012	County Services	Approve resolution establishing public hearing dates required by Public Act 14 of 2012. Discuss preliminary transition plan.
March 13, 2012	Board of Commissioners	Adopt resolution establishing public hearing dates required by Public Act 14 of 2012.
March 20, 2012	County Services	Finalize Transition Plan.
March 27, 2012	Board of Commissioners	Holds 1 st public hearing regarding the transfer of powers, duties and functions of the Board of County Road Commissioners to the County Board of Commissioners.
April 10, 2012	Board of Commissioners	Holds 2 nd public hearing regarding the transfer of powers, duties and functions of the Board of County Road Commissioners to the County Board of Commissioners.
April 17, 2012	County Services	Approves resolution transferring the powers, duties and functions of the County Road Commission to the Board of Commissioners, effective June 1, 2012. Approves resolution establishing the 4 Road Commission MERS divisions as Ingham County divisions. Approves resolution adopting a county budget for the Department of Transportation for the remainder of the 2012 fiscal year. Approves other resolutions as necessary to finalize the transfer.
April 18, 2012	Finance Committee	Approve the resolutions discussed above for the April 17 County Services meeting.

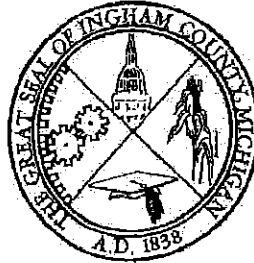
<u>DATE</u>	<u>RESPONSIBILITY</u>	<u>DESCRIPTION</u>
April 24, 2012	Board of Commissioners	Adopt all resolutions necessary to transfer the powers, duties, and functions of the Ingham County Road Commission to the Ingham County Board of Commissioners.
June 1, 2012		Effective date of transfer.

APPENDIX 11

OFFICE OF THE INGHAM COUNTY CONTROLLER

County Courthouse, P. O. Box 319, Mason, MI 48854
 Phone: (517) 676-7206 FAX: (517) 676-7306

Mary A. Lannoye
 Controller/Administrator
 Email: mlannoye@ingham.org



John L. Neilsen, Deputy Controller
 Phone: (517) 676-7209
 Email: jneilsen@ingham.org

Terl Morton, Budget Director
 Phone: (517) 676-7218
 FAX: (517) 676-7337
 Email: tmorton@ingham.org

Jared Cypher, Assistant Deputy Controller
 Phone: (517) 676-7229
 Email: jcypher@ingham.org

Date: March 6, 2012
 To: County Services Committee
 From: Mary A. Lannoye *MAL*
 Subject: Road Commission Transition Plan

Detailed below is an update to my November, 2011 memorandum in which I identified potential issues associated with dissolution of the Ingham County Road Commission (ICRC) and the creation of a County Department of Transportation. Once again I do not see any major impediments to dissolving the ICRC and creating a County Department of Transportation.

Status of Legislation - Public Acts 14 and 15 were signed by Governor Snyder on February 21, 2012. Attached are copies of those bills. (Attachment #1)

Finance/Payroll - The County will absorb these functions. Currently the ICRC employs 2 Finance Clerks and a Director of Finance. Effective on the date of transfer of powers the 2 Clerks will become employees of the County's Financial Services Department. The Director of Finance is retiring soon. The County will need a part time accountant to handle these duties but not a Director level position.

The ICRC currently processes their own payroll and administers their own employee benefits programs. In addition, the ICRC utilizes their own financial reporting software. In order to maintain continuity and consistency, it is my recommendation that the new Department of Transportation continue to utilize these same software systems, including processing their payroll and finance transactions until the end of the 2012 fiscal year.

Cash - The County Treasurer already manages the cash for the ICRC. The ICRC's cash is not pooled with the County and is accounted for separately.

County Services Committee
 March 6, 2012
 Page 2

Budget - The Board of Commissioners will need to pass a resolution establishing a budget for the Department of Transportation for the remainder of the 2012 fiscal year. In addition, the Budget Office will work with the ICRC to make sure that they are included in the budget development process for the 2013 fiscal year.

Purchasing - These functions should be absorbed. Purchases that are currently approved by the ICRC would be authorized according to the County's purchasing policies. The ICRC employs a Purchasing Agent and a Buyer. Both positions would become part of the County's Purchasing Department on the effective date of the transfer.

Human Resources/Labor Relations - These functions would be absorbed into the County's Human Resources (HR) Department. Currently there are no HR positions at the ICRC. I am recommending the establishment of a new full time employee to assist HR with the new Department of Transportation, the new 911 Center, labor relations, and other HR activities. Our County Attorney also provides labor relations services for the ICRC so the legal transition should be seamless.

Liability Insurance - The County's insurance carrier is the Michigan Municipal Risk Management Authority (MMRMA). The ICRC's carrier is the Michigan Road Commission Self Insurance Pool. Last week Jill Rhode and I met with officials from the MMRMA. We provided them with ICRC's premium and claim information for the last ten years. They are preparing a quote to add the Department of Transportation to our existing policy effective June 1, 2012.

Worker's Compensation Insurance - The County is self insured. The ICRC's carrier is the County Road Association Self Insurance Fund. I recommend that we absorb the Department of Transportation employees into the County's self insurance pool.

Collective Bargaining Agreements (CBAs) - The ICRC employees are covered by 3 different bargaining units, AFSCME (highway workers), OPEIU (Office & Professional), and OPEIU (Supervisors). All three units have signed CBAs through December 31, 2013. I am recommending that the resolution authorizing the transfer of functions recognizes the 3 CBAs through the end of the contract period (December 31, 2013).

Health Insurance - Physicians Health Plan is the insurance carrier for both the ICRC and the County. The recently ratified AFSCME and OPEIU (Office & Professional) contracts increase the employee's share of premiums from 2% to 10%. In addition, the employees must pay 50% of the increase in any premium costs. The ICRC has approved a 20% premium sharing for the employees covered by the OPEIU Supervisors unit. Attached is a summary that compares the premium costs and deductibles for the County plans and the ICRC plans. (Attachment #2)

It is unclear how the merging of these units into County government may impact the County's overall compliance with the recently enacted legislation (PA 152) that places caps on the public employer's share of employee health insurance premiums.

County Services Committee
March 6, 2012
Page 3

Retiree Health Insurance - Health insurance is provided for retirees and their spouse at the ICRC's cost. The retiree is only responsible for the cost of the prescription coverage. The only exception is retirees that retired before January, 1, 1991 and whose monthly pension amount from MERS is \$800 or less. For these retirees, the Commission also pays the premium for the Prescription Drug Plan. In addition, retirees are provided life insurance in the amount of \$5,000 or \$10,000. The recently signed CBAs change the coverage for new hires in that they will only receive single coverage and will not receive life insurance.

MERS Benefits - The ICRC offers the MERS B-4 plan to all of their employees. Please see the attached spreadsheet (Attachment #3), which compares the County's MERS plans to the ICRC. The major difference between the County and the ICRC is that the ICRC employees' contribution is zero. The new CBAs also include a new pension plan for new hires with a multiplier of 1.5 as opposed to the 2.5 for current employees.

It is my recommendation that as part of the transition the Board of Commissioners adopt a resolution that establishes Ingham County as the employer for the 4 ICRC Divisions. As separate Divisions MERS will automatically track the funded ratios and employer contributions so that all costs may appropriately be charged against transportation funds.

Transportation Planning - The ICRC's federal funds are allocated based on the Transportation Improvement plan developed and authorized by the Tri-County Regional Planning Authority. The local projects are developed in cooperation with the townships and approved by the ICRC.

Currently the County has 5 representatives on the TCRPC Board. Two of the representatives are appointed by the Board of Commissioners (Commissioners Holman & McGrain), one is appointed by Meridian Township, one by East Lansing, and one by the Road Commission. All 4 of these entities pay \$20,580 per seat on the TCRPC Board. After the transition the Board could appoint a Department of Transportation representative to the TCRPC Board, assuming the dues of \$20,580 are continued. The dues could of course continue to be paid out of road funds.

Advisory Board - If the ICRC is dissolved, the Board of Commissioners may wish to appoint an advisory board that handles strategic planning activities related to local roads. The advisory board could be made up of local township officials.

County Funding - The County currently provides no funding support to the ICRC. If the duties and responsibilities are absorbed into a County Department of Transportation the Board should make it clear in the resolution that the County does not intend to provide any general fund support. The Board might also wish to direct the Controller/ Administrator to separately track all unfunded pension and post employment benefit obligations and develop a plan to ensure that the costs and obligations are paid for out of road funds and do not become an obligation of the county's general operating fund.

Other Attachments - Also attached are copies of an organization chart (Attachment #4) and an updated ICRC Fact Sheet (Attachment #5).

ATTACHMENT #1

Act No. 15
 Public Acts of 2012
 Approved by the Governor
 February 21, 2012
 Filed with the Secretary of State
 February 21, 2012
 EFFECTIVE DATE: February 21, 2012

**STATE OF MICHIGAN
 96TH LEGISLATURE
 REGULAR SESSION OF 2012**

Introduced by Rep. Zorn

ENROLLED HOUSE BILL No. 5126

AN ACT to amend 1851 PA 156, entitled "An act to define the powers and duties of the county boards of commissioners of the several counties, and to confer upon them certain local, administrative and legislative powers; and to prescribe penalties for the violation of the provisions of this act," by amending section 11 (MCL 46.11), as amended by 2008 PA 94.

The People of the State of Michigan enact:

- Sec. 11. A county board of commissioners, at a lawfully held meeting, may do 1 or more of the following:
- (a) Purchase or lease for a term not to exceed 20 years, real estate necessary for the site of a courthouse, jail, clerk's office, or other county building in that county.
 - (b) Determine the site of, remove, or designate a new site for a county building. The exercise of the authority granted by this subdivision is subject to any requirement of law that the building be located at the county seat.
 - (c) Authorize the sale or lease of real estate belonging to the county, and prescribe the manner in which a conveyance of the real estate is to be executed.
 - (d) Erect the necessary buildings for jails, clerks' offices, and other county buildings, and prescribe the time and manner of erecting them.
 - (e) Borrow or raise by tax upon the county those funds authorized by law. The exercise of the authority granted by this subdivision is subject to any voting requirement provided by the law authorizing the borrowing or tax if different from the voting requirement under section 3.
 - (f) Provide for the repayment of a loan made by the board, by tax upon the county. The loan shall be repaid within 15 years after the date of the loan, except that a loan to erect a county building for a public function shall be repaid within 30 years after the date of the loan.
 - (g) Prescribe and fix the salaries and compensation of employees of the county if not fixed by law and, except in a county having a board of county auditors, adjust claims against the county. The sum allowed in the adjustment of a claim is subject to appeal as provided by law.
 - (h) Direct and provide for the raising of money necessary to defray the current expenses and charges of the county and the necessary charges incident to or arising from the execution of the board's lawful authority, subject to the limitations prescribed in this act. The county board of commissioners may borrow in a year, in anticipation of the levy or collection of taxes for the year, a sum of money, not exceeding 50% of the tax to be levied or collected for the general fund of the county, necessary to defray current expenses of the county. The money borrowed shall be repaid from the tax when levied and collected.
 - (i) Authorize the making of a new tax roll.
 - (j) By majority vote of the members of the county board of commissioners elected and serving, pass ordinances that relate to county affairs and do not contravene the general laws of this state or interfere with the local affairs of a township, city, or village within the limits of the county, and pursuant to section 10b provide suitable sanctions for the violation of those ordinances. The board may change the limits of a city, village, or school district within the county as provided by law. If there is not a general law governing the subject, or if a change cannot be made pursuant to a general

(22)

law, the board may change the limits of the village upon petition of at least 10% of the resident taxpayers. An ordinance or act of incorporation provided in this subdivision shall take effect when notice of the adoption is published in a newspaper of general circulation in the county. The clerk of the county board of commissioners shall engross each ordinance or act, and it shall be signed by the chairperson of the county board of commissioners and certified by the clerk of the county board of commissioners. If, within 60 days after the county board of commissioners adopts an ordinance or act, a petition signed by not less than 20% of the electors residing in the district to be affected by the ordinance or act is filed with the county clerk asking that the ordinance or act be submitted to electors of the district to be affected by the ordinance or act for approval or rejection, then the ordinance or act shall not take effect until it is approved by a majority of the electors of the district affected voting on that issue at a regular or special election called for that purpose. The county board of commissioners shall provide the manner of submitting the ordinance or act to the electors for their approval and of determining the result of the election.

(k) Require a county officer whose salary or compensation is paid by the county to make a report under oath to the county board of commissioners on any subject connected with the duties of that office and require the officer to give a bond reasonable or necessary for the faithful performance of the duties of the office. An officer who neglects or refuses either to make a report or give a bond within a reasonable time after being required to do so may be removed from office by the board by a vote of 2/3 of the members elected or appointed, and the office declared vacant. The board may fill the vacancy for the unexpired portion of the term for which the officer was elected or appointed. If an election occurs before the expiration of the unexpired term, and if the office is elective, the vacancy shall be filled at that election. The board shall give reasonable notice of the election to fill the vacancy.

(l) Represent the county and have the care and management of the property and business of the county if other provisions are not made.

(m) Establish rules and regulations in reference to the management of the interest and business concerns of the county as the board considers necessary and proper in all matters not especially provided for in this act or under the laws of this state. The county board of commissioners shall not audit or allow a claim, including a bill or charge, against the county unless the claim has been filed with the county clerk of the county before the fourth day of a regular meeting of the board, or before the second day of an adjourned or other meeting, the claim is contracted by the board during the session of the board or the claim is for mileage and per diem of the members of the board. The county clerk shall keep a book of all claims in the order in which the claims are presented, giving the name of each claimant and the amount and date of presentation of each claim. The book, after the time prescribed for the presentation of claims, shall be delivered to the chairperson for the use of the board. At the October session, the board, by a vote of 2/3 of the members, may receive and allow accounts that have wholly accrued during the session.

(n) Subject to subdivision (o), remove an officer or agent appointed by the board if, in the board's opinion, the officer or agent is incompetent to execute properly the duties of the office or if, on charges and evidence, the board is satisfied that the officer or agent is guilty of official misconduct, or habitual or willful neglect of duty, and if the misconduct or neglect is a sufficient cause for removal. However, an officer or agent shall not be removed for that misconduct or neglect unless charges of misconduct or neglect are preferred to the county board of commissioners or the chairperson of the county board of commissioners, notice of the hearing, with a copy of the charges, is delivered to the officer or agent, and a full opportunity is given the officer or agent to be heard, either in person or by counsel.

(o) If the county has an appointed county manager or other appointed chief administrative officer or a county controller, the county board of commissioners may enter into an employment contract with that officer. The term of the employment contract may extend beyond the terms of the members of the county board of commissioners. The term of the employment contract shall be 3 years or less, unless the employment contract is entered into on or after August 1 of an even-numbered year, in which case the term of the employment contract shall be 1 year or less. However, in a county organized under 1966 PA 293, MCL 45.501 to 45.521, with an appointed chief administrative officer, an employment contract with the appointed chief administrative officer shall be for the term provided by section 11a of 1966 PA 293, MCL 45.511a. An employment contract under this subdivision shall be in writing and shall specify the compensation to be paid to the officer, any procedure for changing the compensation, any fringe benefits, and any other conditions of employment. If the officer serves at the pleasure of the county board of commissioners, the contract shall so state and may provide for severance pay or other benefits in the event the employment of the officer is terminated at the pleasure of the county board of commissioners.

(p) Establish rules consistent with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275, for the manner of proceeding before the board.

(q) Acquire by exchange land needed for county purposes, including the purchase of land to be used in exchange for other land of approximate equal value owned by the federal government and needed for county purposes.

(r) Grant or loan funds to a nonprofit corporation organized for the purpose of providing loans for private sector economic development initiatives. A grant or loan under this subdivision shall not be derived from ad valorem taxes except for ad valorem taxes approved by a vote of the people for economic development. The county shall establish an application process for proposals to receive a grant or loan under this subdivision. The awarding of a grant or loan under this subdivision shall be made at a public hearing of the county board of commissioners. The grant or loan contract shall require a report to the county board of commissioners regarding the activities of the recipient and the degree to which the recipient has met the stated public purpose of the funding.

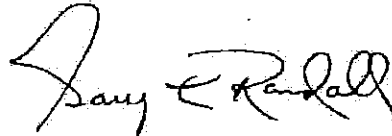
(s) Before January 1, 2015, by majority vote of the members of the county board of commissioners elected and serving in a county with an appointed board of county road commissioners, pass a resolution that transfers the powers, duties, and functions that are otherwise provided by law for the appointed board of county road commissioners of that county to the county board of commissioners. The resolution is subject to the requirement in section 6(9) of chapter IV of 1909 PA 283, MCL 224.6. The appointed board of county road commissioners of that county is dissolved on the date specified in the resolution adopted under this subdivision, and the county board of commissioners is authorized to receive and expend funds as allowed under 1951 PA 51, MCL 247.651 to 247.675. If the powers, duties, and functions of the board of county road commissioners of a county are transferred to the county board of commissioners of that county under this subdivision and the powers and duties of the office of county drain commissioner of that county had previously been transferred to the board of county road commissioners as provided in section 21(3) of the drain code of 1956, 1956 PA 40, MCL 280.21, then the county board of commissioners of that county shall reestablish, by resolution, the office of county drain commissioner as an elected office. The resolution reestablishing the office of county drain commissioner shall provide for the appointment of an acting county drain commissioner for that county who shall hold office until the next general election at which a county drain commissioner will be elected as provided in chapter X of the Michigan election law, 1954 PA 116, MCL 168.191 to 168.211.

(t) Before January 1, 2015, by majority vote of the members of the county board of commissioners elected and serving in a county with an elected board of county road commissioners, pass a resolution to submit to the qualified and registered electors of the county at the next regular election to be held in the county the question of transferring the powers, duties, and functions of the elected board of county road commissioners of that county to the county board of commissioners. The resolution is subject to the requirement in section 6(9) of chapter IV of 1909 PA 283, MCL 224.6. If a majority of the qualified and registered electors of the county voting on the question vote in favor of transferring the powers, duties, and functions of the elected board of county road commissioners of that county to the county board of commissioners, the elected board of county road commissioners of that county is dissolved and the county board of commissioners is authorized to receive and expend funds as allowed under 1951 PA 51, MCL 247.651 to 247.675. If the powers, duties, and functions of the board of county road commissioners of a county are transferred to the county board of commissioners of that county under this subdivision and the powers and duties of the office of county drain commissioner of that county had previously been transferred to the board of county road commissioners as provided in section 21(3) of the drain code of 1956, 1956 PA 40, MCL 280.21, then the county board of commissioners of that county shall reestablish, by resolution, the office of county drain commissioner as an elected office. The resolution reestablishing the office of county drain commissioner shall provide for the appointment of an acting county drain commissioner for that county who shall hold office until the next general election at which a county drain commissioner will be elected as provided in chapter X of the Michigan election law, 1954 PA 116, MCL 168.191 to 168.211.

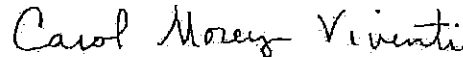
(u) If, after a board of county road commissioners is dissolved as provided in subdivision (s) or (t), the county board of commissioners for a county determines that a board of county road commissioners would provide a cost savings to the county residents and would better meet the needs of the county residents, the county board of commissioners for that county may, upon majority vote of the members of the county board of commissioners, submit the question of adopting a county road system with a board of county road commissioners to a vote of the electors of the county as provided in chapter IV of 1909 PA 283, MCL 224.1 to 224.32.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5125 of the 96th Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor

Act No. 14
Public Acts of 2012
Approved by the Governor
February 21, 2012
Filed with the Secretary of State
February 21, 2012
EFFECTIVE DATE: February 21, 2012

STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012

Introduced by Rep. Switalski

ENROLLED HOUSE BILL No. 5125

AN ACT to amend 1909 PA 283, entitled "An act to revise, consolidate, and add to the laws relating to the establishment, opening, discontinuing, vacating, closing, altering, improvement, maintenance, and use of the public highways and private roads; the condemnation of property and gravel therefor; the building, repairing and preservation of bridges; maintaining public access to waterways under certain conditions; setting and protecting shade trees, drainage, and cutting weeds and brush within this state; providing for the election or appointment and defining the powers, duties, and compensation of state, county, township, and district highway officials; and to prescribe penalties and provide remedies," by amending section 6 of chapter IV (MCL 224.6), as amended by 2009 PA 39.

The People of the State of Michigan enact:

CHAPTER IV

Sec. 6. (1) Except as otherwise provided by law and under subsection (4), (5), (7), or (8), in a county where the county road system is adopted, a board of county road commissioners consisting of not less than 3 members or more than 5 members shall be elected by the people of the county. The initial road commissioners shall be appointed by the county board of commissioners or elected at a general or special election called for that purpose, as determined by the county board of commissioners. The county board of commissioners may by resolution provide for staggered terms of office for the road commissioners under this subsection so that not more than 2 road commissioners' terms of office expire in the same year.

(2) If the road commissioners are appointed, they shall hold office only until January 1 of the first odd numbered year following the date of appointment. If the road commissioners are to be elected at a general or special election, notice of the election, embodying a copy of the resolutions of the county board of commissioners, giving the number and terms of the office of the road commissioners to be elected, shall be published by the clerk as required by section 3 of this chapter.

(3) The regular election of county road commissioners shall be held at the general election on the first Tuesday after the first Monday in November. The term of office of an elected county road commissioner shall commence on January 1 in the year following his or her election. The notice of the election shall be given at the time notice is given of the general election of county officers.

(4) The election of county road commissioners shall not be mandatory in any county that contains all or part of 12 surveyed townships as determined by the government survey of the county. Except as provided under subsection (5), in a county under this subsection the county board of commissioners, by a majority of its members elect, may appoint the county road commissioners. A county road commissioner appointed under this subsection shall not be removed from office before the expiration of his or her term of office without being given written notice of the charges made against him or her and an opportunity to appear before the county board of commissioners for a hearing on the charges.

(5) In a county having a population of 750,000 or more that has adopted a charter under 1966 PA 293, MCL 45.501 to 45.521, the powers and duties that are otherwise provided by law for a board of county road commissioners may be reorganized by amendment to the charter. In a county having a population of 750,000 or more with a charter commission proposing a charter under 1966 PA 293, MCL 45.501 to 45.521, the powers and duties that are otherwise provided by law for a board of county road commissioners may be reorganized under the charter if, at the election considering the approval of the charter, the voters approve both the charter and a separate ballot question presented by the charter commission to reorganize the board of county road commissioners. Funds provided to the county under 1951 PA 51, MCL 247.651 to 247.675, shall only be expended for the purposes provided under 1951 PA 51, MCL 247.651 to 247.675.

(6) If the county board of commissioners proposes to alter the number of county road commissioners as allowed under this act, the county board of commissioners shall hold not less than 1 public hearing on the proposed change to the road commission. The county board of commissioners shall give notice as required under the open meetings act, 1976 PA 267, MCL 15.261 to 15.275, of the time and place of the public hearing not less than 28 days before the hearing. The county board of commissioners shall also provide written notice of the hearing to the county road commission and, if available, by posting the notice on the county's website. The county board of commissioners may vote on whether to alter the number of county road commissioners at the meeting noticed under this subsection.

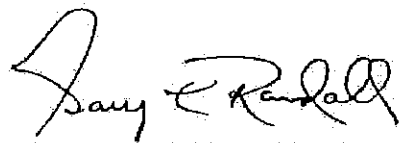
(7) Except as otherwise provided under subsection (5) and subject to the requirement provided in subsection (9), before January 1, 2015, the powers, duties, and functions that are otherwise provided by law for an appointed board of county road commissioners may be transferred to the county board of commissioners by a resolution as allowed under section 11 of 1851 PA 156, MCL 46.11. The appointed board of county road commissioners of that county is dissolved on the date specified in the resolution adopted under this subsection, and the county board of commissioners is authorized to receive and expend funds as allowed under 1951 PA 51, MCL 247.651 to 247.675.

(8) Except as otherwise provided in subsection (5) and subject to the requirement provided in subsection (9), before January 1, 2015, the county board of commissioners in a county with an elected board of county road commissioners may, by a resolution as allowed under section 11 of 1851 PA 156, MCL 46.11, submit to the qualified and registered electors of the county at the next regular election to be held in the county the question of transferring the powers, duties, and functions of the elected board of county road commissioners of that county to the county board of commissioners. If a majority of the qualified and registered electors of the county voting on the question vote in favor of transferring the powers, duties, and functions of the elected board of county road commissioners of that county to the county board of commissioners, the elected board of county road commissioners of that county is dissolved and the county board of commissioners is authorized to receive and expend funds as allowed under 1951 PA 51, MCL 247.651 to 247.675.

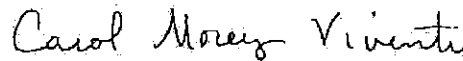
(9) Before adopting a resolution under subsection (7) or (8), the county board of commissioners shall conduct, at a minimum, 2 public hearings on whether to transfer the powers, duties, and functions of the board of county road commissioners to the county board of commissioners.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5126 of the 96th Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor

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**2012 PHYSICIANS HEALTH PLAN COVERAGE
COUNTY VS. ROAD COMMISSION**

ATTACHMENT #2

	County High	County Standard	County High Deductible	Road Commission Base	Road Commission High Deductible
Deductible	None	\$500 Single/\$1,000 Family	\$1250 Single/\$2500 Family	\$100 Single/\$200 Family	\$2500 Single/\$5000 Family
Out of Pocket Max	\$1,000 Single/\$2,000 Family	\$1,500 Single/\$3,000 Family	\$2500 Single/\$5000 Family	\$1,000 Single/\$2,000 Family	\$5000 Single/\$10,000 Family
Office Visits	\$20 Co-pay	\$20 Co-pay	20% after Deductible	\$10 Co-pay	20% after Deductible
Most Services	100%	80% after Deductible	80% after Deductible	90% after Deductible	80% after deductible
Employer monthly premium—Family	\$ 1,253	\$ 1,149	\$ 1,007	\$ 1,426	\$ 864
Employee monthly premium—Family	\$ 398	\$ 235	\$ -	\$ 195	\$ 135
Total monthly family premium	\$ 1,650	\$ 1,383	\$ 1,007	\$ 1,622	\$ 999
Annual family premium	\$ 19,803	\$ 16,600	\$ 12,087	\$ 19,464	\$ 11,988
Employee % of Total	24.09	16.96	-	12.05	13.51

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ATTACHMENT #3

MERS Benefits

COUNTY EMPLOYEES

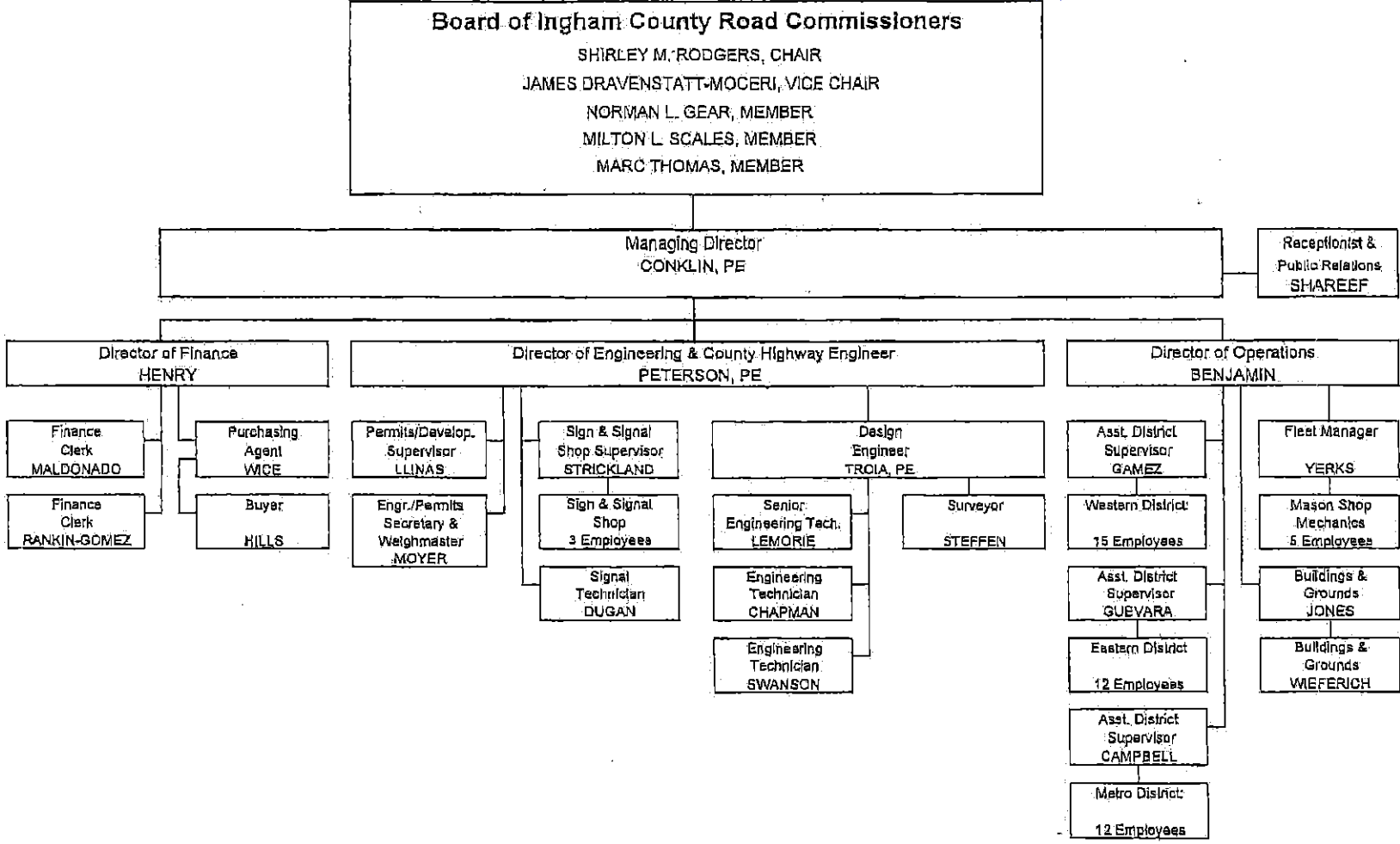
	Plan	Vesting	Service/Age	FAC	Employee Contribution
Confidentials -	B-4	V-6	F55(15)	FAC-3	5.36
Sheriff Supervisors	3.20%	V-10	F55 (15) or 25 YOS	FAC-3	19.61
General Managers	B-4	V-6	F55(15)	FAC-3	6.39
ICEA Professionals	B-4	V-10	F55(15)	FAC-5	13.42 Cost of Living Factor
UAW	B-4	V-10	F55(15)	FAC-5	3.62
OPEIU	B-4	V-10	F55(15)	FAC-3	9.71
Animal Control	B-4	V-10	F55 (15) or 25 YOS	FAC-3	15.49 Cost of Living Factor
Nurses	B-3	V-6	F55(15)	FAC-3	11.87 Cost of Living Factor
ICEA Court Professionals	B-3	V-10	F55(15) or 20 YOS	FAC-5	9.84
Deputies	3.20%	V-10	F55 (15) or 25 YOS	FAC-5	10.96
APA	B-4	V-6	F55(15)	FAC-5	1.40
Parks Union	B-3	V-10	60	FAC-5	-
Parks Non-Union	B-4	V-10	F55(25)	FAC-3	-
Legal Research Groups	C-1	V-10	60	FAC-5	-
Zoo - MERS/Legal still working on					

ROAD COMMISSION EMPLOYEES

General Hourly	B-4	V-8	F55(20)	FAC-3	0
Administration	B-4	V-8	F55(20)	FAC-3	0
Administration Union	B-4	V-8	F55(20)	FAC-3	0
Department Heads	B-4	V-8	F55(20)	FAC-3	0

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ORGANIZATION CHART INGHAM COUNTY ROAD COMMISSION



Organizational chart as of April 4, 2011

ATTACHMENT #5

INGHAM COUNTY ROAD COMMISSION FACT SHEET

- FTEs - 70
- 2011 Adopted Budget - \$15,006,474
- Financial Statements as of December 31, 2010:
 - Actual Revenues \$19,623,444
 - Actual Expenditures 19,034,823
 - Fund Balance 4,338,949
 - Unreserved Fund Balance 3,092,083
- Collective Bargaining Agreements:
 - OPEIU - Office Personnel - Contract 1/01/2010-12/31/13
 - AFSCME - Highway Workers - Tentative Agreement 1/01/2011-12/31/2013
 - OPEIU - formerly SEIU - Supervisors - Draft Agreement 01/01/2010-through 12/31/2103
- Municipal Employees Retirement System (MERS):
 - Benefit plan B-4
 - 2.5% of final average compensation with maximum benefits of 80%
 - 2012 Contribution - \$964,728
 - 2012 Employer Contribution as a % of payroll - 19.14%
 - 2012 Employee Contribution as a % of payroll - 0%
- Long Term Unfunded Liabilities - Unfunded Accrued Actuarial Liability:
 - MERS Pension System - 70% funded ratio \$ 9,787,460
 - Other Post Employment Benefit - Retiree Health 13,679,964

APPENDIX 12

1/22/2016

Jackson, Ingham, and Calhoun Counties v MCRCSIP - mattnordi@gmail.com - Gmail

sender, do not disclose its contents to others, and delete it from your system. Any other use of this E-mail and/or attachments is prohibited. Unauthorized interception of this e-mail is a violation of federal criminal law.

----- Forwarded message -----

From: Gayle Pratt <GPratt@mcrقسip.org>
 To: William Conklin <IMCEAEX-
 _O=INGHAMCRC_OU=FIRST+20ADMINISTRATIVE+20GROUP_CN=RECIPIENTS_CN=WCONKLIN@ingham.org>
 Cc:
 Date: Wed, 4 Apr 2012 21:03:36 +0000
 Subject: The Other Pool
 Hi Bill:

Pursuant to our earlier telephone conversation:

MCRCSIP currently has 8 members – Arenac, Benzie, Cheboygan, Dickenson, Mackinac, Midland, Otsego and Roscommon that joined January 1, 1991. The information I have found states that they "lost coverage". Nothing in my files states why. Our reinsurance broker, who was involved with us back then, remembers that they were refused coverage due to their experience with their previous insurer. Their previous insurer was "The Michigan Road Commission Risk Management Authority". I have heard (heresy again...sorry) that that was MMRMA - they used to customize their name for specific sectors.

I am not sure how to verify the parts that I don't have written evidence for. But maybe this will give you a start when looking for more information.

Enjoy your holiday.....I will talk to you later.

Gayle Pratt
Administrator

Michigan County Road Commission Self-Insurance Pool
 417 Seymour Ave., Suite 2, Lansing, MI 48933
 (: [517.482.9166](tel:517.482.9166) | 7: [517.485.4809](tel:517.485.4809) | *: gpratt@mcrقسip.org | (: [800.842.4971](tel:800.842.4971))

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----- Forwarded message -----

From: "Lannoye, Mary" <co_lannoye@ingham.org>
 To: William Conklin <IMCEAEX-
 _O=INGHAMCRC_OU=FIRST+20ADMINISTRATIVE+20GROUP_CN=RECIPIENTS_CN=WCONKLIN@ingham.org>, "Rhode, Jill" <JRhode@ingham.org>
 Cc:
 Date: Fri, 6 Apr 2012 11:47:10 +0000
 Subject: RE: More info on Road Com Insurance
 So are they trying to convince us to keep their coverage? If so, why don't they move quicker to amend their bylaws?

From: William Conklin [WConklin@inghamcrc.org]
Sent: Thursday, April 05, 2012 1:23 PM
To: Lannoye, Mary; Rhode, Jill
Subject: More info on Road Com Insurance

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1/22/2016

Jackson, Ingham, and Calhoun Counties v MCRCSIP - mattnordf@gmail.com - Gmail

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Mary, Jill,

Further information on general insurance coverage for the Road Commission:

Please see email below from MCRCSIP Administrator Gayle Pratt about some Road Commissions that may have had previous coverage problems under MMRMA.

Also Gayle informs me that if we pull out of MCRCSIP, we will not receive any refunds for previous years which the pool may close out in the future with savings refunds distributed back to the members. She says currently about 10 prior years remain open, and since they are not closed—no estimate of what these refunds could be.

I will be out of the office next week, April 9-13, but will see you at a meeting we have scheduled for 1:15 pm, Monday, April 16, and can discuss further then if desired.

—Bill Conklin,
ICRC

From: Gayle Pratt [mailto:GPratt@mcrsip.org]
Sent: Wednesday, April 04, 2012 5:04 PM
To: William Conklin
Subject: The Other Pool

Hi Bill:

Pursuant to our earlier telephone conversation:

MCRCSIP currently has 8 members – Arenac, Benzie, Cheboygan, Dickenson, Mackinac, Midland, Otsego and Roscommon that joined January 1, 1991. The information I have found states that they “lost coverage”. Nothing in my files states why. Our reinsurance broker, who was involved with us back then, remembers that they were refused coverage due to their experience with their previous insurer. Their previous insurer was “The Michigan Road Commission Risk Management Authority”. I have heard (heresy again...sorry) that that was MMRMA - they used to customize their name for specific sectors.

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Gayle Pratt
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APPENDIX 13

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR INGHAM COUNTY

THE COUNTIES OF INGHAM,
JACKSON, and CALHOUN, Municipal
corporations and bodies politic and corporate,

Plaintiffs,

Case No. 15- 432 -NZ

-v-

Hon. ~~ROSEMARIE ACELINA~~

THE MICHIGAN COUNTY ROAD COMMISSION
SELF-INSURANCE POOL, an unincorporated voluntary
Association,

Defendant.

Bonnie G. Toskey (P30601)
Mattis D. Nordfjord (P69780)
Cohl, Stoker & Toskey, P.C.
Attorneys for Plaintiffs
601 N. Capitol Ave.
Lansing, MI 48933
(517) 372-9000
btoskey@cstmlaw.com

COMPLAINT

The Counties of Ingham, Jackson, and Calhoun, municipal corporations and bodies politic and corporate under the Michigan Constitution of 1963, hereby make claim against the Michigan County Road Commission Self-Insurance Pool (MCRCSIP) and in support thereof state as follows:

Parties

1. a. The County of Ingham is a municipal corporation and body politic and corporate under the Michigan Constitution of 1963, governed—pursuant to MCL 46.1—by the Ingham

COHL, STOKER & TOSKEY, P.C.
ATTORNEYS AND COUNSELORS
601 NORTH CAPITOL
LANSING, MICHIGAN 48933
(517) 372-9000

County Board of Commissioners, with an official address of Ingham County Courthouse, 315 S. Jefferson St., Mason, MI 48854.

b. The County of Jackson is a municipal corporation and body politic and corporate under the Michigan Constitution of 1963, governed—pursuant to MCL 46.1—by the Jackson County Board of Commissioners, with an official address of 120 W. Michigan Avenue, Jackson, MI 49201.

c. The County of Calhoun is a municipal corporation and body politic and corporate under the Michigan Constitution of 1963, governed—pursuant to MCL 46.1—by the Calhoun County Board of Commissioners, with an official address of 315 W. Green Street, Marshall, MI 49068.

2. Defendant MCRC SIP is a voluntary, unincorporated association of Michigan county road commissions formed in 1983 and now subsisting by virtue of contract (Declaration of Trust dated April 1, 1984—**Exhibit 1**), as authorized by Mich Const 1963, art 7, §28 and MCL 124.5, with an official address of 417 N. Seymour Ave., Suite 2, Lansing, MI 48933.

3. Defendant MCRC SIP was formed for the purpose of providing “reliable, consistent and affordable liability and physical damage coverage to Michigan county road commissions”¹ by means of a self-insurance pool, which self-insurance does not make MCRC SIP an insurance company or insurer or constitute the doing of insurance business, as declared in MCL 124.6.

Common Allegations

4. The MCRC SIP provides pooled self-insurance coverage for the following types of potential liabilities that might otherwise be the subject of commercial insurance protection:

¹ <https://www.mcrcsip.org/main.php?id=start>

- General Liability
- Auto Liability
- Trunkline Automobile Liability
- Employment Practices/Errors & Omissions Liability
- Employee Fidelity & Faithful Performance
- Property & Physical Damage
- Equipment Damages (including licensed vehicles)
- Equipment Breakdown

5. The MCRCSIP is governed by a board of directors, currently consisting of the following individuals:

- Brian A. Gutowski - Chair, Emmet County
- Timothy J. Haagsma - Vice Chair, Kent County
- Alan D. Cooper - Wexford County
- Brett A. Laughlin - Ottawa County
- Dorothy G. Pohl - Ionia County
- Michael A. Power - Huron County
- Darrel A. Spragg - Alpena County
- Dennis J. Stanek - Delta County
- Joseph F. Valente - Marquette County

6. a. The Ingham County Road Commission became a member of MCRCSIP by accepting the Declaration of Trust on June 10, 1985.

b. The Jackson County Road Commission became a member of MCRC SIP by accepting the Declaration of Trust on March 7, 1984.

c. Upon information and belief, the Calhoun County Road Commission became a member of MCRC SIP by accepting the Declaration of Trust in 1984 or 1985.

7. On February 14, 2012, MCRC SIP, through its administrator (**Exhibit 2**), notified Ingham County that should it transfer the functions of the Ingham County Road Commission to the Ingham County Board of Commissioners, MCRC SIP offered to continue to provide Road Liability Coverage and Physical Damage coverage for road vehicles.

8. On February 21, 2012, the Legislature adopted, and the Governor signed into law:

a. HB 5125, which was tie-barred to HB 5126, as 2012 PA 14, amending MCL 224.6, which was given immediate effect, subsection (7) of, which in relevant part provides:

(7) Except as otherwise provided under subsection (5) and subject to the requirement provided in subsection (9), before January 1, 2015, the powers, duties, and functions that are otherwise provided by law for an appointed board of county road commissioners may be transferred to the county board of commissioners by a resolution as allowed under section 11 of 1851 PA 156, MCL 46.11. The appointed board of county road commissioners of that county is dissolved on the date specified in the resolution adopted under this subsection, and the county board of commissioners is authorized to receive and expend funds as allowed under 1951 PA 51, MCL 247.651 to 247.675.

b. HB 5126, which was tie-barred to HB 5125, as 2012 PA 15, amending MCL 46.11, which was given immediate effect, subsection (s) of which in relevant part provides:

(s) Before January 1, 2015, by majority vote of the members of the county board of commissioners elected and serving in a county with an appointed board of county road commissioners, pass a resolution that transfers the powers, duties, and functions that are otherwise provided by law for the appointed board of county road commissioners of that county to the county board of commissioners. The resolution is subject to the requirement in section 6(9) of chapter IV of 1909 PA 283, MCL 224.6. The appointed board of county road commissioners of that county is dissolved on the date specified in the resolution adopted under this subdivision, and the county board of commissioners is authorized to receive and expend funds as allowed under 1951 PA 51, MCL 247.651 to 247.675. * * *

9. On February 28, 2012, MCRC SIP, through its administrator (**Exhibit 3**), notified Ingham County that on February 23, 2012, the MCRC SIP Board of Directors approved the distribution of the April 1, 2012 contributions. Ingham County was provided a breakdown of the proposed invoice for insurance coverage for April 1, 2012 – March 31, 2013. The administrator indicated that should the Ingham County Board of Commissioners transfer to themselves the functions of the Ingham County Road Commission, MCRC SIP would not offer EPLI/Public Officials D&O (directors', officers' and public officials' liability) coverage, nor Crime/Employee Dishonesty coverage. However, the administrator stated MCRC SIP would continue to make available General Liability, Auto Liability and Excess Umbrella coverages to Ingham County for road operations only.

10. MCRC SIP, through its administrator, made the following statement to Ingham County on February 28, 2012:

My last comment is with respect to the right to be included in MCRC SIP Refunds. Our Board currently has a policy that states that any Member leaving the Pool loses their right to participate in future refunds. We currently have open years for liability beginning in 2002. **However, our Board has said that it is their intent to transfer the Road Commission's right to refunds to the County if their Membership in the Pool is uninterrupted.** (*emphasis added*) (see Exhibit 3)

11. Ingham County was assessed a premium for the fiscal year April 1, 2012-March 31, 2013 by MCRC SIP, which Ingham County paid in full on April 13, 2012, via check # 98827, in the amount of \$400,716.00 in reliance on the MCRC SIP administrator's February 28, 2012 letter.

12. a. On April 24, 2012, the Ingham County Board of Commissioners, proceeding under MCL 224.6(7) —and in reliance on the MCRC SIP administrator's February 14 and 28,

2012 communications (Exhibit 2 and Exhibit 3)—after two (2) public hearings under MCL 224.6(9), adopted Resolution #12-23 (Exhibit 4a) dissolving the appointed Ingham County Road Commission, and transferring all powers and duties of the road commission to the Ingham County Board of Commissioners.

b. On January 15, 2013, the Jackson County Board of Commissioners, proceeding under MCL 224.6(7), and after two (2) public hearings under MCL 224.6(9), adopted a resolution (Exhibit 4b) dissolving the appointed Jackson County Road Commission, and transferring all powers and duties of the road commission to the Jackson County Board of Commissioners.

c. On September 20, 2012, the Calhoun County Board of Commissioners, proceeding under MCL 224.6(7), and after two (2) public hearings under MCL 224.6(9), adopted a resolution (Exhibit 4c) dissolving the appointed Calhoun County Road Commission, and transferring all powers and duties of the road commission to the Calhoun County Board of Commissioners.

13. On May 29, 2012, MCRC SIP, through its Board Chairman, sent a letter to the Members of MCRC SIP, outlining the concerns resulting from the loss of members from the insurance pool if County Commissioners were to exercise the newly created statutory authority to transfer the powers and duties of the Road Commissioners to counties (Exhibit 5).

14. On May 29, 2012, MCRC SIP, through its Board Chairman, stated, "...your Board of Directors unanimously passed a motion at its November 10, 2011 meeting to recommend that our Members allow counties with road responsibilities to become Members of MCRC SIP." (see Exhibit 5)

15. On May 29, 2012, MCRCSIP, through its Board Chairman, provided two resolutions for consideration by the Members to vote on at their annual meeting on July 19, 2012, including:

- **Resolution "B"** – to amend the Declaration of Trust and By-Laws to allow "counties that have assumed the powers and duties provided by law to county road commissions" to be members of our Pool. (see Exhibit 5)

16. On the same date as the May 29, 2012, letter from MCRCSIP where its Board Chairman recommended the Members allow counties with road responsibilities to become Members of MCRCSIP (Exhibit 5); MCRCSIP, through its administrator, sent Ingham County an email dated May 29, 2012 with two documents attached. These attachments were "Agreement for Cancellation of Insurance" and "Agreement for Withdrawal From Michigan County Road Commission Self-Insurance Pool." (Exhibit 6)

17. Upon information and belief, on May 29, 2012, MCRCSIP intended to accept Ingham County into the Pool at the time the Declaration of Trust and By-Laws were amended and misled Ingham County and similarly situated counties (Jackson and Calhoun) into believing the right to premium refunds and membership in the Pool were not in jeopardy.

18. Ingham County executed the Agreement for Withdrawal From Michigan County Road Commission Self-Insurance Pool, required by MCRCSIP, on May 31, 2012 (Exhibit 7a). Ingham County also executed the Agreement for Cancellation of Insurance on May 31, 2012 (see Exhibit 7a).

19. Upon information and belief, MCRCSIP notified the Ingham County Finance Director it would not refund the balance of the premium paid for the insurance policy covering the period of April 1, 2012 – March 31, 2013, unless both Agreements presented on May 29, 2012 were executed (see Exhibit 7a).

20. Jackson County received and its County's records include a copy of the Agreement for Withdrawal From Michigan County Road Commission Self-Insurance Pool, required by MCRC SIP, executed only by MCRC SIP on January 16, 2013 (**Exhibit 7b**).

21. Calhoun County executed the Agreement for Withdrawal From Michigan County Road Commission Self-Insurance Pool, as required by MCRC SIP, on October 23, 2012 (**Exhibit 7c**).

22. All of the Agreements for Withdrawal From Michigan County Road Commission Self-Insurance Pool include the following provision in the last paragraph:

5. **Limited Purpose of this Agreement.** The sole purpose of this Agreement is to effectuate the termination of the Commission's membership from MCRC SIP as of 12:01 a.m. on June 1, 2012 [Ingham] [January 16, 2013 – Jackson] [November 1, 2012 – Calhoun], and not to affect or impact in any way any other terms or conditions contained in the Declaration of Trust – Inter-Local Agreement, or By-Laws. (see Exhibits 7a, 7b and 7c)

23. On June 1, 2012, Ingham County, through its County Finance Director, protested the action of MCRC SIP (**Exhibit 8**), but MCRC SIP steadfastly refused to alter its decision.

24. On June 25, 2012, MCRC SIP, through its administrator (**Exhibit 9**), reversed its stated intent from February 28, 2012, “to transfer the Road Commission's right to refunds to the County if their Membership in the Pool is uninterrupted...” (see Exhibit 3) and notified Ingham County as follows:

However, MCRC SIP's Board confirms its prior advice that no refund of surplus equity that otherwise might have been afforded to the former ICRC will be made available to any entity, including Ingham County. Pursuant to its long-standing policy, the Board does not refund surplus attributable to any Member that has **withdrawn** from the Pool. (**Exhibit 9**) (emphasis added)

25. Upon information and belief, at the annual meeting on July 19, 2012, the Members of MCRC SIP rejected the MCRC SIP Board of Directors' recommendation of May 29, 2012, to

“allow counties with road commission responsibilities to become Members of MCRC SIP”. (see Exhibit 5)

26. MCRC SIP declared that, by statutorily abolishing their respective road commissions, the Counties of Ingham, Jackson, and Calhoun had caused their withdrawal from membership and participation in the MCRC SIP and therefore are not entitled to the refund of surplus equity.

27. As of February 28, 2012, MCRC SIP had “open years for liability beginning with 2002”, which meant that members had overpaid premiums for closed years and were in position to participate in and benefit from the calculation of refunds of unused premiums as each such year’s potential liability was actuarially closed (see Exhibit 3).

28. MCRC SIP had a longstanding pattern and practice of refunding unused premiums to Members, based on unused reserves remaining at the actuarial closing of a fiscal year, usually many years later.

29. For many years, MCRC SIP had calculated refunds of unused reserves for each closed actuarial year by paying a pro rated amount to each Member, based on a fraction consisting of a numerator of premium paid by that county and a denominator of total premiums paid by all Members multiplied by the surplus or unused reserve for each such particular year.

30. Plaintiffs are without more specific information as to how refunds were calculated by MCRC SIP, or how much excess or overpaid premium would be due to each of Ingham, Jackson and Calhoun counties as each actuarial year from 2002 forward is closed, and Plaintiffs will rely on discovery to determine further details.

31. On July 17, 2014, each of the Counties of Ingham, Jackson, and Calhoun, through their legal representatives, after being informed by MCRC SIP that they would not receive

refunds of unused premium from prior plan years, demanded that the MCRC SIP pay to the respective Boards of Commissioners of Ingham, Jackson and Calhoun counties their *aliquod* share of any surplus then held by or improperly distributed to the remaining Members of the MCRC SIP for actuarial years going back to 2002 and recognized by MCRC SIP as being funds in excess of reserve requirements imposed by MCL 124.7a (**Exhibit 10**).

32. Thereafter, MCRC SIP refused to pay any of the plaintiffs any part of their respective *aliquod* shares of surplus, whether as existing on the effective date of "termination from pool", June 1, 2012, or the date of the various resolutions abolishing each county's road commission, or any other date going back to 2002 for which refunds had not already been paid.

33. MCRC SIP thereafter distributed its surplus of premiums paid including the respective surplus in premiums paid by each Plaintiff to remaining Members as each actual year was closed, each member thereby receiving funds as a group which funds represent the plaintiffs' *aliquod* shares of surplus, amounting to far in excess of \$25,000.00.

34. Plaintiffs, through their respective legal representatives, continued communications with MCRC SIP and its attorneys in an effort to reach an agreeable settlement of differences, but without success.

35. Plaintiffs have exhausted whatever internal remedies are available within MCRC SIP.

COUNT I: UNLAWFUL ACTIONS IN VIOLATION OF

Article 9, §18 of the MICHIGAN CONSTITUTION of 1963

36. The facts detailed in preceding paragraphs are incorporated here by reference as if fully repeated *verbatim*.

37. Article 9, Section 18 of the Michigan 1963 Constitution states in pertinent part that:

“The credit of the state shall not be granted to, nor in aid of any person, association or corporation, public or private, except as authorized in this constitution.”

38. Const 1963, art 9, §18 applies to counties as well as other local units of government and municipalities in the State of Michigan, including county road commissions or consortia of county road commissions or other form of inter-county organization. *Drain Commissioner of Oakland Co v City of Royal Oak*, 306 Mich 124, 142 (1943) (construing Const 1908, art 10, § 12, the predecessor of Const 1963, art 9, § 18); *Advisory Opinion on Constitutionality of 1986 PA 281*, 430 Mich 93, 119 (1988).

39. By claiming plaintiffs’ *aliquod* shares of MCRCSIP surplus for the remaining Members, defendant has breached art 9, §18 by using the credit of Ingham, Jackson, and Calhoun counties to aid the financial interests of the other Members of MCRCSIP.

40. The actions of defendant, claiming plaintiffs’ *aliquod* shares of MCRCSIP surplus, are contrary to law.

41. The credit of plaintiffs Ingham, Jackson, and Calhoun counties must be restored by refunding, with interest, plaintiffs’ *aliquod* shares of MCRCSIP surplus.

42. Plaintiffs accordingly seek damages equal to their respective *aliquod* shares of MCRCSIP surplus for each actuarial year from 2002 through 2012 as it is closed, plus interest.

COUNT II: EXTORTION

43. The facts detailed in preceding paragraphs are incorporated here by reference as if fully repeated *verbatim*.

44. The Legislature, by virtue of enactment of 2012 PA 14, MCL 2024.6(7) and 2012 PA 15, MCL 46.11(s), has left it to the sole discretion of elected county boards of commissioners whether to abolish separate county road commissions and absorb the functions thereof into the

county board of commissioners.

45. The MCRC SIP, by requiring that Members forfeit their membership if the elected county board of commissioners exercises its statutory discretion under 2012 PA 14, MCL 224.6(7) and 2012 PA 15, MCL 46.11(s), and also forfeit their pro rata share of any surplus, penalizes those counties that avail themselves of this statutory right.

46. The actions of the MCRC SIP are void as contrary to public policy, and, to the extent designed to prohibit and/or discourage county boards of commissioners of counties whose road commissions are Members of MCRC SIP from exercising their statutory discretion under 2012 PA 14, MCL 224.6(7) and 2012 PA 15, MCL 46.11(s) to abolish separate appointed county road commissions and absorb the functions thereof into the county board of commissioners, constitute extortion as defined by MCL 750.213.

47. MCRC SIP separately perpetrated distinct acts of extortion against Ingham County, Jackson County, and Calhoun County.

48. MCRC SIP's acts of extortion were aided and abetted by its members, each of whom directly profited from joining the combination or conspiracy to commit extortion.

49. Such acts of extortion render the "Agreements in Recognition of Termination from Pool" signed by plaintiffs void as the product of fraud, duress and as contrary to public policy.

50. Plaintiffs therefore seek damages in the amount of their respective *aliquod* shares of surplus as of the date of distribution by MCRC SIP to other Members for each actuarial year from 2002-2012.

**COUNT III: STATUTORY CONVERSION/EMBEZZLEMENT—TREBLE DAMAGES
UNDER, MCL 600.2919a**

51. The facts detailed in preceding paragraphs are incorporated here by reference as if fully repeated *verbatim*.

52. By expelling Ingham County, Jackson County, and Calhoun County from continued membership in MCRCSIP, each remaining Member seized the respective *aliquod* shares of premium surplus for actuarial years 2002-2012 that would otherwise have been distributed to the appointed road commissions of Ingham County, Jackson County, and Calhoun County, to whose legal rights and interests each county board of commissioners has succeeded.

53. The distribution of the respective *aliquod* shares of surplus that would otherwise be or have been distributed, for actuarial years from 2002-2012, to the appointed road commissions of Ingham County, Jackson County, and Calhoun County, and which now belong to the respective boards of commissioners of Ingham, Jackson, and Calhoun counties as successors in interest to their road commissions, among the other members of MCRCSIP constitutes statutory conversion or embezzlement.

54. Plaintiffs accordingly seek damages in three times the amount of their respective *aliquod* shares of surplus that would otherwise be or have been distributed to the road commissions of Ingham County, Jackson County, and Calhoun County.

COUNT IV: BREACH OF CONTRACT

55. The facts detailed in preceding paragraphs are incorporated here by reference as if fully repeated *verbatim*.

56. Although the Declaration of Trust dated April 1, 1984—**Exhibit 1**—provides in §9 that “The Pool may treat members who withdraw from future Pool Years differently and less favorably than the Pool treats members who continue in the pool for future years”, plaintiffs did not withdraw, but rather, were terminated from continued membership in the MCRCSIP.

57. To the extent each plaintiff signed an “Agreement in Recognition of Termination from Pool”, such execution was the result of extortion, fraud and duress, and such agreements are therefore invalid and of no legal force or effect.

58. The representation by MCRCSIP as detailed in ¶10 and 14 were false and fraudulent, because at the time or shortly thereafter MCRCSIP planned to retain the surpluses belonging to Ingham, Jackson, and Calhoun Counties for distribution among remaining Members, and therefore such agreements are the product of fraud in the inducement, invalid, and of no legal force or effect.

59. After each plaintiff signed its respective “Agreement in Recognition of Termination from Pool”, MCRCSIP refused to pay any of the plaintiffs their respective *aliquod* share of surplus premiums paid for actuarial years from 2002 through 2012, which represents the first material breach of such Agreements and bars defendant from invoking said Agreements in defense of their actions.

60. Plaintiffs did not voluntarily withdraw from membership in MCRCSIP, but were, against their express wishes, falsely declared to have withdrawn by the unilateral actions of the MCRCSIP.

61. Because plaintiffs did not voluntarily or otherwise “withdraw” from membership in MCRCSIP, ¶9 of the Declaration of Trust dated April 1, 1984 has no proper application.

62. Even if plaintiff were deemed to have “withdrawn” from the Pool for purposes of ¶9 of the Declaration of Trust dated April 1, 1984, the decision by defendant to withhold plaintiffs’ respective *aliquod* shares of surplus and to distribute those shares among other members of MCRCSIP, *viz.*, the remaining member road commissions, was tainted by and permeated with conflict of interest, self dealing and breach of fiduciary obligation.

63. The decision by defendant, whether collectively or through the MCRCSIP Board of Directors or any other committee, agent, officer, or representative of MCRCSIP, to withhold plaintiffs’ respective *aliquod* shares of surplus for actuarial years 2002-2012 and to distribute those shares to other Members, paid for with tax dollars from Ingham, Jackson and Calhoun Counties was fundamentally unfair and oppressive, unreasonable, and contrary to the duties of good faith and fair dealing and fiduciary obligation.

64. Plaintiffs therefore seek damages in the amount of their respective *aliquod* shares of surplus for actuarial years 2002-2012 as of the date of distribution by MCRCSIP to other Members.

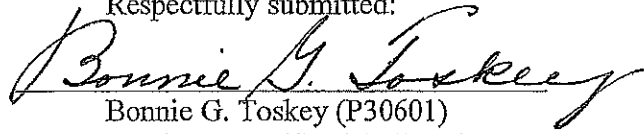
REQUEST FOR RELIEF COMMON TO ALL COUNTS

WHEREFORE, Plaintiffs respectfully request that this Honorable Court GRANT the following relief:

- A. Award plaintiffs damages in the appropriate amount for all surplus payments due for actuarial years 2002-2012;
- C. Award plaintiffs fines and damages associated with defendant’s actions; and
- D. Award plaintiffs all other legal or equitable relief it may be entitled to under the circumstances, including costs, interest and reasonable attorney fees.

Dated: May 28, 2015

Respectfully submitted:



Bonnie G. Toskey (P30601)
Mattis D. Nordford (P69780)
Cohl, Stoker & Toskey, P.C.
Attorneys for Plaintiffs
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Lansing, MI 48933
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btoskey@cstmlaw.com

APPENDIX 14

ADOPTED - APRIL 24, 2012
Agenda Item No. 10

Introduced by the County Services and Finance Committees of the:

INGHAM COUNTY BOARD OF COMMISSIONERS

RESOLUTION DISSOLVING THE BOARD OF ROAD COMMISSIONERS AND TRANSFERRING ALL OF ITS POWERS, DUTIES AND FUNCTIONS TO THE INGHAM COUNTY BOARD OF COMMISSIONERS; CREATING A DEPARTMENT OF TRANSPORTATION AND ROADS, AND ADOPTING A 2012 BUDGET FOR THE DEPARTMENT

RESOLUTION #12-123

WHEREAS, on December 13, 2011, the Ingham County Board of Commissioners passed Resolution #11-379 expressing their intent to dissolve the Board of Road Commissioners and create an Ingham County Department of Transportation and Roads; and

WHEREAS, on February 21, 2012, Governor Snyder signed Acts Number 14 and 15 of the Public Acts of 2012; and

WHEREAS Public Acts 14 and 15 authorize a county board of commissioners, with an appointed board of county road commissioners, to transfer the powers duties and functions by majority vote of those elected and serving to the county board of commissioners; and

WHEREAS, Section 8 of Public Act 14 requires that a county board of commissioners conduct at least 2 public hearings on whether to transfer the powers, duties, and functions of the board of county road commissioners before adopting such a resolution; and

WHEREAS, the public hearings were held on March 27, 2012 and April 10, 2012; and

WHEREAS, the Ingham County road system has been under the jurisdiction of the Ingham County Board of Road Commissioners for many years. The modern county road system we enjoy today is a result of decades of effort of the Ingham County Road Commission. However, in recent years, there have been signs that it is time for updating the institution that provides for the roads in the county;

WHEREAS, with the authority now established by Public Acts No. 14 and 15 of the Public Acts of 2012, Ingham County has the opportunity to bring the entire road commission organization under the umbrella of Ingham County government to stabilize the road agency and bring about consistency of operation and policies throughout Ingham County government.

THEREFORE BE IT RESOLVED, pursuant to the authority established in Public Acts No. 14 and 15 of the Public Acts of 2012, the Ingham County Board of Commissioners hereby transfer the powers, duties, and functions provided by law for the Ingham County Board of Road Commissioners to the Ingham County Board of Commissioners effective June 1, 2012.

BE IT FURTHER RESOLVED, that effective June 1, 2012 the Ingham County Board of Road Commissioners is dissolved pursuant to the provisions in Public acts 14 and 15 of the Public Acts of 2012.

BE IF FURTHER RESOLVED, that the Ingham County Board of Commissioners hereby absorbs the functions of the Ingham County Road Commission (ICRC) into County government operations by establishing the Ingham County Department of Transportation and Roads effective June 1, 2012.

APPENDIX 15

ADOPTED - APRIL 24, 2012
Agenda Item No. 10

RESOLUTION #12-123

BE IT FURTHER RESOLVED, that the Ingham County Department of Transportation and Roads will utilize the dollars available to Ingham County under 1951 PA 51, MCL 247.651 to 247.675 or any successor Act for the purposes allowed under 1951 PA 51, MCL 247.651 to 247.675, or any successor Act.

BE IT FURTHER RESOLVED, that the Ingham County Board of Commissioners hereby establishes the Transportation and Road Special Revenue Fund to account for the activity of the Department of Transportation and Roads.

BE IT FURTHER RESOLVED, that the Ingham County Board of Commissioners hereby adopts the attached \$20.69 million line-item budget for the Transportation and Roads Fund for the January 1, 2012 through December 31, 2012 fiscal year, and that County General Fund dollars will not be used to supplement the Transportation and Roads Fund.

BE IT FURTHER RESOLVED, that the Board of Commissioners hereby establishes the attached list of positions with salary ranges and grades levels for the Ingham Department of Transportation and Roads.

BE IT FURTHER RESOLVED, that the County's Position Allocation list is hereby amended to include the attached list of positions:

BE IT FURTHER RESOLVED, that effective June 1, 2012 the Ingham County Board of Commissioners authorizes the transfer of all existing Road Commission employees into these newly established Ingham County positions at the exact same pay and benefit levels that existed prior to the transfer.

BE IT FURTHER RESOLVED, that effective June 1, 2012, the Managing Director of the ICRC will transfer to the new Department of Transportation and Roads and will report to the County Controller:

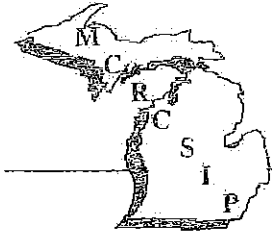
BE IT FURTHER RESOLVED, that the Director level positions within the new Department of Transportation and Roads will report to the Managing Director and all other reporting relationships will be maintained.

BE IT FURTHER RESOLVED, that the Ingham County Board of Commissioners hereby agrees and confirms that it will recognize through the end of the December 31, 2013 contract term, the three (3) existing collective bargaining agreements, being the agreement with Local #1499 of the American Federation of State, County and Municipal Employees AFL-CIO, Council 25 (Garage and Road Employees Unit), the agreement with Local #512 of the Office and Professional Employees International Union (Office and Professional Employees Unit), and the agreement with Local #512 of the Office and Professional Employees International Union (Supervisory Unit), and recognizes each of these respective unions as the collective bargaining representative for the bargaining units covered by these collective bargaining agreements.

BE IT FURTHER RESOLVED, that the Board of Commissioners authorizes the County Controller to add the Department of Transportation and Roads to our existing liability insurance policy with the Michigan Municipal Risk Management Authority effective June 1, 2012, and to take whatever steps are prudent and necessary to withdraw from the existing ICRC insurance carrier, the Michigan Road Commission Self Insurance Fund.

BE IT FURTHER RESOLVED, that the Board of Commissioners authorizes the increase of the worker compensation insurance specific retention amount from \$400,000 to \$500,000 effective June 1, 2012.

APPENDIX 16



**MICHIGAN
COUNTY
ROAD
COMMISSION
SELF-
INSURANCE
POOL**

Board of Directors

Chairman
Timothy J. Haagsma
Kent

Vice Chairman
Darrel A. Spragg
Alpena

Alan D. Cooper
Washtenaw

Brian A. Gutowski
Emmet

Lonny L. Lutke
Missaukee

Dorothy G. Pohl
Ionia

Michael A. Power
Huron

Carl J. Sholander
Iron

Joseph F. Valente
Marquette

Administrator
Board Treasurer
Gayle A. Pratt

Assistant Administrator
Director of Loss Control
Michael E. Shultz

Member Services
Coordinator
Board Secretary
Kay Newberry

417 N. Seymour Ave.
Suite 2
Lansing, MI 48933

www.mcrsip.org
(517) 482-9166
(800) 842-1971
Fax: (517) 485-4809

May 29, 2012

To Our Member Contacts:

The Michigan County Road Commission Self-Insurance Pool was formed in 1984 by Road Commissions to provide the insurance coverage they needed to maintain the roads. Coverage for the road liability exposures and for road equipment was expensive, inconsistent and difficult to find in the commercial insurance market. Because of the commitment of our Members and the stability of our membership, our Pool has been successful in achieving the Road Commissions' coverage objectives at consistent prices.

Our By-Laws specify that our members have to be Road Commissions. When the Legislature passed House Bills 5125 and 5126, giving County Commissioners the option to transfer the powers and duties of the Road Commissioners to themselves, we had to face the very real possibility that we would have fewer members in the near future.

Losing members creates increased costs for the rest. We have prepared a graph on the supplemental information attached to this letter in order to give you some idea of the magnitude of the expected increases.

Possibly even more troubling, are the problems we could encounter with more pools and attorneys influencing road liability case law. Thus far, we have been able to use our knowledge and that of our experienced legal firms to develop a more favorable position in the courts for the road commissions.

Because of the above concerns, and after discussions with our legal consultants, reinsurers and actuaries, your Board of Directors unanimously passed a motion at its November 10, 2011 meeting to recommend that our Members allow counties with road responsibilities to become Members of MCRCSIP. This would give us the opportunity to serve the same members that CRAM serves.

Additionally, legal counsel has recommended that we update the language in our trust and membership documents, and we have had Members request an "absentee" voting option, there will be two Resolutions for your vote at our Annual Meeting on July 19, 2012.

Page 2 of 2
Letter to the Members
May 29, 2012

- Resolution "A" - to amend the Declaration of Trust and By-Laws to bring the documents "up to date" and to create the option of voting by resolution and mailing your vote to our office.
- Resolution "B" - to amend the Declaration of Trust and By-Laws to allow "counties that have assumed the powers and duties provided by law to county road commissions" to be members of our Pool.

The InterLocal Agreement will be amended as necessary by your Board of Directors to comply with the changes as passed by the members.

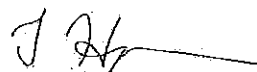
For your consideration, we have attached to this letter Supplemental Information, Sample Resolutions, and copies of the Declaration of Trust and By-Laws with all of the proposed changes highlighted in either red or blue. The changes in red relate to Resolution "A" and the changes in blue relate to Resolution "B". We encourage discussions of these proposed changes and would be interested in hearing your suggestions and feedback.

Your Board of Directors is asking for your support of both Resolutions in order to continue to serve those who have responsibility for the county roads. We believe that is the best way to keep our Pool and our Members strong.

If you have questions, please call our Administrator, Gayle Pratt, or one of the MCRCSIP Board Members.

Thank you for your time and attention to this proposal.

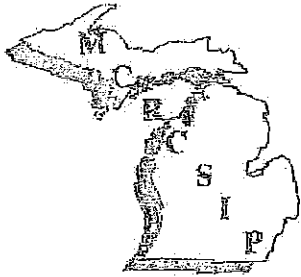
On Behalf of the MCRCSIP Board,



Tim Haagsma
Board Chairman

Enclosures

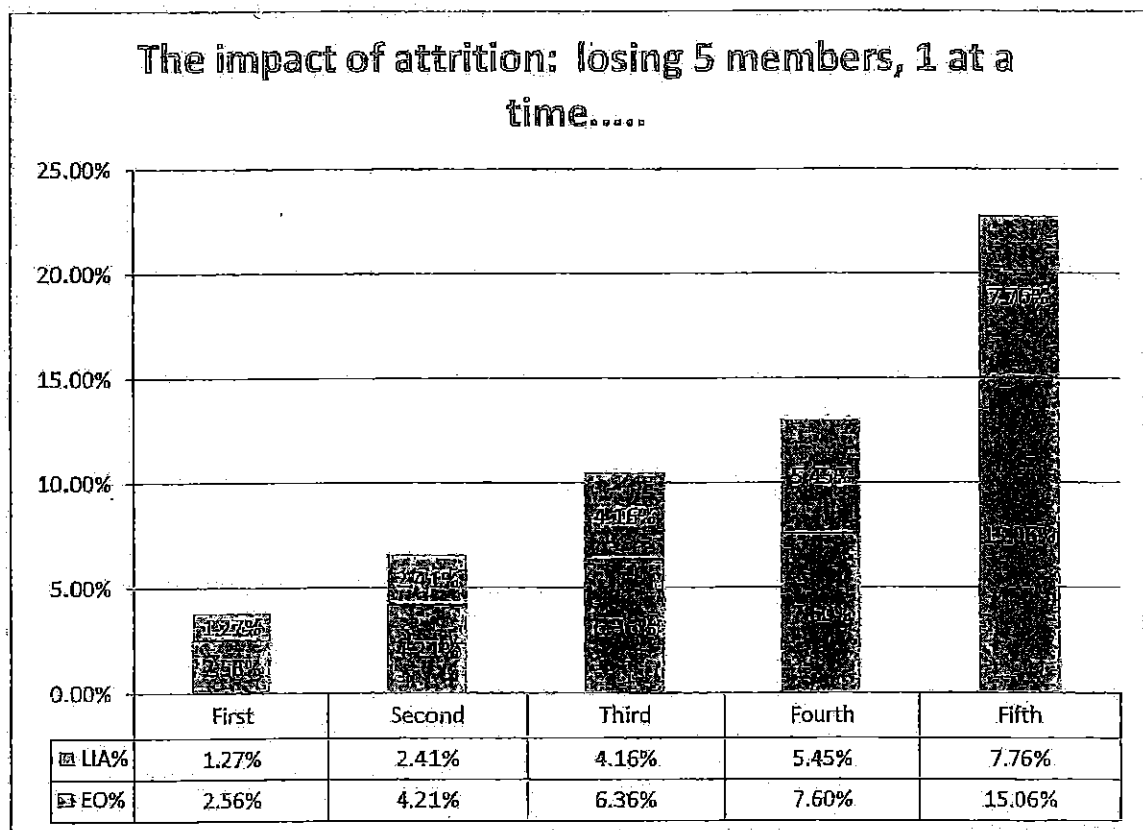
Cc: Commissioners



Proposed Changes to the Declaration of Trust, By-Laws and Inter Local Agreements – July 2012

Supplemental Information

1. Losing Members means the remaining Members' Contributions go up.



- "LIA" in the chart refers to the General and Automobile Liability and Umbrella coverage.
- "EO" in the chart refers to the Employment Practices Liability and Public Officials' D&O coverage.
- These numbers are estimates. We used 2012 renewal data, removed individual members, adjusted the actuarial estimates and compared contribution amounts to what was invoiced on April 1.
- The percentages in the chart are the average percentage change. Individual members could see a change higher or lower than the average.

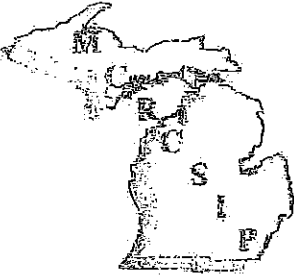
Proposed Changes to the Declaration of Trust, By-Laws and Inter Local Agreements -- July 2012

Supplemental Information/continued

2. Keeping our coalition of County Road Commissions means that we can be more effective against plaintiff attorneys and have more impact on defining road law
 - MCRCSIP has been a significant factor in defining Road Law in the courts.
 - Our Team of Legal Experts, Litigators and Claim Managers have been together for more than 28 years.
 - Plaintiff Attorneys know who we are and they know we don't like to settle.
 - If Members go to other Pools or Insurance Companies, we lose our numbers and, potentially, our effectiveness.

3. Our size impacts our costs of doing business
 - We get better reinsurance rates because of our volume.
 - We have more investment options at lower costs because of the size of our loss fund.

4. Other Pools will have the ability to cover the General Liability, Automobile Liability and Equipment exposures
 - Withholding membership may not be an effective negotiating tool.
 - At Ingham County, MMRMA, stepped in and matched our Contribution amounts for the Road Commission. They already cover certain liability exposures for the County.
 - There have always been other insurance options for Road Commissions. We were formed to provide broad coverages to our Members at stable costs. Our service model has also been customized to our Members' needs.
 - We have had a few members leave the Pool. Most have returned after 3 -- 5 years because of the inconsistency of coverage and the difficulty they had in dealing with cost and deductible increases.



Amendment 'A'

In Accordance with Article X of the Declaration of Trust and Article XIII of the By-Laws of the Michigan County Road Commission Self-Insurance Pool, a 2/3 majority vote of our members present at the Annual Meeting on July 19, 2012 at the Searing Eagle Conference Center is required to adopt these amendments to our Declaration of Trust and our By-Laws. Official ballots will be provided to designated voters at the meeting.

Proposed:

To amend the Declaration of Trust and the By-Laws as described below for the purpose of updating the documents with better descriptions of current operations and responsibilities, to bring in current language requirements and to provide for voting by mail (both documents with changes highlighted are attached)

Changes proposed to the Declaration of Trust:

- Article II – Language is updated to better describe our purpose and available coverage.
- Article VI, Section 9(d) – Unnecessary language is deleted.
- Article VIII, Section 2(b) – Changes are made to update the language.
- Article IX – The language is updated.
- Article X, Section 1- Changes to the voting process are included that would allow Members to vote by mail.
- Article X, Section 2 – The language is updated.
- Article X, Section 13 – This Section has been added to better describe the interrelationship of our documents.

Changes proposed to the By-Laws:

- Article II – Unnecessary language is deleted
- Article III – Changes are made to update the language.
- Article IV (1) – The title of the InterLocal Agreement is changed and the language is updated.
- Article IV (2) – The language is updated.
- Article IV (6) – Language has been updated to better define the meaning.
- Article V (1) – The language is updated.
- Article V (6) - Language is removed that provided the Board with the authority to vote by telephone and language is added to better describe limitations.
- Article V (9) – Unnecessary language is removed.
- Article VI (1) – Language is added to better describe current operations.

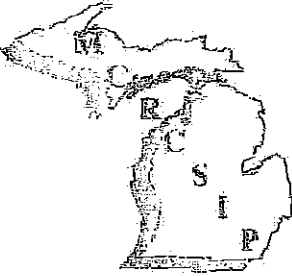
Amendment 'A' / Page 2 of 2

- Article VI (2) – The title of the InterLocal Agreement is changed.
- Article VI (4) – Requirements are added and updated.
- Article VI (5) – This paragraph is added to incorporate the legal requirement for an annual actuarial certification. This addition caused the subsequent sections to re-number.
- Article VI (6) – The language is updated.
- Article VI (9) – The title of the InterLocal Agreement is changed and the language is updated.
- Article VII – The title of the InterLocal Agreement is changed and the language is updated.
- Article VIII – The title of the InterLocal Agreement is changed and unnecessary language is removed.
- Article X – The language is updated.
- Article XIII – Changes to the voting process are included that would allow Members to vote by mail. And the language is updated.

**DO YOU VOTE TO APPROVE
AMENDMENT 'A'?**

YES () NO ()





Amendment 'B'

In Accordance with Article X of the Declaration of Trust and Article XIII of the By-Laws of the Michigan County Road Commission Self-Insurance Pool, a 2/3 majority vote of our members present at the Annual Meeting on July 19, 2012 at the Soaring Eagle Conference Center is required to adopt these amendments to our Declaration of Trust and our By-Laws. Official ballots will be provided to designated voters at the meeting.

Proposed:

To amend the Declaration of Trust and the By-Laws as described below for the purpose of allowing counties that have assumed the road commission responsibilities to be members in the Michigan County Road Commission Self-Insurance Pool.

Changes proposed to the Declaration of Trust:

- Article II - Language has been added to allow other governmental entities to be Members.

Changes proposed to the By-Laws:

- Article III - Language has been added to allow counties to be Members.
- Article IV - Language has been added to allow "a county which has assumed the powers and duties provided by law to county road commissions" to be Members; and the definition of road commission is defined.

DO YOU VOTE TO APPROVE
AMENDMENT 'B'?

YES () NO ()



DECLARATION OF TRUST

With Proposed Changes

Resolution "A" in Red

Resolution "B" in Blue

DECLARATION OF TRUST

AGREEMENT made and entered into effective the _____
by and among _____

_____ (hereinafter "Members") and the Trustees who have heretofore or who may hereafter be appointed to serve as provided herein.

WITNESSETH:

WHEREAS, Members and Trustees desire to establish a group self-insurance fund pursuant to the provisions of Act 138 of the Michigan Public Acts of 1982 for the mutual benefit and protection of the Members; and

WHEREAS, it has been determined that it is in the best interests of the Members to establish a Trust for the purpose of receiving, protecting and disbursing monies paid pursuant to such fund:

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, the Michigan County Road Commission Self-Insurance Pool be and is hereby established as follows:

ARTICLE I

CREATION OF THE TRUST

There is hereby established and created a Trust Fund which shall be known as the "MICHIGAN COUNTY ROAD COMMISSION SELF-INSURANCE POOL" and the Trustees may hold property, enter into contracts and in all matters as hereinafter set forth act in behalf of the Trust Fund in that name. This Trust Fund shall be used only for the purposes as hereinafter set forth.

ARTICLE II

PURPOSE

This Trust Agreement is made and executed for the purpose of forming a group self-insurance pool to provide for joint and cooperative action relative to Members' financial and administrative resources for the purpose of providing to participating Members risk management and coverage for pool Members and road commission Pool Members and their employees, and for other Pool Members and their employees acting within the scope of their employment, for acts and/or omissions arising out of, or involving property used for purposes related to, the jurisdiction, design, construction, or maintenance of public roadways by a Member or arising out of, or involving property

used in relation to governmental activities of a county road commission acting as a commission or other governing board or body of a municipal corporation, governmental agency or an organization created by the execution of one or more Intergovernmental agreements. Such coverage may include of pool Members, for acts or omissions arising out of the scope of their employment, including any or all of the following:

- ~~(a) Casualty insurance, including general and professional liability coverage.~~
- ~~(b) Property insurance, including marine insurance and inland navigation and transportation insurance.~~
- ~~(c) Automobile insurance, including motor vehicle liability insurance coverage and security for motor vehicles owned or operated, as required by section 3101 of the Insurance Code of 1956, Act No. 218 of the Public Acts of 1956, as amended, being section 500.3101 of the Michigan Compiled Laws, and 500.3101 of the Michigan Compiled Laws, and protection against other liability and loss associated with the ownership of motor vehicles;~~
- ~~(d) Surety and fidelity insurance coverage; and~~
- ~~(e) Umbrella and excess insurance coverages.~~
 1. Casualty insurance, including general liability, public officials and employment practices liability and automobile liability, including no-fault coverages as required by Chapter 31 of the Michigan Insurance Code.
 2. Physical damage coverage including equipment breakdown, and
 3. Employee fidelity and faithful performance coverage.

ARTICLE III

DESIGNATION OF TRUSTEES

SECTION 1. Number of Trustees: Designation of Governing Body. The operation and the administration of the Trust shall be the joint responsibility of a Board of Directors consisting of not less than nine (9) Trustees. All Trustees shall serve as members of the Board of Directors.

SECTION 2. Appointment of Initial Board of Directors. The initial Board of Directors, as appointed by the Members, shall be:

	<u>Term</u>
Herbert O. Larkin	3
Kenneth R. Apsey	3
Donald Gillard	3
E. R. Amble	2
W. V. Wentela	2

Doris J. Younts	2
Thomas Brouwer	1
James M. Falk	1
D. Mack Rabourn	1

SECTION 3. Election of Directors: Terms of Office. The election of Directors, their term of office, and all related matters shall be governed by the By-Laws adopted by the Members in accordance with the terms and provisions of this Trust.

ARTICLE IV

BY-LAWS

SECTION 1. Adoption of By-Laws. By two-thirds (2/3) vote, the Board of Directors shall adopt By-Laws governing the operation and administration of the Trust; provided, however, that the By-Laws so adopted shall not become effective and binding until they have been approved by not less than two-thirds (2/3) of the Members.

SECTION 2. Amendment of By-Laws. Any amendment of the By-Laws must be approved by not less than two-thirds (2/3) of the Board of Directors and, in addition, by not less than two-thirds (2/3) of the Members before it shall become effective and binding.

SECTION 3. Binding Effect. The By-Laws and any amendments thereto properly adopted pursuant to the terms and provisions of this Trust shall be binding upon the Trustees acting as the Board of Directors of the Trust and the Members.

ARTICLE V

RULES AND REGULATIONS

The Board of Directors may prescribe such rules and regulations as may, in their judgement and discretion, be proper and necessary for the sound and efficient administration of the Trust provided, however, that the rules and regulations shall not be inconsistent with the provision of this Declaration of Trust, the By-Laws or applicable Federal and/or State laws and/or regulations.

ARTICLE VI

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

SECTION 1. General Powers. The Board of Directors shall have the power and authority and shall be charged with the duty of general supervision and operation of the Trust and shall conduct the business and activities of the Trust in accordance with this Declaration of Trust, the By-Laws adopted pursuant to the terms and provisions of this

Trust, rules and regulations adopted by the Trustees, and applicable Federal and/or State laws and/or regulations.

SECTION 2. Deposit of Funds. The Board of Directors shall cause to be immediately deposited to the account of the Trust, at any bank or banks designated by the Board of Directors, all premiums as and when collected. Said monies shall be disbursed only as provided by the terms and provisions of this Trust, the By-Laws, rules and regulations adopted by the Board of Directors, agreements entered into by the Trust and applicable Federal and/or State laws and/or regulations.

SECTION 3. Appointment of Administrator. The Board of Directors may designate a fiscal agent and/or administrator to administer the operational and financial affairs of the Trust. Any fiscal agent and/or administrator so appointed shall furnish a fidelity bond with the Board of Directors as obligees, in an amount sufficient to protect the Trust and its assets against the misappropriation or misuse of any monies or securities held by or in the name of the Trust. The amount of the bond shall be determined by the Board of Directors and evidence of such bond shall be filed with the appropriate entities.

SECTION 4. Office of the Trust. The Board of Directors shall establish and maintain an office of the Trust, the exact location of which shall be made known to the parties interested in or participating in the Trust and to other interested parties. The books and records pertaining to the Trust and its administration shall be kept and maintained at the office of the Trust.

SECTION 5. Actions to Protect Against Losses. The Board of Directors is authorized and directed to take all reasonable precautions which it deems appropriate to protect the Members from losses. The Board of Directors shall provide for excess insurance coverage designed to protect said Members against excess losses, as the Board of Directors may deem appropriate and reasonable under the circumstances.

SECTION 6. Admission of New Members. The Board of Directors may admit as new members of this Trust whomever it determines, by not less than a two-thirds (2/3) vote, is acceptable and financially sound. The Board of Directors shall be the sole judge of whether or not an applicant for membership shall be admitted to membership.

SECTION 7. Suspension and Expulsion of Members. The Members may suspend or expel any Member from the Trust upon thirty (30) days advance written notice by not less than a two-thirds (2/3) vote. No liability shall accrue to the Trust or to its Members as a result of any claim asserted against any suspended or expelled Member arising out of any accident or other incident occurring after thirty days from the date the notice of suspension or expulsion has been given to the Member.

SECTION 8. Acceptance of Resignation of Member. The Board of Directors may accept the resignation or withdrawal of a Member; provided, however, that no liability shall accrue to the Trust or any Members other than the resigning or withdrawing Member with respect to a member who has resigned or withdrawn from the Trust arising

out of any accident or other incident occurring on or subsequent to the effective date of the Member's resignation or withdrawal.

SECTION 9. Use of Funds. The Board of Directors shall set aside from the premiums collected during each fiscal year a reasonable sum for the operating expenses or administrative expenses of the Trust for that year. All remaining funds coming into its possession or under its control with respect to that fiscal year of the Trust shall be set aside and shall be used only for the following purposes:

- (a) Fee for any service agent(s) for that year of the Trust;
- (b) Payment of all claims and judgments for occurrences covered by the Trust for that Trust year.
- (c) Payment of the cost of all bonds and auditing expense required of the Trust or its agents;
- (d) Payment of all premiums and costs of excess insurance for protection obtained from outside carriers ~~for exposure beyond that assumed by the Trust;~~
- (e) Payment of all costs associated with the operation and maintenance of the Trust;
- (f) Distribution among the members during that fiscal year in such manner as the Members and the Board of Directors shall deem to be equitable, of any excess monies remaining after payment of claims and claims expenses and after provision has been made for open claims and outstanding reserves and a reserve for claims incurred but not reported; provided, however, that no such distributions shall be made earlier than twelve (12) months after the end of each Trust Year; and provided further, that undistributed funds from previous Trust Years may be distributed at any time if not required for loss funding and if approved for distribution by the Board of Directors. The Board of Directors may treat members who withdraw from future Trust Years differently and less favorably than they treat members who continue in the Trust for future years.
- (g) The Board of Directors may establish from time to time a reasonable amount of reimbursement for expenses to cover attendance at meetings of the Board of Directors and the performance of the normal duties of a member of the Board of Directors. The reimbursement shall only include reimbursement of necessary expenses incurred.

ARTICLE VIILIABILITY

SECTION 1. Good Faith Actions. No member of the Board of Directors shall be liable for any action taken pursuant to this Trust Agreement in good faith or for an omission, except for gross negligence, or for any act of omission or commission by any other member of the Board of Directors or by any employee of the Board of Directors.

SECTION 2. Liability Insurance. The Board of Directors is hereby authorized and empowered to obtain, at the expense of the Trust, liability insurance fully protecting the members of the Board of Directors jointly and severally and the Trust from any loss or expense incurred, including reasonable attorney's fees, for all acts of the Board of Directors, except bad faith and gross negligence on the part of the Board of Directors. The Trust hereby agrees to save, hold harmless and indemnify each member of the Board of Directors while acting in its official capacity, excepting bad faith and gross negligence.

SECTION 3. Advice of Legal Counsel. The Board of Directors may consult with legal counsel concerning any questions which may arise with reference to the duties and powers or with reference to any other matter pertaining to this agreement or the Trust hereby created; and the opinion of such counsel shall be full and complete authorization and protection in respect to any action taken or suffered by the Board of Directors hereunder in good faith in accordance with the opinion of such counsel and the Board of Directors shall not be liable therefore.

ARTICLE VIIIDUTIES AND OBLIGATIONS OF MEMBERS

SECTION 1. Compliance with By-Laws, Rules and Regulations. Each member shall comply with and be bound by all By-Laws, Rules and Regulations adopted pursuant to the terms and provisions of this Trust.

SECTION 2. Additional Obligations. Each Member shall also comply with and be bound by each of the following additional obligations.

- (a) Each Member shall follow the safety and general recommendations of the Board of Directors and the service agent.
- (b) In the event of ~~an accident or a reported claim~~ a claim, suit, or occurrence which may give rise to a claim, each Member shall give immediate notification of the ~~accident or reported claim~~ claim, suit, or occurrence to the service agent on the prescribed forms.

- (c) Each Member shall promptly pay all premiums and assessments as required by the Board of Directors, which premiums are to be determined by applying applicable experience modification to the standard rates for the exposure to risk. Further, the premium shall include loss and expense constants and minimum premiums, where applicable. Finally, the premium may be reduced by any discount allowed by the Board of Directors. Each Member shall indemnify the Trust for all punitive or exemplary damages to the extent said damages are not covered by any issued insurance contract.
- (d) Each Member shall, and by signing this Trust Agreement or its counterpart, or by ratifying same, does appoint the current service agent of the Trust any successor service agent from time to time appointed by the Board of Directors as its agent and attorney-in-fact to act in its behalf and execute all contracts, reports, waivers and agreements, or arrange for payment of claims, medical expenses, and all other things required or necessary insofar as they affect its liability under Michigan law and as covered by the terms of this Trust Agreement and the rules and regulations as now provided or as hereafter promulgated by the Board of Directors.
- (e) The Member agrees that in the event of the payment of any loss by the Trust under this Trust, the Trust shall be subrogated to the extent of such payment to all the rights of the member against any person or other entity legally responsible for damages for said loss, and in such event the member hereby agrees to render all reasonable assistance other than pecuniary, to effect recovery, provided, however, that any sums recovered pursuant to subrogation shall be divided between the Member and the Trust in the same proportions as the amount of the expenses and judgment paid by the Member pursuant to its deductible and the amount of the expenses and judgment paid by the Trust (directly and through re-insurance).
- (f) The Board of Directors of the Trust, the Service Agency, and any of their agents, servants, employees or attorneys shall be permitted at all reasonable times to inspect the work places, plants, works, machinery, and appliances covered by this agreement, and shall be permitted at all reasonable times and within three (3) years after the final termination of the membership to examine Member's books, vouchers, contracts, documents, and records of any and every kind which show or tend to show or verify the premium which is payable under the terms hereof.

ARTICLE IX

OBLIGATIONS OF TRUST TO MEMBERS

~~The Trust shall defend in the name of and on behalf of the Member any suits or other proceedings which may at any time be instituted against it on account of injuries or death within the purview of the Trust, or on the basis of Member's liability, including suits or other proceedings alleging such injuries and demanding damages or compensation therefore, although such suits, other proceedings, allegations or demands are wholly groundless, false, or fraudulent. The Trust will investigate, handle, and if appropriate settle any claims made against any Member and shall defend in the name of and on behalf of any Member any litigation or other proceedings which may be instituted against a member on account of injuries, death, or other damages or compensation within the perview of the Trust, subject to the coverage provided to the Member, or on the basis of the liability or alleged liability of the Member and even if such claims, suits, other proceedings, allegations, or demands are wholly groundless, false or fraudulent; and to pay all judgments and costs taxed against this the Member in any legal proceeding defended by the service company Pool, all interest accruing after entry of a judgment and all expenses incurred for investigation, negotiation or defense up to the limits of the liability of the Pool therefore.~~

ARTICLE X

MISCELLANEOUS

SECTION 1. Amendments. This Trust may be amended, in writing, at any time by the concurrence of not less than two-thirds (2/3) of the Board of Directors and the concurrence of not less than two-thirds (2/3) of the then current Members; provided, however, this Trust may not be amended so as to change its purpose as set forth in Article II above or to permit the diversion or application of any of the funds of the Trust for any purpose other than those specified herein. ~~The Board of Directors, upon amending this agreement, shall send~~ Upon the receipt of a two-thirds (2/3) vote of the Pool Board, a copy of the proposed amendment shall be sent to all Members. The concurrence of the Members, if not provided at a duly called special or annual meeting of the Pool, may be delivered to the Pool office via the United States Postal Service or overnight mail not later than forty (40) days of the date that the proposed amendment is furnished to the Members by the Pool Board. A copy of any such approved amendment bearing the necessary signatures shall be sent to all Members.

SECTION 2. Termination of Trust. This Trust may be terminated at any time by concurrence of all of the parties to this agreement, or their successors. This Trust shall terminate, in any case, ~~upon the death of the last survivor of such persons who are living at the time of the creation of the Trust and who were participating in the Trust, unless, without the benefit of this provision, the Trust does not violate the rule against perpetuity; in which case the Trust may continue in perpetuity unless otherwise terminated, in the~~

event that all of the members are dissolved, abolished, or cease to exist as a municipal corporation or governmental entity. This agreement shall continue in full force and effect as it may be amended and supplemented from time to time, subject, however, to the above termination provision. In the event of termination, the remaining funds available in the Trust, after providing for all outstanding obligations, shall be distributed to the participating Members through a formula determined by the Board of Directors.

SECTION 3. Situs of the Trust. This Trust Agreement is executed by the parties hereto and accepted by the Trustees in the State of Michigan and all questions pertaining to its validity, construction and administration shall be determined in accordance with the laws of the State of Michigan.

SECTION 4. Execution of Documents. A certification signed by the Chairman and Secretary of the Trust shall be evidence of the action of the Board of Directors and any such certificate or other instruments so signed shall conclusively be presumed to be authentic and all facts and matters stated therein shall conclusively be presumed to be true.

SECTION 5. Fiscal Year of Trust. The Trust shall operate on the fiscal year designated in the By-Laws. Application for continuing membership, when approved in writing by the Board of Directors or its designee, shall constitute a continuing contract for each succeeding fiscal period unless cancelled by the Trust or unless the Member shall have resigned or withdrawn or been expelled from the Trust by written notice.

SECTION 6. Distribution of Dividends or Reserves. There will be no disbursement out of this Trust for any fiscal year by way of dividends or distribution of accumulated reserve to Members until (a) after provision has been made for all known obligations and (b) the Board of Directors shall deem the distribution to be proper.

SECTION 7. New Members. Any entity which subsequently formally applies for membership in this Trust and is accepted by the Board of Directors in accordance with the provisions of this Trust and the By-Laws thereupon become a party to this Trust and be bound by all of the terms and conditions hereof by the signing of a copy of the Trust, or the ratification thereof, which shall thereupon constitute a counterpart of this Trust.

SECTION 8. Board of Director Action. Except, as otherwise set forth in this Trust, all actions taken by the Board of Directors shall be by majority vote.

SECTION 9. Insolvency. In the event the Trust becomes insolvent, the Board of Directors shall adopt and implement a plan which will cure the insolvency or, in the alternative, shall take such action as is necessary to terminate the Trust. Any action taken pursuant to this Section shall require the approval of two-thirds (2/3) of the Board of Directors and two-thirds (2/3) of the Members.

SECTION 10. Captions. Captions in this Trust are used for convenience only and shall not limit, broaden or qualify the text.

SECTION 11. Severability. Should any provision of this Trust be or become invalid or unenforceable, the remaining provisions shall continue to be fully effective.

SECTION 12. Binding Effect. This Trust shall be binding upon and be fully enforceable as to each Member and the successors and assigns of each member.

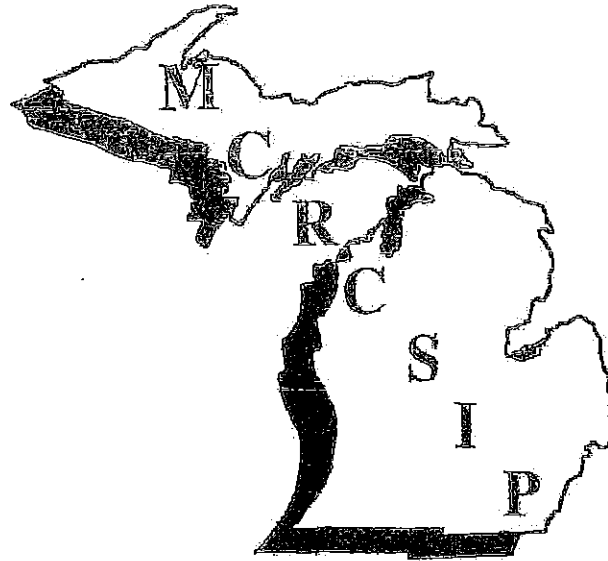
SECTION 13. Counterparts. This Agreement is intended to be executed by each Member of the Pool in Counterparts, each of which shall be an original and all of which shall constitute the same instrument.

IN WITNESS WHEREOF, this Agreement and Declaration of Trust has been executed the day and year first written above.

COUNTY ROAD COMMISSIONS:

TRUSTEES:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____



BY-LAWS

With Proposed Changes

Resolution "A" in Red

Resolution "B" in Blue

ADOPTED: 10/17/83
REVISED: 08/22/84

MICHIGAN COUNTY ROAD COMMISSION
SELF-INSURANCE POOL
BY-LAWS

ARTICLE I

NAME

The name of this organization shall be the Michigan County Road Commission Self-Insurance Pool (hereinafter referred to as the "Pool").

ARTICLE II

PURPOSE AND OBJECTIVES

The Michigan Legislature, during its regular session in 1982, adopted Act 138 which became immediately effective April 27, 1982. Act 138 of 1982 amends the Intergovernmental Contracts Act of 1951, Act 35, PA 1951, as amended, thereby authorizing "contracts between municipal corporations to form group self-insurance pools, and to prescribe conditions to the performance of those contracts." Act 138 went on to define municipal corporations as including county road commissions.

In accordance with the provisions of Act 138, these By-laws govern a ~~road~~ ~~commission~~ self-insurance pool whose general objectives are to formulate, develop, and administer a self-insurance program for members of the pool, to establish the Michigan County Road Commission Self-Insurance Pool, to finance such a program, and to develop suitable financial and management plans. The Pool has been established by a Trust Agreement executed by the initial participating county road commissions and by the initial Board of Directors ("Pool Board"), as Trustees of the Trust, ~~designated by the initial participating county road commissions.~~

ADOPTED: 10/17/83

REVISED: 08/22/84

ARTICLE IIINATURE OF THE ORGANIZATION

The Pool ~~shall~~ may be comprised of counties and county road commissions of the State of Michigan which are authorized and approved under Section 1 of Act 138, PA 1982, as amended (MCL 124.1; MSA 5.4081), to enter into an agreement to pool their loss exposures and which have executed the Pool Trust Agreement. Each participating county and county road commission shall adopt and execute such written agreements as may be required by law or by the Pool Board. The Pool is not to operate as an insurance company or insurer under the laws of the State of Michigan, but rather is to be the contracting mechanism by which each Member receives, from the Pool, risk and financial management services and protections.

The Pool shall be established and operated by the Members through the Pool Board. The Pool shall not be a function, service, or agent of the County Road Association of Michigan.

ADOPTED: 10/17/83
 REVISED: 08/22/84
 AMENDED: 06/18/86
 AMENDED: 07/16/87

ARTICLE IV

MEMBERSHIP

1. Members. A Member may be a county road commission (herein referred to as "Member"), shall be a county road commission or a county which has assumed the powers and duties provided by law to county road commissions located in the State of Michigan, which has paid its annual contribution, as determined by the Pool Board, and has met other requirements as may be set by the Pool Board, including execution of the Inter Local Intergovernmental Agreement and the Trust Agreement. The term "road commission" includes a municipal corporation, a division of a municipal corporation, a governmental agency, or an organization created by the execution of one or more Intergovernmental agreements where the commissioners of a county road commission also act as the commissioners or other governing board or body of the municipal corporation, division of a municipal corporation, governmental agency, or an organization created by the execution of one or more Intergovernmental agreements. All new Members shall be approved by a two-thirds vote of the Pool Board.

For the purpose of voting at meetings, a representative from the Member shall be designated by the its respective Board of County Road Commissioners governing body to cast votes on behalf of the Member. An alternate delegate may also be designated by said Board of County Road Commissioners the governing body of the Member for the purpose of voting in the absence of the designated voting representative. Both the designated voting

representative and the designated alternate delegate shall be either a ~~road commissioner~~
~~member of said Member~~ the governing body of said Member or a full-time employee of said
 Member.

2. Associate Members. ~~County road commissions~~ An entity who otherwise
qualifies as a Member located in Michigan but who have ~~has~~ not paid a contribution, as
 designated by the Pool Board, but who expresses an interest in being associated with the Pool
 may be designated as an Associate Members. Associate Members shall be approved by two-
 thirds vote of the Pool Board. The Pool Board may determine if fees will be charged to said
 Associate Members for services provided to the Associate Members by the Pool. Such fees
 may be reduced or waived in consideration of the provision of claims data and other
 information or services useful to the Pool. Associate Members shall not have voting rights,
 nor shall they be eligible to serve as voting Members of the Pool Board.

3. Meetings. There shall be an annual meeting of the Members as soon as
 practicable after the close of the fiscal year. Additional meetings of the Members may be
 called by a vote of the majority of the Pool Board. The Pool Board shall establish the time
 and place for the annual meeting and any special meetings. All meetings of the Pool shall be
 held in Michigan.

4. Conduct of Meetings. The Chairperson of the Pool Board; or in his or her
 absence, the Vice Chairperson, shall conduct the annual meeting of the Members and any
 special meetings of the Members. In the absence of both the Chairperson and the Vice
 Chairperson, a temporary Chairperson for that meeting shall be elected by a majority vote of
 the Members present. All proceedings shall be conducted in accordance with Robert's Rules
 of Order.

5. Notice of Meetings. Members shall be notified not less than thirty days prior to the date of the annual or any special meeting. The notice shall include the date, time, place, and proposed topics for action or discussion.

6. Quorum. A majority of the Membership shall constitute a quorum for any meeting of the Members. No action shall be taken except on concurring vote of a majority of those in attendance or on such vote as may otherwise be required by the Intergovernmental Agreement, Trust, or these By-laws.

7. Minutes. The Secretary of the Pool Board shall keep minutes of the annual and special meetings of the Members.

ADOPTED: 10/17/83
 REVISED: 08/22/84
 AMENDED: 07/16/87

ARTICLE V

BOARD OF DIRECTORS

1. Election. The Board of Directors of the Pool (herein referred to as the "Pool Board") shall consist of nine members (herein referred to as "Directors") elected by the members at an annual meeting. The individual Directors shall be ~~either a read-commissioner~~ an elected or appointed officer of a Member or a full-time employee of a Member. The Pool Board shall include at least two representatives from each of the three regions of the State of Michigan. For purposes of representation on the Pool Board, the three regions of the State shall be known as the Southern Region, Northern Region and Upper Peninsula Region. The ~~three regions are identified as follows and shall include the following counties:~~

Southern Region: Allegan, Barry, Bay, Berrien, Branch, Calhoun, Cass, Clinton, Eaton, Genesee, Gratiot, Hillsdale, Huron, Ingham, Ionia, Jackson, Kalamazoo, Kent, Lapeer, Lenawee, Livingston, Macomb,

Monroe, Muskegon, Oakland, Ottawa, Saginaw, Sanilac, Shiawassee, St. Clair, St. Joseph, Tuscola, Van Buren, Washtenaw and Wayne.

Northern Region: Alcona, Alpena, Antrim, Arenac, Benzie, Charlevoix, Cheboygan, Clare, Crawford, Emmet, Gladwin, Grand Traverse, Iosco, Isabella, Kalkaska, Lake, Leelanau, Manistee, Mason, Mecosta, Midland, Missaukee, Montcalm, Montmorency, Newaygo, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Presque Isle, Roscommon and Wexford.

Upper Peninsula Region: Alger, Baraga, Chippewa, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon and Schoolcraft.

For purposes of election of any Director by the Members, there shall be at least twice as many nominations as there are open positions. When it becomes necessary to elect a Director from one or more regions, those Director's positions shall be voted on separately ~~and~~ ~~and~~ nominations shall be made up of persons representing Members from the appropriate region. The regional representation requirement may be waived ~~if all members from a region annually agree to waive it by the majority of members present at any annual meeting at~~ which an election of directors takes place.

2. Term. The term of each Director shall be three years. The terms shall be staggered so that three Directors are elected at each annual meeting of the Members. To this end, at the first meeting of the Members, three Directors shall be elected to a one year term of office, three Directors shall be elected to a two year term of office, and three Directors shall be elected to a three year term of office.

3. Officers. Annually, at the first meeting following the annual meeting of the Members, the Pool Board shall elect a Chairperson and Vice Chairperson. The Pool Board shall also appoint a Secretary and Treasurer to the Pool Board, who need not be a Director.

4. Meetings. The Pool Board shall meet not less often than semiannually. The first meeting shall not be more than one week following the annual meeting of the Members, and shall be held in Michigan. Other meetings may be called by either the Chairperson or a majority of the Pool Board, and shall also be held in Michigan. All proceedings shall be conducted in accordance with Robert's Rules of Order.

5. Minutes. Minutes of meetings of the Pool Board shall be kept by the Secretary or in the Secretary's absence any other person appointed by the Chairperson.

6. Quorum. ~~Attendance of Five-five Directors shall constitute a quorum for any meeting of the Pool Board. For emergency situations, five affirmative or five negative votes received by telephone shall be acceptable in determining Pool Board decisions. The Pool Board shall adopt a procedure for telephone votes which shall indicate the conditions under which a telephone vote shall be authorized, who may conduct telephone votes, and other matters considered relevant. No action shall be taken except on a concurring vote of a majority of those in attendance or on such vote as may otherwise be required by the Intergovernmental Agreement, Trust, or these By-laws.~~

7. Compensation. The Directors shall serve without compensation. However, upon the request of a Director, the Pool Board shall reimburse a Director for actual, necessary, and reasonable expenses incurred either for the purpose of attending Pool Board meetings or in the conduct of other Pool business.

8. Resignation and Removal. Any Director who fails to meet the eligibility requirements during that person's term of office shall be considered to have automatically resigned. A Director may be removed from office by a vote of two-thirds of the Members present at an annual meeting of the Members. In the event of such resignation or removal which occurs at any annual meeting of the Members, the Members shall, acting in accordance with all requirements of these Bylaws for the election of a Director, immediately elect a replacement Director. Any newly elected Director filling an unexpired term shall serve only the remainder of the term for the vacated position. Should the vacancy involve an officer of the Pool Board, the Pool Board shall elect a new officer.

9. Vacancies. Should a vacancy occur on the Pool Board, other than at an annual meeting of the Members, the Chairperson with approval of the Pool Board shall appoint a temporary replacement who shall serve until the next annual meeting of the Members. ~~The replacement must meet the requirements of eligibility, including the required representation by CRAM sectional associations.~~

ADOPTED: 10/17/83

REVISED: 08/22/84

ARTICLE VIPOWERS AND DUTIES OF THE BOARD

The Pool Board in addition to other powers and duties herein conferred and imposed or authorized by law, shall have the following powers and duties:

1. The Pool Board shall be authorized to contract with any qualified individual or organization to perform any of the functions necessary for the carrying out of a self-insured Pool arrangement, including the provision of excess loss insurance, "stop loss," insurance, umbrella insurance, reinsurance, the investigation of claims, the handling of claims, the settlement of claims, safety engineering services, administrative services, and any and all other services that the Pool Board shall deem appropriate.

2. The Pool Board shall prepare an Inter-Local Intergovernmental Agreement and shall require that each member execute said Inter-Local Intergovernmental Agreement as a condition of membership.

3. The Pool Board shall make provision for proper accounting and reporting procedures for each of the Members so that they shall be apprised at all times of the nature of the claims arising within their jurisdiction, the manner in which these claims are being handled, and the impact of the same upon the Pool.

4. The Pool Board shall maintain such accounts, funds, and records as may be required by good accounting practice. The Pool Board shall provide for an annual certified audit of the books of the Pool by a-an independent Certified Public Accountant. A copy of the audit report shall be supplied to each of the Members and the commissioner of insurance, as required by law.

5. As required by law, the Pool Board shall provide an annual actuarial certification by an independent actuary that the reserves set aside pursuant to Act 138 of the Michigan Public Acts of 1982, as amended, are adequate for the payment of claims. A copy of the actuarial certification shall be provided to the commissioner of insurance as required by law.

55. The Pool Board shall arrange for the investing of monies of the Pool to keep the same invested as authorized as required by law. The Pool Board shall provide for the banking of the monies of the Pool and the proper security of any and all investments.

57. The Pool Board shall adopt a balanced annual budget and shall require that the budget be adhered to. The Pool Board may amend the budget at any time.

7-9. The Pool Board shall adopt a risk management and loss control plan.

9-9. The Pool Board shall adopt and equally enforce rules and procedures for the handling, investigation, defense, administration, and settlement of claims. Said rules and procedures shall specify each Member's responsibilities and involvement in claims matters. These rules and procedures, including settlement authority, shall be incorporated in the ~~Inter-~~ Local Intergovernmental Agreement and executed by each Member.

109. The Pool Board shall perform annual reviews consisting of the following, and shall present the results of these reviews to the Membership at the annual meeting:

- A. Audit and summary financial review;
- B. Risk Management and loss prevention review; and
- C. Claims review.
- D. Annual budget.

1011. The Chairperson of the Pool Board may appoint an Executive Committee or Designee of the Pool Board to handle the affairs of the Pool Board in-between the regular meetings or any of the special Pool Board meetings, with such functions as may be designated to the Executive Committee or designee by the Pool Board in a resolution properly adopted. Other special committees or designees may also be appointed by the Chairperson, as needed, with powers spelled out in a resolution properly adopted by the Pool Board.

1112. The Pool Board shall require the securing of a fidelity bond on each and all of the employees of the Pool Board or upon other persons charged with the duty of handling any of the monies or investments of the Pool. The Pool shall pay the premium for such a bond.

1213. The Pool Board may provide for a suitable seal with the following letters upon its face: "Michigan County Road Commission Self-Insurance Pool." The seal shall be used for the authentication of legal documents, contracts, and other instruments indicating the official action of the Pool Board.

1314. The Pool Board shall have the general power to make and enter into all contracts, leases, and agreements necessary or convenient to carry out any of the powers granted under the Trust Agreement, these By-laws or any other laws. All such contracts, leases, and agreements, or other legal documents herein authorized shall be approved by resolution of the Pool Board and shall be executed by those individuals designated in such resolution. In the absence of such a designation, all approved contracts shall be executed by the Chairperson or Vice Chairperson.

1415. The Pool Board shall carry out all the duties necessary for the proper operation and administration of the Pool on behalf of the Members and to that end shall have all of the power necessary and desirable for the effective administration of the affairs of the Pool.

ADOPTED: 10/17/83

REVISED: 08/22/84

ARTICLE VIIADMINISTRATION

There shall be an Administrator of the Pool (herein referred to as the "Administrator") to administer the financial and administrative affairs of the Pool. The Administrator shall be an employee of the Pool and shall be appointed by, and serve at the pleasure of the Pool Board. The Administrator shall have the power and authority to implement policy matters set forth by the Pool Board as they relate to the ongoing operation and supervision of the Pool and the provisions of the Trust Agreement establishing the Pool, the By-laws, the ~~Inter Local~~ Intergovernmental Agreement, applicable Federal and/or State statutes, and other applicable governmental rules and regulations.

The Pool Board shall establish, maintain, and provide adequate funding for an office of the Pool, also administered by the Administrator. The address of such office shall be made known to the Members and other ~~road-commission~~ entities interested in participating in the Pool, and to the appropriate governmental agencies and departments of the State of Michigan. The Administrator may hire staff, purchase equipment and supplies, and incur expenses within the limits set in the annual budget.

ADOPTED: 10/17/83

REVISED: 08/22/84

ARTICLE VIIIDETERMINATION OF COVERAGE TO BE PROVIDED

The Pool Board shall determine the terms, conditions, and length of the ~~Inter-~~Local Intergovernmental Agreement, which it shall develop and prepare to be signed by each of the Members as they join the Pool. The Pool Board shall determine the amount of insurance, if any, which shall be purchased by the Pool insofar as catastrophic coverage, excess loss coverage and "stop loss," fiduciary, error and omissions, or other types of insurance coverages are concerned. ~~The Pool Board shall also make any other arrangements or contracts deemed necessary to meet requirements of law, or which it determines to be necessary for the operation of the Pool. The amount and type of insurance coverages to be provided to members shall be~~ which shall be identified in the ~~Inter-~~Local Intergovernmental Agreement to be signed by each Member.

ADOPTED: 10/17/83
REVISED: 08/22/84

ARTICLE IX

INDEMNIFICATION OF OFFICERS, TRUSTEES, AND EMPLOYEES

The Pool shall indemnify each person now or hereafter a Director, trustee, officer, employee or agent of the Pool, and the heirs, executors, administrators, or other legal representatives of such Director, trustee, officer, employee, or agent, from and against reasonable expenses and losses incurred or suffered by them in connection with any claim, action, suit, or proceeding, civil or criminal, actual or threatened, in which he or she may be involved by reasons of his or her being or having been such Director, trustee, officer, employee, or agent, or by reason of his or her alleged acts or omissions as such a Director, trustee, officer, employee, or agent, regardless of whether he or she is such a Director, trustee, officer, employee, or agent at the time of incurring such expenses and losses, except with respect to any matter as to which he or she shall have been adjudicated in any proceeding to have been guilty of gross negligence or shall have been adjudicated in any proceeding not to have acted in good faith in the reasonable belief that his or her action was in the best interest of the Pool; provided, however, that the Pool, by vote of the Pool Board, may compromise and settle any such claim, action, suit, or proceeding and pay such expenses and losses, if such settlement and payment appear to be in the best interest of the Pool. Such indemnification may include payment by the Pool of expenses incurred in defending a civil or criminal action or proceeding in advance of the final disposition of such action or proceeding, upon receipt of an agreement executed by the person to be indemnified agreeing to repay such payment if he or she shall be adjudicated to be not entitled to indemnification.

ADOPTED: 10/17/83
REVISED: 08/22/84

ARTICLE X

DETERMINATION OF CONTRIBUTIONS BY MEMBERS
OR REFUNDS TO MEMBERS

The Pool Board shall determine the amount of contribution to be paid annually by each Member. Such contribution shall be calculated based on past experience, projected future losses, excess and stop loss insurance costs, reinsurance costs, umbrella insurance costs, administrative costs, loss prevention costs, and any other projected expenses to be incurred in the operation and administration of the Pool. Should deficiencies or surpluses occur within the funding of the Pool, the Pool Board shall determine the method of addressing these deficiencies or surpluses through the annual contribution mechanism. The Pool Board may employ actuarial services or other professional assistance in determining the appropriate contribution. The contributions by the individual members shall be clearly spelled out in an annual contribution notice.

ARTICLE XI
FISCAL YEAR

The fiscal year of the Pool shall be from April 1 through March 31.

ADOPTED 10/17/83

REVISED 08/22/84

ARTICLE XIIWITHDRAWAL OR TERMINATION OF MEMBERSHIP

Any Member may withdraw from the Pool by giving at least sixty days written notice to the Pool Board of its desire to so withdraw. The Pool Board shall develop procedures for addressing accumulated equity, if any, or accumulated funding deficiency. The Pool Board shall determine the short rate cancellation penalty for terminating prior to the annual renewal date. A Member may be terminated from membership by a two-thirds vote of the Members present at an annual or special meeting of the Members. Reasons for termination of Members may include, but are not limited to, the following:

1. Failure to follow the rules designated by the Pool Board in claims handling or other matters as set forth by the Pool Board.
2. A loss of eligibility.
3. Willful and continuous refusal to follow the recommendations of the Pool Board or Administrator regarding loss prevention and other Risk Management programs.
4. Acting in a manner which is counter to the interests of the Pool and its Members.

ADOPTED: 10/17/83
 REVISED: 08/22/84
 AMENDED: 07/16/87

ARTICLE XIII

AMENDMENTS

The By-laws may be amended by a two-thirds vote of the Pool Board with the additional approval of a two-thirds vote of the Members casting ballots thereon, provided that said amendment shall comply to applicable statutes regarding the establishment and operation of a self-insurance pool. Upon the receipt of a two-thirds (2/3) vote of the Pool Board, a copy of the proposed amendment shall be sent to all Members. The concurrence of the Members, if not provided at a duly called special or annual meeting of the Pool, may be delivered to the Pool office via the United State Postal Service or overnight mail not later than forty (40) days of the date that the proposed amendment is furnished to the Members by the Pool Board.

Alternatively, aAny Member may propose an amendment to the By-laws by submitting a copy of the proposed amendment in writing to the Pool Board, ~~not less than thirty days prior to the end of the fiscal year of the Pool.~~ The Pool Board shall consider the proposed amendment at the first regular or special meeting of the Pool Board following the ~~receipt of~~ close of the fiscal year in which the proposed amendment was submitted. If the proposed amendment receives a two-thirds affirmative vote of the Pool Board, a copy of the proposed amendment to the By-laws shall be provided to all Members for consideration and the vote of the Members with the meeting notice announcing the next annual meeting of the Members as set forth above. A copy of any such approved amendment shall be sent to all Members. The proposed By-law amendment shall be presented and discussed at the annual membership meeting. Not later than thirty days after the annual meeting, each Member shall be provided with a written secret ballot on the proposed amendment, with the ballot to be returned to the Pool Board no more than thirty days after the date of mailing to the membership. The Pool Board shall open, count and tabulate the ballots cast at the first regular or special meeting of the Pool Board following the voting deadline. The proposed

APPENDIX 17

1/22/2016

Jackson, Ingham, and Calhoun Counties v MCRCSIP - mattnordi@gmail.com - Gmail

Thanks.

Gayle Pratt
Administrator

Michigan County Road Commission Self-Insurance Pool
417 Seymour Ave., Suite 2, Lansing, MI 48933
(: [517.482.9166](tel:517.482.9166) | 7: [517.485.4809](tel:517.485.4809) | *: gpratt@mcrقسip.org | (: [800.842.4971](tel:800.842.4971))

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From: "Lannoye, Mary" <co_lannoye@ingham.org>
To: Peter Cohl <pcohl@cstmlaw.com>, Gwen Kamm <gkamm@cstmlaw.com>
Cc: "Rhode, Jill" <JRhode@ingham.org>, William Conklin <IMCEAEX-_O=INGHAMCRC_OU=FIRST+20ADMINISTRATIVE+20GROUP_CN=RECIPIENTS_CN=WCONKLIN@ingham.org>
Date: Tue, 29 May 2012 20:45:18 +0000
Subject: FW: Ingham Cancellation of Insurance.pdf - Adobe Acrobat Standard
This needs to be looked into ASAP. MCRCSIP is the liability insurance carrier for the Ingham County Road Commission. They are cancelling our coverage as of June 1, 2012 and want Mr. Conklin to sign the attached agreements agreeing to the cancellation

Our original intention was to keep the MCRCSIP coverage thru at least the end of June, 2012. We added the Department of Transportation and Roads to our MMRMA policy effective June 1, 2012 a few weeks ago and confirmed again today we are covered.

Mary A. Lannoye
Ingham County Controller/Administrator
517-676-7206

From: William Conklin [<mailto:WConklin@inghamcrc.org>]
Sent: Tuesday, May 29, 2012 2:11 PM
To: Lannoye, Mary; Rhode, Jill
Cc: Tina Henry
Subject: FW: Ingham Cancellation of Insurance.pdf - Adobe Acrobat Standard

Mary, Jill,

MCRCSIP Administrator Gayle Pratt informed late Friday me that MCRCSIP has determined they will not be able to insure the road department after June 1 as previously planned. Their attorneys and certain members late last week apparently determined they cannot continue to insure absorbed county road departments.

See below and attached—MCRCSIP insurance cancellation and withdrawal agreements which MCRCSIP indicates should be approved and signed by the Road Board in an open public meeting. Jim Dravenstatt-Mocerri told me today there is a possibility the Road Board may decide today not to meet tomorrow after all. We will public notice this cancellation if it occurs. If the Road Board does not meet again this week, it appears the County Board would need to handle these attached agreements. The agreements basically spell out the reimbursement of pre-paid premium and continuation of handling currently open claims.

--Bill Conklin

From: Gayle Pratt [<mailto:GPratt@mcrقسip.org>]

- 0156a

1/22/2016

Jackson, Ingham, and Calhoun Counties v MCRCSIP - mattford@gmail.com - Gmail

Sent: Tuesday, May 29, 2012 1:37 PM
To: William Conklin
Subject: Ingham Cancellation of Insurance.pdf - Adobe Acrobat Standard

Bill:

These are the two documents we will need signed. Our attorneys feel that it is something the Road Commissioners do in a public meeting.

If you have any questions or concerns, please let me know.

Thanks.

Gayle Pratt
Administrator

Michigan County Road Commission Self-Insurance Pool
 417 Seymour Ave., Suite 2, Lansing, MI 48933
 (: [517.482.9166](tel:517.482.9166) | 7: [517.485.4809](tel:517.485.4809) | *: gpratt@mcrقسip.org | (: [800.842.4971](tel:800.842.4971)

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----- Forwarded message -----

From: Gayle Pratt <GPratt@mcrقسip.org>
To: William Conklin <1MCEAEX-
 _O=INGHAMCRC_OU=FIRST+20ADMINISTRATIVE+20GROUP_CN=RECIPIENTS_CN=WCONKLIN@ingham.org>
Cc:
Date: Wed, 30 May 2012 17:04:01 +0000
Subject: meeting?

Hi...I heard through the grapevine that the meeting tonight is cancelled?

Also, I talked to the Ingham County Attorney and she is supportive of signing the agreements. There is one change she needs to make and is supposed to send it over for our review. It sounded like a good change to make.

If we aren't having a meeting, how are we signing the docs?

Thanks

Gayle Pratt
Administrator

Michigan County Road Commission Self-Insurance Pool
 417 Seymour Ave., Suite 2, Lansing, MI 48933
 (: [517.482.9166](tel:517.482.9166) | 7: [517.485.4809](tel:517.485.4809) | *: gpratt@mcrقسip.org | (: [800.842.4971](tel:800.842.4971)

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----- Forwarded message -----

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To: William Conklin <IMCEAEX-

_O=INGHAMCRC_OU=FIRST+20ADMINISTRATIVE+20GROUP_CN=RECIPIENTS_CN=WCONKLIN@ingham.org>

Cc:

Date: Wed, 30 May 2012 17:17:02 +0000

Subject: RE: meeting?

Ok. But the county can't sign the withdrawal agreement....the RC has to sign it. Can you sign it?

From: William Conklin [mailto:WConklin@inghamcrc.org]

Sent: Wednesday, May 30, 2012 1:12 PM

To: Gayle Pratt

Subject: RE: meeting?

No meeting tonite. County Controller or their attorney will contact Bob Stone to schedule one sometime next week. The County will decide how to sign the withdrawal agreements—either the controller or the Board Chair.

From: Gayle Pratt [mailto:GPratt@mcrقسip.org]

Sent: Wednesday, May 30, 2012 1:04 PM

To: William Conklin

Subject: meeting?

Hi...I heard through the grapevine that the meeting tonight is cancelled?

Also, I talked to the Ingham County Attorney and she is supportive of signing the agreements. There is one change she needs to make and is supposed to send it over for our review. It sounded like a good change to make.

If we aren't having a meeting, how are we signing the docs?

Thanks

Gayle Pratt
Administrator

Michigan County Road Commission Self-Insurance Pool
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(: [517.482.9166](tel:517.482.9166) | 7: [517.485.4809](tel:517.485.4809) | *: gpratt@mcrقسip.org |(: [800.842.4971](tel:800.842.4971)

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APPENDIX 18

1/22/2016

Jackson, Ingham, and Calhoun Counties v. MCRC SIP - mattniordi@gmail.com - Gmail

RECEIVED by MSC 11/4/2020 4:34:25 PM

----- Forwarded message -----

From: Gayle Pratt <GPratt@mcrsip.org>
 To: William Conklin <MCEAEX-
 _O=INGHAMCRC_OU=FIRST+20ADMINISTRATIVE+20GROUP_CN=RECIPIENTS_CN=WCONKLIN@ingham.org>
 Cc:
 Date: Wed, 30 May 2012 18:59:33 +0000
 Subject: FW: Ingham Cancellation of Insurance
 Hi...I sent this to Bonnie and your name was spelled wrong...sorry!!

From: Gayle Pratt
 Sent: Wednesday, May 30, 2012 2:58 PM
 To: 'Bonnie Toskey'
 Cc: co_lannoye@ingham.org; jrhode@ingham.org; wconcklin@inghamcrc.org
 Subject: RE: Ingham Cancellation of Insurance

Thanks Bonnie:

I have forwarded to Bill Henn at Smith Haughey for his feedback. We were wondering who can execute the documents since there won't be another Road Commission board meeting. Were you thinking Bill Conklin would be the best person to sign?

Will get back to you asap...

Gayle Pratt
 Administrator

Michigan County Road Commission Self-Insurance Pool
 417 Seymour Ave., Suite 2, Lansing, MI 48933
 (: [517.482.9166](tel:517.482.9166) | 7: [517.485.4809](tel:517.485.4809) | *: gpratt@mcrsip.org | (: [800.842.4971](tel:800.842.4971)

From: Bonnie Toskey [<mailto:btoskey@cstmlaw.com>]
 Sent: Wednesday, May 30, 2012 1:32 PM
 To: Gayle Pratt
 Cc: co_lannoye@ingham.org; jrhode@ingham.org; wconcklin@inghamcrc.org
 Subject: Ingham Cancellation of Insurance

Ms. Pratt:

Pursuant to our conversation this morning, attached please find the Agreement for Cancellation of Insurance and the Agreement for withdrawal from MCRC SIP with Ingham County. I have bolded the changes that I have made to the two Agreements. If the Agreements meet with your approval, I will remove the bold and forward the Agreements to Mr. Conklin for execution. Should you have any questions, do not hesitate to contact me.

Bonnie G. Toskey
 COHL, STOKER & TOSKEY, P.C.
 601 N. Capitol Ave.
 Lansing, Michigan 48933
 (517) 372-9000

Bonnie Toskey

From: Bonnie Toskey <btoskey@cstmlaw.com>
Sent: Wednesday, May 30, 2012 1:32 PM
To: 'gpratt@mcrsnp.org'
Cc: co_lannoye@ingham.org; jrhode@ingham.org; wconcklin@inghammcr.org
Subject: Ingham Cancellation of Insurance
Attachments: Agr termination from MCRCSIP.pdf; Agreement For Cancellation Of Insurance.pdf

Ms. Pratt:

Pursuant to our conversation this morning, attached please find the Agreement for Cancellation of Insurance and the Agreement for withdrawal from MCRCSIP with Ingham County. I have bolded the changes that I have made to the two Agreements. If the Agreements meet with your approval, I will remove the bold and forward the Agreements to Mr. Conklin for execution. Should you have any questions, do not hesitate to contact me.

Bonnie G. Toskey
COHL, STOKER & TOSKEY, P.C.
601 N. Capitol Ave.
Lansing, Michigan 48933
(517) 372-9000
Fax: (517) 372-1026
btoskey@cstmlaw.com

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**AGREEMENT [IN RECOGNITION OF TERMINATION] FROM
MICHIGAN COUNTY ROAD COMMISSION SELF-INSURANCE POOL**

This Agreement, dated May 30, 2012, is made by and between the Michigan County Road Commission Self-Insurance Pool ("MCRCSIP") and the Board of County Road Commissioners of the County of Ingham ("the Commission"), as follows:

Background

The MCRCSIP is a group self-insurance pool, authorized by MCL 124.1, *et seq*, that provides risk management and coverage to its Members, including the Commission.

The Commission is a body corporate, authorized by MCL 224.1, *et seq*, and is a Member of MCRCSIP as a signatory to both the MCRCSIP Inter-Local Agreement and the Declaration of Trust.

The Ingham County Board of Commissioners has, pursuant to and in accordance with MCL 224.6(7), by Resolution Dissolving the Board of Road Commissioners and Transferring All of Its Powers, Duties, and Functions to the Ingham County Board of Commissioners; Creating a Department of Transportation and Roads, and Adopting a 2012 Budget for the Department – (Resolution #12, dated April 24, 2012), dissolved the Commission as of June 1, 2012, and determined that the powers, duties, and functions of the Commission will be transferred to and undertaken by Ingham County. Consequently, as of June 1, 2012, the Commission is dissolved and by operation of law cannot and is not eligible to be a Member of the MCRCSIP as provided in the applicable By-Laws and the Inter-Local Agreement that govern membership in the MCRCSIP. As such, both the Commission and the MCRCSIP agree that under the circumstances the Commission is not eligible to participate as a member of the MCRCSIP as of 12:01 a.m. on June 1, 2012.

Consequently, steps will be taken to effectuate the cancellation of insuring agreements issued by MCRCSIP to the Commission effective as of 12:01 a.m. on June 1, 2012.

The parties recognize that the Declaration of Trust, Inter-Local Agreement, and By-Laws contain provisions governing the withdrawal of a member county road commission from the MCRCSIP, but given the abrupt and impending dissolution of the Commission, those provisions cannot be implemented by either party to take effect before June 1, 2012.

The purpose of this Agreement, the terms of those withdrawal provisions notwithstanding, is to effectuate the termination of the Commission's membership in MCRCSIP as of June 1, 2012.

The Agreement

The MCRCSIP and the Commission covenant and agree as follows:

1. **Waiver of Withdrawal Notice Period.** Each party, for itself and its directors, officers, successors and assigns, does hereby waive and hold for naught any and all provisions in

the Declaration of Trust, By-Laws, and Inter-Local Agreement that concern, relate to regulate, or affect in any way the requirement for written notice of withdrawal at least sixty days prior to the effective date of withdrawal.

- 2. **Effective Withdrawal Date.** By operation of the action taken by the Ingham County Board of Commissioners (April 24, 2012) the Commission's membership in MCRCSIP shall be and is hereby terminated concurrent with the termination of the Ingham County Road Commission as of 12:01 a.m. on June 1, 2012, without the necessity of any further action by either of the parties to this Agreement.
- 3. **Contribution Adjustment.** Any applicable contribution adjustment shall be made at the time cancellation is effective or as soon as practical thereafter, but payment or tender of unearned contribution shall not be a condition precedent to cancellation.
- 4. **Existing Claims.** MCRCSIP shall continue servicing any of the Commission's claims pending and those made and those which occur or arise from incidents or events occurring prior in time to June 1, 2012, being the time of termination (June 1, 2012), unless the Commission or its successor in function specifically assumes the liability therefor and makes provision to indemnify MCRCSIP from loss by taking over the servicing of any such claim(s). **The exception shall be the Employment Practices & Public Officials Errors and Omissions Liability Agreement which is a claims made policy/coverage only.** The Commission or its successor in function shall be responsible for all applicable reimbursements as provided in the Inter-Local Agreement, By-Laws and Declaration of Trust in force as of the date of this Agreement.
- 5. **Limited Purpose of this Agreement.** The sole purpose of this Agreement is to effectuate the termination of the Commission's membership from the MCRCSIP as of 12:01 a.m. on June 1, 2012, and not to affect or impact in any way any other terms or conditions contained in the Declaration of Trust – Inter-Local Agreement, or By-Laws.

Michigan County Road Commission
Self-Insurance Pool

Ingham County Board of County
Road Commissioners

By: _____
Its: _____

By: _____
Its: _____

N:\Client\Ingham\RoadComm\Agr termination from MCRCSIP.doc

Agreement For Cancellation Of Insurance

This Agreement, dated May 31, 2012, is made by and between the Michigan County Road Commission Self-Insurance Pool ("MCRCSIP") and the Board of County Road Commissioners of the County of Ingham ("the Commission"), as follows:

Background

The MCRCSIP is a group self-insurance pool, authorized by MCL 124.1, *et seq*, that provides risk management and coverage to its Members, including the Commission.

The Commission is a body corporate, authorized by MCL 224.1, *et seq*, and is a Member of MCRCSIP insured under the Insuring Agreements issued by MCRCSIP which include the following:

- Liability Coverage Agreement, Certificate Number MCRP-3300-AC; and,
- Physical Damage Agreement, Certificate Number PHYS-3300-AC; and,
- Employment Practices & Public Officials Errors and Omissions Liability Agreement, Certificate Number MCRPE-3300-AC; and,
- Employee Fidelity and Faithful Performance Coverage Agreement, Certificate Number EF-3300-AC;

each of which, together with their respective Declaration pages, are attached as Exhibits to this Agreement ("the Insurance Coverages").

The Ingham County Board of Commissioners has by Resolution Dissolving the Board of Road Commissioners and Transferring All of Its Powers, Duties and Functions to the Ingham County Board of Commissioners; Creating a Department of Transportation and Roads, and Adopting A 2012 Budget for the Department -- (Resolution #12, dated April 24, 2012) dissolved the Commission as of June 1, 2012, and determined that the powers, duties and functions of the Commission will be undertaken by Ingham County. As such, the Commission will no longer exist as a statutory body corporate after June 1, 2012. Steps will be taken to effectuate the Commission's withdrawal from membership in the MCRCSIP.

Because, as of June 1, 2012, the Commission **being non-existent** will no longer be a member of the MCRCSIP or a road commission within the meaning of the applicable By-Laws and the Inter-Local Agreement that govern membership in the MCRCSIP, the MCRCSIP will not be able to issue insurance coverage to the Commission after it is dissolved. As such, both the Commission and the

MCRCSIP agree that, under the circumstances, they should agree to terminate the Insurance Coverages as of 12:01 a.m. on June 1, 2012.

The parties realize that the Insurance Coverages contain cancellation provisions, but those provisions cannot be implemented by either party to take effect before June 1, 2012.

The purpose of this Agreement, the terms of those cancellation provisions notwithstanding, is to terminate the Insurance Coverages as of that date and time.

The Agreement

The MCRCSIP and the Commission covenant and agree as follows:

1. **Waiver of Cancellation Notice Period.** Each party, for itself and its directors, officers, successors and assigns, does hereby waive and hold for naught any and all provisions in the Insurance Coverages that concern, relate to, regulate or affect in any way the manner, means or processes by which the parties thereto may cancel the Insurance Coverages, including, but not limited to, those provisions as found within the clause in each of the Insurance Coverages entitled "Cancellation", and, in particular, any provision thereof that requires written notice of cancellation and delays the effective date of cancellation for any particular number of days following the submission by either party of such notice of cancellation.
2. **Effective Cancellation Date.** By operation of the action taken by the Ingham County Board of Commissioners (April 24, 2012), the Insurance Coverages shall be and are hereby **Terminated concurrent with the termination of the Ingham County Road Commission** as of 12:01 a.m. on June 1, 2012, without the necessity of any further action by either of the parties to this Agreement.
3. **Contribution Adjustment.** Any applicable contribution adjustment will be made at the time cancellation is effective or as soon as practicable thereafter, but payment or tender of unearned contribution shall not be a condition precedent to cancellation.
4. **Existing Claims.** MCRCSIP shall continue servicing any of the Commission's claims pending and those made and those which occur or arise from incidents or events occurring prior in time to June 1, 2012, being the time of termination (June 1, 2012), unless the Commission or its successor in function specifically assumes the liability therefor and makes provision to indemnify MCRCSIP from loss by taking over the servicing of any such claim(s). **The exception shall be the Employment Practices & Public Officials Errors and Omissions Liability Agreement which is a claims made policy/coverage only.** The

Commission or its successor in function shall reimburse MCRCSIP for all claims expenses incurred after the cancellation.

- 5. Limited Purpose of this Agreement. The sole purpose of this Agreement is to effectuate the cancellation of the Insurance Coverages as of 12:01 a.m. on June 1, 2012, and not to affect or impact in any way any other of the terms or conditions contained in the Insurance Coverages.

Michigan County Road Commission
Self-Insurance Pool

Ingham County Board of
County Road Commissioners

By: _____
Its: _____

By: _____
Its: _____

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APPENDIX 19

**AGREEMENT IN RECOGNITION OF TERMINATION FROM
MICHIGAN COUNTY ROAD COMMISSION SELF-INSURANCE POOL**

This Agreement, dated May 30, 2012, is made by and between the Michigan County Road Commission Self-Insurance Pool ("MCRCSIP") and the Board of County Road Commissioners of the County of Ingham ("the Commission"), as follows:

Background

The MCRCSIP is a group self-insurance pool, authorized by MCL 124.1, *et seq.*, that provides risk management and coverage to its Members, including the Commission.

The Commission is a body corporate, authorized by MCL 224.1, *et seq.*, and is a Member of MCRCSIP as a signatory to both the MCRCSIP Inter-Local Agreement and the Declaration of Trust.

The Ingham County Board of Commissioners has, pursuant to and in accordance with MCL 224.6(7), by Resolution Dissolving the Board of Road Commissioners and Transferring All of Its Powers, Duties, and Functions to the Ingham County Board of Commissioners; Creating a Department of Transportation and Roads, and Adopting a 2012 Budget for the Department – (Resolution #12, dated April 24, 2012), dissolved the Commission as of June 1, 2012, and determined that the powers, duties, and functions of the Commission will be transferred to and undertaken by Ingham County. Consequently, as of June 1, 2012, the Commission is dissolved and by operation of law cannot and is not eligible to be a Member of the MCRCSIP as provided in the applicable By-Laws and the Inter-Local Agreement that govern membership in the MCRCSIP. As such, both the Commission and the MCRCSIP agree that under the circumstances the Commission is not eligible to participate as a member of the MCRCSIP as of 12:01 a.m. on June 1, 2012.

Consequently, steps will be taken to effectuate the cancellation of insuring agreements issued by MCRCSIP to the Commission effective as of 12:01 a.m. on June 1, 2012.

The parties recognize that the Declaration of Trust, Inter-Local Agreement, and By-Laws contain provisions governing the withdrawal of a member county road commission from the MCRCSIP, but given the abrupt and impending dissolution of the Commission, those provisions cannot be implemented by either party to take effect before June 1, 2012.

The purpose of this Agreement, the terms of those withdrawal provisions notwithstanding, is to effectuate the termination of the Commission's membership in MCRCSIP as of June 1, 2012.

The Agreement

The MCRCSIP and the Commission covenant and agree as follows:

1. **Waiver of Withdrawal Notice Period.** Each party, for itself and its directors, officers, successors and assigns, does hereby waive and hold for naught any and all provisions in

the Declaration of Trust, By-Laws, and Inter-Local Agreement that concern, relate to regulate, or affect in any way the requirement for written notice of withdrawal at least sixty days prior to the effective date of withdrawal.

- 2. **Effective Withdrawal Date.** By operation of the action taken by the Ingham County Board of Commissioners (April 24, 2012) the Commission's membership in MCRCSIP shall be and is hereby terminated concurrent with the termination of the Ingham County Road Commission as of 12:01 a.m. on June 1, 2012, without the necessity of any further action by either of the parties to this Agreement.
- 3. **Contribution Adjustment.** Any applicable contribution adjustment shall be made at the time cancellation is effective or as soon as practical thereafter, but payment or tender of unearned contribution shall not be a condition precedent to cancellation.
- 4. **Existing Claims.** MCRCSIP shall continue servicing all of the Commission's claims pending and those which occur or arise from incidents or events occurring prior in time to June 1, 2012, being the time of termination of the Ingham County Road Commission (June 1, 2012), unless the Commission or its successor in function specifically assumes the liability therefor and makes provision to indemnify MCRCSIP from loss by taking over the servicing of any such claim(s). The Commission or its successor in function shall be responsible for all applicable reimbursements as provided in the Inter-Local Agreement, By-Laws and Declaration of Trust in force as of the date of this Agreement.
- 5. **Limited Purpose of this Agreement.** The sole purpose of this Agreement is to effectuate the termination of the Commission's membership from the MCRCSIP as of 12:01 a.m. on June 1, 2012, and not to affect or impact in any way any other terms or conditions contained in the Declaration of Trust – Inter-Local Agreement, or By-Laws.

Michigan County Road Commission
Self-Insurance Pool

By: Bayle Phatt
Its: Administrator
Date: June 21, 2012

Ingham County Board of County
Road Commissioners

By: Wm Conklin
William Conklin
Its: Managing Director
Date: 5-31-12

APPENDIX 20

Agreement For Cancellation Of Insurance

This Agreement, dated May 31, 2012, is made by and between the Michigan County Road Commission Self-Insurance Pool ("MCRCSIP") and the Board of County Road Commissioners of the County of Ingham ("the Commission"), as follows:

Background

The MCRCSIP is a group self-insurance pool, authorized by MCL 124.1, *et seq.*, that provides risk management and coverage to its Members, including the Commission.

The Commission is a body corporate, authorized by MCL 224.1, *et seq.*, and is a Member of MCRCSIP insured under the Insuring Agreements issued by MCRCSIP which include the following:

- Liability Coverage Agreement, Certificate Number MCRP-3300-AC; and,
- Physical Damage Agreement, Certificate Number RHYS-3300-AC; and,
- Employment Practices & Public Officials Errors and Omissions Liability Agreement, Certificate Number MCRPE-3300-AC; and,
- Employee Fidelity and Faithful Performance Coverage Agreement, Certificate Number EF-3300-AC;

each of which, together with their respective Declaration pages, are attached as Exhibits to this Agreement ("the Insurance Coverages").

The Ingham County Board of Commissioners has by Resolution Dissolving the Board of Road Commissioners and Transferring All of Its Powers, Duties and Functions to the Ingham County Board of Commissioners; Creating a Department of Transportation and Roads, and Adopting A 2012 Budget for the Department – (Resolution #12, dated April 24, 2012) dissolved the Commission as of June 1, 2012, and determined that the powers, duties and functions of the Commission will be undertaken by Ingham County. As such, the Commission will no longer exist as a statutory body corporate after June 1, 2012. Steps will be taken to effectuate the Commission's withdrawal from membership in the MCRCSIP.

Because, as of June 1, 2012, the Commission being **non-existent** will no longer be a member of the MCRCSIP or a road commission within the meaning of the applicable By-Laws and the Inter-Local Agreement that govern membership in the MCRCSIP, the MCRCSIP will not be able to issue insurance coverage to the Commission after it is dissolved. As such, both the Commission and the

MCRCSIP agree that, under the circumstances, they should agree to terminate the Insurance Coverages as of 12:01 a.m. on June 1, 2012.

The parties realize that the Insurance Coverages contain cancellation provisions, but those provisions cannot be implemented by either party to take effect before June 1, 2012.

The purpose of this Agreement, the terms of those cancellation provisions notwithstanding, is to terminate the Insurance Coverages as of that date and time.

The Agreement.

The MCRCSIP and the Commission covenant and agree as follows:

1. **Waiver of Cancellation Notice Period.** Each party, for itself and its directors, officers, successors and assigns, does hereby waive and hold for naught any and all provisions in the Insurance Coverages that concern, relate to, regulate or affect in any way the manner, means or processes by which the parties thereto may cancel the Insurance Coverages, including, but not limited to, those provisions as found within the clause in each of the Insurance Coverages entitled "Cancellation", and, in particular, any provision thereof that requires written notice of cancellation and delays the effective date of cancellation for any particular number of days following the submission by either party of such notice of cancellation.
2. **Effective Cancellation Date.** By operation of the action taken by the Ingham County Board of Commissioners (April 24, 2012), the Insurance Coverages shall be and are hereby Terminated concurrent with the termination of the Ingham County Road Commission as of 12:01 a.m. on June 1, 2012, without the necessity of any further action by either of the parties to this Agreement.
3. **Contribution Adjustment.** Any applicable contribution adjustment will be made at the time cancellation is effective or as soon as practicable thereafter, but payment or tender of unearned contribution shall not be a condition precedent to cancellation.
4. **Existing Claims.** MCRCSIP shall continue servicing all of the Commission's claims pending and those which occur or arise from incidents or events occurring prior in time to June 1, 2012, being the time of termination of the Ingham County Road Commission (June 1, 2012), unless the Commission or its successor in function specifically assumes the liability therefor and makes provision to indemnify MCRCSIP from loss by taking over the servicing of any such claim(s). The Commission or its successor in function shall be responsible for all applicable

reimbursements as provided in the Inter-Local Agreement, By-Laws and Declaration of Trust in force as of the date of this Agreement.

- 5. Limited Purpose of this Agreement. The sole purpose of this Agreement is to effectuate the cancellation of the Insurance Coverages as of 12:01 a.m. on June 1, 2012, and not to affect or impact in any way any other of the terms or conditions contained in the Insurance Coverages.

Michigan County Road Commission
Self-Insurance Pool

Ingham County Board of
County Road Commissioners

By: *Gayle Pratt*
 Its: *Administrator*
 Date: *June 21, 2012*

By: *William Conklin*
 William Conklin
 Its: Managing Director
 Date: *5-31-12*

N:\Client\Ingham\Road Comm\Agreement For Cancellation Of Insurance.doc

APPENDIX 21

Bonnie Toskey

From: Bonnie Toskey <btoskey@cstmlaw.com>
Sent: Wednesday, May 30, 2012 7:30 PM
To: fhughes@mrrma.org
Cc: jrhode@ingham.org; co_lannoye@ingham.org
Subject: FW: Revised paragraph 4
Attachments: Agr termination from MCRC SIP revision.pdf; Ingham Cancellation of Insurance MCRC SIP version.pdf; Ingham Membership Withdrawal Agreement MCRC SIP version.pdf; Agreement For Cancellation Of Insurance revision.pdf

Frank:

As you know Ingham County will be covering its Road Commission effective June 1, 2012. The Road Commission has been a member of the Road Commission Insurance Pool. The County just received proposed Agreements which purport to recognize certain claims pending. See proposed Agreements from Gayle Pratt to Bill Conklin, Paragraph 4. See also my revision in the language in a counter of Paragraph 4 to Gayle Pratt to expand the claims covered by the Pool to include those which occur or arise from incidents or events occurring prior to June 1, 2012. Finally, see the e-mail from Gayle Pratt below which represents the Pool's attorney's (William Henn) revision of Paragraph 4. Can you have someone at MRRMA review the proposed language to see if William Henn's version (below) requires the Pool to cover and service all claims for events occurring prior to June 1, 2012? Thank you.

Bonnie

Bonnie G. Toskey
 COHL, STOKER & TOSKEY, P.C.
 601 N. Capitol Ave.
 Lansing, Michigan 48933
 (517) 372-9000
 Fax: (517) 372-1026
btoskey@cstmlaw.com

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From: Gayle Pratt [mailto:GPratt@mcrcsip.org]
Sent: Wednesday, May 30, 2012 5:45 PM
To: btoskey
Subject: FW: Revised paragraph 4

Bonnie:

Below is a further change to paragraph 4 of each Agreement proposed by our attorneys. Their explanation is included.

We need these forms signed prior to end of day Thursday. Do you know if the RC Board will be meeting? Or is it appropriate to have Bill Conklin sign, given the timing?

Thank you again for your help with these Agreements.

I am leaving here soon, but will be in tomorrow before 9....if you need me in the meantime, my cell # is 517 256-0028. Please feel free to call.

Take care....~g

Gayle Pratt
Administrator

Michigan County Road Commission Self-Insurance Pool
417 Seymour Ave., Suite 2, Lansing, MI 48933
☎: 517.482.9166 | 📠: 517.485.4809 | ✉: gpratt@mcrsrip.org | 📠: 800.842.4971

From: Henn, William [<mailto:whenn@shrr.com>]
Sent: Wednesday, May 30, 2012 5:29 PM
To: Gayle Pratt
Cc: Geary, Pat
Subject: Revised paragraph 4

Gayle,

Below is the revision we suggest to paragraph 4 of each Agreement. This is necessary because the language proposed by the County appears to transform the occurrence policies into claims made policies and vice versa. We need to avoid that. Also, I note that this paragraph in the Insurance Cancellation agreement contains the language about "expense" reimbursement that was modified to refer to "applicable reimbursements" in the Withdrawal Agreement. You may want to revise the Insurance Cancellation paragraph to match the Withdrawal paragraph. Also, please note that the "therefor" is correct **without** the "e" at the end:

Existing Claims. MCRCSIP shall continue servicing any of the Commission's claims pending, those claims made prior in time to June 1, 2012 that are covered by a claims made policy, and those claims which occur or arise from incidents or events occurring prior in time to June 1, 2012 that are covered by occurrence policies, being the time of termination (June 1, 2012), unless the Commission or its successor in function specifically assumes the liability therefor and makes provision to indemnify MCRCSIP from loss by taking over the servicing of any such claim(s). The Commission or its successor in function shall be responsible for all applicable reimbursements as provided in the Inter-Local Agreement, By-Laws and Declaration of Trust in force as of the date of this Agreement.

Please let me know if you have any questions. Pat and I are in agreement that it would be best if the Road Commission Board could execute the documents. If that is absolutely not possible, then the managing director of the Road Commission would be the next best option, but he should execute them prior to June 1, 2012 in his capacity as the managing director of the Road Commission, not after June 1, 2012 in his capacity as the director of the Ingham County Department of Highways and Transportation.

WILLIAM L. HENN | ATTORNEY
SMITH HAUGHEY RICE & ROEGGE
Direct Phone: 616-458-5456 | E-mail: whenn@shrr.com

100 Monroe Center NW | Grand Rapids, MI 49503-2802
Phone 616-774-8000 Fax 616-774-2461 | www.shrr.com



**** Smith Haughey Rice & Riegge ****

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**AGREEMENT [IN RECOGNITION OF TERMINATION] FROM
MICHIGAN COUNTY ROAD COMMISSION SELF-INSURANCE POOL**

This Agreement, dated May 30, 2012, is made by and between the Michigan County Road Commission Self-Insurance Pool ("MCRCSIP") and the Board of County Road Commissioners of the County of Ingham ("the Commission"), as follows:

Background

The MCRCSIP is a group self-insurance pool, authorized by MCL 124.1, *et seq.*, that provides risk management and coverage to its Members, including the Commission.

The Commission is a body corporate, authorized by MCL 224.1, *et seq.*, and is a Member of MCRCSIP as a signatory to both the MCRCSIP Inter-Local Agreement and the Declaration of Trust.

The Ingham County Board of Commissioners has, pursuant to and in accordance with MCL 224.6(7), by Resolution Dissolving the Board of Road Commissioners and Transferring All of Its Powers, Duties, and Functions to the Ingham County Board of Commissioners; Creating a Department of Transportation and Roads, and Adopting a 2012 Budget for the Department – (Resolution #12, dated April 24, 2012), dissolved the Commission as of June 1, 2012, and determined that the powers, duties, and functions of the Commission will be transferred to and undertaken by Ingham County. Consequently, as of June 1, 2012, the Commission is dissolved and by operation of law cannot and is not eligible to be a Member of the MCRCSIP as provided in the applicable By-Laws and the Inter-Local Agreement that govern membership in the MCRCSIP. As such, both the Commission and the MCRCSIP agree that under the circumstances the Commission is not eligible to participate as a member of the MCRCSIP as of 12:01 a.m. on June 1, 2012.

Consequently, steps will be taken to effectuate the cancellation of insuring agreements issued by MCRCSIP to the Commission effective as of 12:01 a.m. on June 1, 2012.

The parties recognize that the Declaration of Trust, Inter-Local Agreement, and By-Laws contain provisions governing the withdrawal of a member county road commission from the MCRCSIP, but given the abrupt and impending dissolution of the Commission, those provisions cannot be implemented by either party to take effect before June 1, 2012.

The purpose of this Agreement, the terms of those withdrawal provisions notwithstanding, is to effectuate the termination of the Commission's membership in MCRCSIP as of June 1, 2012.

The Agreement

The MCRCSIP and the Commission covenant and agree as follows:

1. **Waiver of Withdrawal Notice Period.** Each party, for itself and its directors, officers, successors and assigns, does hereby waive and hold for naught any and all provisions in

the Declaration of Trust, By-Laws, and Inter-Local Agreement that concern, relate to regulate, or affect in any way the requirement for written notice of withdrawal at least sixty days prior to the effective date of withdrawal.

- 2. **Effective Withdrawal Date.** By operation of the action taken by the Ingham County Board of Commissioners (April 24, 2012) the Commission's membership in MCRCSIP shall be and is hereby terminated concurrent with the termination of the Ingham County Road Commission as of 12:01 a.m. on June 1, 2012, without the necessity of any further action by either of the parties to this Agreement.
- 3. **Contribution Adjustment.** Any applicable contribution adjustment shall be made at the time cancellation is effective or as soon as practical thereafter, but payment or tender of unearned contribution shall not be a condition precedent to cancellation.
- 4. **Existing Claims.** MCRCSIP shall continue servicing any of the Commission's claims pending and those made and those which occur or arise from incidents or events occurring prior in time to June 1, 2012, being the time of termination (June 1, 2012), unless the Commission or its successor in function specifically assumes the liability therefor and makes provision to indemnify MCRCSIP from loss by taking over the servicing of any such claim(s). The exception shall be the Employment Practices & Public Officials Errors and Omissions Liability Agreement which is a claims made policy/coverage only. The Commission or its successor in function shall be responsible for all applicable reimbursements as provided in the Inter-Local Agreement, By-Laws and Declaration of Trust in force as of the date of this Agreement.
- 5. **Limited Purpose of this Agreement.** The sole purpose of this Agreement is to effectuate the termination of the Commission's membership from the MCRCSIP as of 12:01 a.m. on June 1, 2012, and not to affect or impact in any way any other terms or conditions contained in the Declaration of Trust – Inter-Local Agreement, or By-Laws.

Michigan County Road Commission
Self-Insurance Pool

Ingham County Board of County
Road Commissioners

By: _____
Its: _____

By: _____
Its: _____

N:\Client\Ingham\RoadComm\Agr termination from MCRCSIP.doc

**AGREEMENT FOR WITHDRAWAL FROM MICHIGAN COUNTY
ROAD COMMISSION SELF-INSURANCE POOL**

This Agreement, dated May 30, 2012, is made by and between the Michigan County Road Commission Self-Insurance Pool ("MCRCSIP") and the Board of County Road Commissioners of the County of Ingham ("the Commission"), as follows:

Background

The MCRCSIP is a group self-insurance pool, authorized by MCL 124.1, *et seq.*, that provides risk management and coverage to its Members, including the Commission.

The Commission is a body corporate, authorized by MCL 224.1, *et seq.*, and is a Member of MCRCSIP as a signatory to both the MCRCSIP Inter-Local Agreement and the Declaration of Trust.

The Ingham County Board of Commissioners has, pursuant to and in accordance with MCL 224.6(7), by Resolution Dissolving the Board of Road Commissioners and Transferring All of Its Powers, Duties, and Functions to the Ingham County Board of Commissioners; Creating a Department of Transportation and Roads, and Adopting a 2012 Budget for the Department – Resolution #12, dated April 24, 2012, dissolved the Commission as of June 1, 2012, and determined that the powers, duties, and functions of the Commission will be transferred to and undertaken by Ingham County. Consequently, as of June 1, 2012, the Commission is dissolved and cannot and will not be a Member of the MCRCSIP as provided in the applicable By-Laws and the Inter-Local Agreement that govern membership in the MCRCSIP. As such, both the Commission and the MCRCSIP agree that, under the circumstances, the Commission must withdraw as a member of the MCRCSIP as of 12:01 a.m. on June 1, 2012.

Steps will be taken to simultaneously, as of 12:01 a.m. on June 1, 2012, effectuate the cancellation of insuring agreements issued by MCRCSIP to the Commission.

The parties realize that the Declaration of Trust, Inter-Local Agreement, and By-Laws contain provisions governing the withdrawal of a member county road commission from the MCRCSIP, but given the abrupt and impending dissolution of the Commission, those provisions cannot be implemented by either party to take effect before June 1, 2012.

The purpose of this Agreement, the terms of those withdrawal provisions notwithstanding, is to terminate the Commission's membership in MCRCSIP as of June 1, 2012.

The Agreement

The MCRCSIP and the Commission covenant and agree as follows:

1. **Waiver of Withdrawal Notice Period.** Each party, for itself and its directors, officers, successors and assigns, does hereby waive and hold for naught any and all provisions in the Declaration of Trust, By-Laws, and Inter-Local Agreement that concern, relate to,

regulate, or affect in any way the requirement for written notice of withdrawal at least sixty days prior to the effective date of withdrawal.

- 2. **Effective Withdrawal Date.** By mutual consent, the Commission's membership in MCRCSIP shall be and is hereby canceled as of 12:01 a.m. on June 1, 2012, without the necessity of any further action by either of the parties to this Agreement.
- 3. **Contribution Adjustment.** Any applicable contribution adjustment will be made at the time cancellation is effective or as soon as practical thereafter, but payment or tender of unearned contribution shall not be a condition precedent to cancellation.
- 4. **Existing Claims.** MCRCSIP shall continue servicing any of the Commission's claims pending at the time of cancellation, unless the Commission or its successor in function specifically assumes the liability therefor and makes provision to indemnify MCRCSIP from loss by taking over the servicing of any such claims(s). The Commission or its successor in function shall be responsible for all applicable reimbursements as provided in the Inter-Local Agreement, By-Laws and Declaration of Trust in force as of the date of this Agreement.
- 5. **Limited Purpose of this Agreement.** The sole purpose of this Agreement is to effectuate the withdrawal of the Commission from the MCRCSIP as of 12:01 a.m. on June 1, 2012, and not to affect or impact in any way any other terms or conditions contained in the Declaration of Trust – Inter-Local Agreement, or By-Laws

Michigan County Road Commission
Self-Insurance Pool

Ingham County Board of County
Road Commissioners

By: _____

By: _____

Its: _____

Its: _____

Agreement For Cancellation Of Insurance

This Agreement, dated May 31, 2012, is made by and between the Michigan County Road Commission Self-Insurance Pool ("MCRCSIP") and the Board of County Road Commissioners of the County of Ingham ("the Commission"), as follows:

Background

The MCRCSIP is a group self-insurance pool, authorized by MCL 124.1, *et seq.*, that provides risk management and coverage to its Members, including the Commission.

The Commission is a body corporate, authorized by MCL 224.1, *et seq.*, and is a Member of MCRCSIP insured under the Insuring Agreements issued by MCRCSIP which include the following:

- Liability Coverage Agreement, Certificate Number MCRP-3300-AC; and,
- Physical Damage Agreement, Certificate Number PHYS-3300-AC; and,
- Employment Practices & Public Officials Errors and Omissions Liability Agreement, Certificate Number MCRPE-3300-AC; and,
- Employee Fidelity and Faithful Performance Coverage Agreement, Certificate Number EF-3300-AC;

each of which, together with their respective Declaration pages, are attached as Exhibits to this Agreement ("the Insurance Coverages").

The Ingham County Board of Commissioners has, by Resolution Dissolving the Board of Road Commissioners and Transferring All of Its Powers, Duties and Functions to the Ingham County Board of Commissioners; Creating a Department of Transportation and Roads, And Adopting A 2012 Budget for the Department – Resolution #12, dated April 24, 2012, dissolved the Commission as of June 1, 2012 and determined that the powers, duties and functions of the Commission will be undertaken by Ingham County. As such, the Commission will no longer exist as statutory body corporate after June 1, 2012. Steps will be taken to effectuate the Commission's withdrawal from membership in the MCRCSIP.

Because, as of June 1, 2012, the Commission will no longer be a member of the MCRCSIP or a road commission within the meaning of the applicable By-Laws and the

Inter-Local Agreement that govern the membership in the MCRCSIP, the MCRCSIP will not be able to issue insurance coverage to the Commission after it is dissolved. As such, both the Commission and the MCRCSIP agree that, under the circumstances, they should agree to terminate the Insurance Coverages as of 12:01 a.m. on June 1, 2012.

The parties realize that the Insurance Coverages contain cancellation provisions, but those provisions cannot be implemented by either party to take effect before June 1, 2012.

The purpose of this Agreement, the terms of those cancellation provisions notwithstanding, is to terminate the Insurance Coverages as of that date and time.

The Agreement

The MCRCSIP and the Commission covenant and agree as follows:

1. **Waiver of Cancellation Notice Period.** Each party, for itself and its directors, officers, successors and assigns, does hereby waive and hold for naught any and all provisions in the Insurance Coverages that concern, relate to, regulate or affect in any way the manner, means or processes by which the parties thereto may cancel the Insurance Coverages, including, but not limited to, those provisions as found within the clause in each of the Insurance Coverages entitled "Cancellation", and, in particular, any provision thereof that requires written notice of cancellation and delays the effective date of cancellation for any particular number of days following the submission by either party of such notice of cancellation.
2. **Effective Cancellation Date.** By mutual consent, the Insurance Coverages shall be and are hereby cancelled as of 12:01 a.m. on June 1, 2012, without the necessity of any further action by either of the parties to this Agreement.
3. **Contribution Adjustment.** Any applicable contribution adjustment will be made at the time cancellation is effective or as soon as practicable thereafter, but payment or tender of unearned contribution shall not be a condition precedent to cancellation.
4. **Existing Claims.** MCRCSIP shall continue servicing of any of the Commission's claims pending at the time of cancellation, unless the Commission or its successor in function specifically assumes the liability therefor and makes provision to indemnify MCRCSIP from loss by taking over the servicing of any such claim(s). The Commission or its successor in function shall reimburse MCRCSIP for all claims expenses incurred after the cancellation.
5. **Limited Purpose of this Agreement.** The sole purpose of this Agreement is to effectuate the cancellation of the Insurance Coverages as of 12:01 a.m. on June 1,

RECEIVED by MSC 1/4/2020 4:34:25 PM

2012, and not to affect or impact in any way any other of the terms or conditions contained in the Insurance Coverages.

Michigan County Road Commission
Self-Insurance Pool

Board of County Road
Commissioners of Ingham County

By: _____
Its _____

By: _____
Its _____

BGT

RECEIVED by MSC 1/4/2020 4:34:25 PM

Agreement For Cancellation Of Insurance

This Agreement, dated May 31, 2012, is made by and between the Michigan County Road Commission Self-Insurance Pool ("MCRCSIP") and the Board of County Road Commissioners of the County of Ingham ("the Commission"), as follows:

Background

The MCRCSIP is a group self-insurance pool, authorized by MCL 124.1, *et seq.*, that provides risk management and coverage to its Members, including the Commission.

The Commission is a body corporate, authorized by MCL 224.1, *et seq.*, and is a Member of MCRCSIP insured under the Insuring Agreements issued by MCRCSIP which include the following:

- Liability Coverage Agreement, Certificate Number MCRP-3300-AC; and,
- Physical Damage Agreement, Certificate Number PHYS-3300-AC; and,
- Employment Practices & Public Officials Errors and Omissions Liability Agreement, Certificate Number MCRPE-3300-AC; and,
- Employee Fidelity and Faithful Performance Coverage Agreement, Certificate Number EF-3300-AC;

each of which, together with their respective Declaration pages, are attached as Exhibits to this Agreement ("the Insurance Coverages").

The Ingham County Board of Commissioners has by Resolution Dissolving the Board of Road Commissioners and Transferring All of Its Powers, Duties and Functions to the Ingham County Board of Commissioners; Creating a Department of Transportation and Roads, and Adopting A 2012 Budget for the Department – (Resolution #12, dated April 24, 2012) dissolved the Commission as of June 1, 2012, and determined that the powers, duties and functions of the Commission will be undertaken by Ingham County. As such, the Commission will no longer exist as a statutory body corporate after June 1, 2012. Steps will be taken to effectuate the Commission's withdrawal from membership in the MCRCSIP.

Because, as of June 1, 2012, the Commission being **non-existent** will no longer be a member of the MCRCSIP or a road commission within the meaning of the applicable By-Laws and the Inter-Local Agreement that govern membership in the MCRCSIP, the MCRCSIP will not be able to issue insurance coverage to the Commission after it is dissolved. As such, both the Commission and the

MCRCSIP agree that, under the circumstances, they should agree to terminate the Insurance Coverages as of 12:01 a.m. on June 1, 2012.

The parties realize that the Insurance Coverages contain cancellation provisions, but those provisions cannot be implemented by either party to take effect before June 1, 2012.

The purpose of this Agreement, the terms of those cancellation provisions notwithstanding, is to terminate the Insurance Coverages as of that date and time.

The Agreement

The MCRCSIP and the Commission covenant and agree as follows:

1. **Waiver of Cancellation Notice Period.** Each party, for itself and its directors, officers, successors and assigns, does hereby waive and hold for naught any and all provisions in the Insurance Coverages that concern, relate to, regulate or affect in any way the manner, means or processes by which the parties thereto may cancel the Insurance Coverages, including, but not limited to, those provisions as found within the clause in each of the Insurance Coverages entitled "Cancellation", and, in particular, any provision thereof that requires written notice of cancellation and delays the effective date of cancellation for any particular number of days following the submission by either party of such notice of cancellation.
2. **Effective Cancellation Date.** By operation of the action taken by the Ingham County Board of Commissioners (April 24, 2012), the Insurance Coverages shall be and are hereby **Terminated concurrent with the termination of the Ingham County Road Commission** as of 12:01 a.m. on June 1, 2012, without the necessity of any further action by either of the parties to this Agreement.
3. **Contribution Adjustment.** Any applicable contribution adjustment will be made at the time cancellation is effective or as soon as practicable thereafter, but payment or tender of unearned contribution shall not be a condition precedent to cancellation.
4. **Existing Claims.** MCRCSIP shall continue servicing any of the Commission's claims pending and those made and those which occur or arise from incidents or events occurring prior in time to June 1, 2012, being the time of termination (June 1, 2012), unless the Commission or its successor in function specifically assumes the liability therefor and makes provision to indemnify MCRCSIP from loss by taking over the servicing of any such claim(s). **The exception shall be the Employment Practices & Public Officials Errors and Omissions Liability Agreement which is a claims made policy/coverage only.** The

Commission or its successor in function shall reimburse MCRC SIP for all claims expenses incurred after the cancellation.

- 5. Limited Purpose of this Agreement. The sole purpose of this Agreement is to effectuate the cancellation of the Insurance Coverages as of 12:01 a.m. on June 1, 2012, and not to affect or impact in any way any other of the terms or conditions contained in the Insurance Coverages.

Michigan County Road Commission
Self-Insurance Pool

Ingham County Board of
County Road Commissioners

By: _____
Its: _____

By: _____
Its: _____

N:\Client\Ingham\RoadComm\Agreement For Cancellation Of Insurance.doc

APPENDIX 22

Will get back to you asap....

Gayle Pratt
Administrator

Michigan County Road Commission Self-Insurance Pool
417 Seymour Ave., Suite 2, Lansing, MI 48933
(: [517.482.9166](tel:517.482.9166) | 7: [517.485.4809](tel:517.485.4809) | *: gpratt@mcrsip.org | (: [800.842.4971](tel:800.842.4971))

From: Bonnie Toskey [<mailto:btoskey@cstmlaw.com>]
Sent: Wednesday, May 30, 2012 1:32 PM
To: Gayle Pratt
Cc: lannoye@ingham.org; jrhode@ingham.org; wconcklin@inghamcrc.org
Subject: Ingham Cancellation of Insurance

Ms. Pratt:

Pursuant to our conversation this morning, attached please find the Agreement for Cancellation of Insurance and the Agreement for withdrawal from MCRC SIP with Ingham County. I have bolded the changes that I have made to the two Agreements. If the Agreements meet with your approval, I will remove the bold and forward the Agreements to Mr. Conklin for execution. Should you have any questions, do not hesitate to contact me.

Bonnie G. Toskey
OHL, STOKER & TOSKEY, P.C.
601 N. Capitol Ave.
Lansing, Michigan 48933
(517) 372-9000
Fax: (517) 372-1026
btoskey@cstmlaw.com

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----- Forwarded message -----
From: Gayle Pratt <GPratt@mcrsip.org>
To: William Conklin <IMCEAEX-O=INGHAMCRC_OU=FIRST+20ADMINISTRATIVE+20GROUP_CN=RECIPIENTS_CN=WCONKLIN@ingham.org>
Cc: Bonnie Toskey <btoskey@cstmlaw.com>
Date: Thu, 31 May 2012 12:22:09 +0000
Subject: Re: Ingham Cancellation of Insurance

Then we will make it work. I think we have one more change I am hoping Bonnie approves and then I will send the forms over. I will call when we are ready.

Thanks Bill. I appreciate your taking the time. ~g

On May 31, 2012, at 8:11 AM, "William Conklin" <WConklin@inghamcrc.org> wrote:

Gayle,

Unless Bonnie advises otherwise, the only choice at this point will be for me to sign as the ICRC Board has no further meetings scheduled and is disbanded after today.

--Bill Conklin

From: Bonnie Toskey [mailto:btoskey@cstmlaw.com]

Sent: Wednesday, May 30, 2012 3:21 PM

To: William Conklin

Subject: FW: Ingham Cancellation of Insurance

FYI

Bonnie G. Toskey
COHL, STOKER & TOSKEY, P.C.
601 N. Capitol Ave.
Lansing, Michigan 48933
[\(517\) 372-9000](tel:(517)372-9000)
Fax: [\(517\) 372-1026](tel:(517)372-1026)
btoskey@cstmlaw.com

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From: Gayle Pratt [mailto:GPratt@mcrsisp.org]

Sent: Wednesday, May 30, 2012 2:58 PM

To: btoskey

Cc: co_lannoye@ingham.org; jrhode@ingham.org; wconcklin@inghamcrc.org

Subject: RE: Ingham Cancellation of Insurance

Thanks Bonnie:

I have forwarded to Bill Henni at Smith Haughey for his feedback. We were wondering who can execute the documents since there won't be another Road Commission board meeting. Were you thinking Bill Conklin would be the best person to sign?

Will get back to you asap....

Gayle Pratt
Administrator

APPENDIX 23

Bonnie Toskey

From: Gayle Pratt <GPratt@mcrsip.org>
Sent: Thursday, May 31, 2012 3:16 PM
To: btoskey
Subject: Withdrawing Member Letter.pdf - Adobe Acrobat Standard
Attachments: Withdrawing Member Letter.pdf

Hi Bonnie:

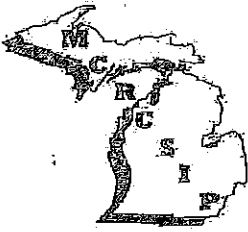
This is the letter sent to all members in 1990 describing our board's policy with respect to members withdrawing. Hopefully it will appropriately address the questions we discussed earlier.

If you need anything further, please let me know.

Gayle Pratt
Administrator

Michigan County Road Commission Self-Insurance Pool
417 Seymour Ave., Suite 2, Lansing, MI 48933
☎: 517.482.9166 | ☎: 517.485.4809 | ✉: gpratt@mcrsip.org | ☎: 800.842.4971

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July 19, 1990

To: MEMBERS OF THE
MICHIGAN COUNTY ROAD COMMISSION
SELF-INSURANCE POOL

To be in compliance with both the MCRC SIP Bylaws, Sect. XII, and P.A. 36, 1988, your board has been considering proposals for the establishment of a policy that would specify the procedures for members withdrawing from the Pool. The following is the policy adopted by your board:

A Member which has properly given its sixty days written notice of its desire to withdraw from the Pool will be not charged a short rate cancellation penalty. If a Member notifies the Pool of its desire to withdraw from the Pool upon less than sixty days written notice and the Pool permits the withdrawal notwithstanding the lack of proper notice, then the withdrawing Member shall be charged a short rate cancellation penalty using the traditional insurance industry tables.

A withdrawing Member forfeits any and all rights to dividend, credits and/or accumulated interest that is to be paid or shall become payable after the effective date of the Member's withdrawal from the Pool.

A withdrawing Member shall continue to be liable for its share of any funding deficiency of the Pool for any Pool fiscal years during which the withdrawing Member held membership in the Pool.

The Pool shall continue to service any pending claims of a withdrawing Member unless the withdrawing Member, by written agreement with the Pool, specifically assumes the liability for any judgment or settlement amount on the claim and for all legal expenses and other costs of any nature whatsoever relating to the pending claims assumed by the withdrawing Member and otherwise makes provision to indemnify the Pool, in form and substance satisfactory to the Pool, from loss of any nature whatsoever as a result of the withdrawing Member taking over the servicing of the claim from the Pool.

In any event, the withdrawing Member shall reimburse the Pool for all claims expenses (including, but not limited to, judgement and settlement expenses, legal expenses and other costs of any nature whatsoever) incurred by the Pool after the effective date of withdrawal of the Member from the Pool up to the amount of the withdrawing Member's deductible.

The issue of a withdrawing member desiring to return to the Pool has also been considered. It is imperative for the existence of the Pool that members do not leave and return at will.

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Many different approaches to discourage this practice have been discussed; however, a final decision has not yet been made.

If you have any questions or comments regarding the above please call the Pool office at your convenience.

Very truly yours,

Thomas Brøwer
Administrator

—Original message—

From: William Conklin <WConklin@inghamcrc.org>
To: btoskey <btoskey@cstmlaw.com>
Cc: Gayle Pratt <GPratt@mcrsip.org>
Sent: Thu, May 31, 2012 20:28:32 GMT+00:00
Subject: RE: MCRCSIP Agreements

Got it, have signed, will have signed copies sent to you and Gayle Pratt. –Bill Conklin

From: Bonnie Toskey [mailto:btoskey@cstmlaw.com]
Sent: Thursday, May 31, 2012 4:25 PM
To: William Conklin
Cc: jrhode@ingham.org; co_lannoye@ingham.org
Subject: MCRCSIP Agreements

Bill:

Attached please find the Agreements to cancel the coverage/membership with MCRCSIP. They are ready for your signature and provision to MCRCSIP. Should you have any questions, do not hesitate to contact me.

Bonnie

Bonnie G. Toskey
 COHL, STOKER & TOSKEY, P.C.
 601 N. Capitol Ave.
 Lansing, Michigan 48933
 (517) 372-9000
 Fax: (517) 372-1026
 btoskey@cstmlaw.com

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— Forwarded message —

From: "Daly, John" <JDaly@gcrc.org>
To: Burt Thompson <bthompson@cntrimcrc.org>
Cc: "Gayle Pratt" <GPratt@mcrsip.org>, "ALCONA MANAGER-Jesse Campbell" <Engineer@alconacrc.com>, "ALGER MANAGER - Robert" <engineer@algerroads.org>, "ALLEGAN MANAGER - LARRY BROWN" <rlclary@alleganroads.org>, "ALPENA MANAGER - LARRY ORCUTT" <manager@alpcrc.org>, "ARENAC MANAGER - BLAIR DYER" <bdyer@arenacrc.org>, "BARAGA MANAGER - DOUG MILLS" <brodjm@up.net>, "BARRY MANAGER - BRAD LAMBERG" <bl@barrycrc.org>, "Wendling, Brian" <wendlingb@scrc-mi.org>, "BENZIE MANAGER - NANCY ROSEMAN" <BCRCManager@benzieroad.org>, "Rhonda Hildebrand" <rhildebrand@bcroad.org>, "BRANCH MANAGER - TRENT ARVER" <trent.arver@cpu.com>, "CALHOUN MANAGER - KEVIN HENNING" <khenning@calhouncrc.net>, "CASS MANAGER - Louie Csokasy"

----- Forwarded message -----

From: Gayle Pratt <GPratt@mcrsip.org>
 To: William Conklin <IMCEAEX-
 _O=INGHAMCRC_OU=FIRST+20ADMINISTRATIVE+20GROUP_CN=RECIPIENTS_CN=WCONKLIN@ingham.org>
 Cc:
 Date: Wed, 30 May 2012 18:59:33 +0000
 Subject: FW: Ingham Cancellation of Insurance
 Hi...I sent this to Bonnie and your name was spelled wrong...sorry!!

From: Gayle Pratt
 Sent: Wednesday, May 30, 2012 2:58 PM
 To: 'Bonnie Toskey'
 Cc: co_lannoye@ingham.org; jrhode@ingham.org; wconcklin@inghamcrc.org
 Subject: RE: Ingham Cancellation of Insurance

Thanks Bonnie:

I have forwarded to Bill Henn at Smith Haughey for his feedback. We were wondering who can execute the documents since there won't be another Road Commission board meeting. Were you thinking Bill Conklin would be the best person to sign?

Will get back to you asap....

Gayle Pratt
 Administrator

Michigan County Road Commission Self-Insurance Pool
 417 Seymour Ave., Suite 2, Lansing, MI 48933
 (: [517.482.9166](tel:517.482.9166) | 7: [517.485.4809](tel:517.485.4809) | *: gpratt@mcrsip.org | (: [800.842.4971](tel:800.842.4971))

From: Bonnie Toskey [<mailto:btoskey@cstmlaw.com>]
 Sent: Wednesday, May 30, 2012 1:32 PM
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 Cc: co_lannoye@ingham.org; jrhode@ingham.org; wconcklin@inghamcrc.org
 Subject: Ingham Cancellation of Insurance

Ms. Pratt:

Pursuant to our conversation this morning, attached please find the Agreement for Cancellation of Insurance and the Agreement for withdrawal from MCRC SIP with Ingham County. I have bolded the changes that I have made to the two Agreements. If the Agreements meet with your approval, I will remove the bold and forward the Agreements to Mr. Conklin for execution. Should you have any questions, do not hesitate to contact me.

Bonnie G. Toskey
 BOHL, STOKER & TOSKEY, P.C.
 601 N. Capitol Ave.
 Lansing, Michigan 48933
 (517) 372-9000

APPENDIX 24

1/22/2016

Jackson, Ingham, and Calhoun Counties v MCRCSIP - mattnordi@gmail.com - Gmail

-----Original message-----

From: William Conklin <WConklin@inghamcrc.org>
To: btoskey <btoskey@cstmlaw.com>
Cc: Gayle Pratt <GPratt@mcrsisp.org>
Sent: Thu, May 31, 2012 20:28:32 GMT+00:00
Subject: RE: MCRCSIP Agreements

Got it, have signed, will have signed copies sent to you and Gayle Pratt. --Bill Conklin

From: Bonnie Toskey [mailto:btoskey@cstmlaw.com]
Sent: Thursday, May 31, 2012 4:25 PM
To: William Conklin
Cc: jrhode@ingham.org; co_lannoye@ingham.org
Subject: MCRCSIP Agreements

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Bonnie G. Toskey
 COHL, STOKER & TOSKEY, P.C.
 601 N. Capitol Ave.
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 Fax: (517) 372-1026
btoskey@cstmlaw.com

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----- Forwarded message -----

From: "Daly, John" <JDaly@gcrc.org>
To: Burt Thompson <bthompson@artrmrc.org>
Cc: "Gayle Pratt" <GPratt@mcrsisp.org>, "ALCONA MANAGER-Jesse Campbell" <Engineer@alconacrc.com>, "ALGER MANAGER - Robert" <engineer@algerroads.org>, "ALLEGAN MANAGER - LARRY BROWN" <rlarry@alleganroads.org>, "ALPENA MANAGER - LARRY ORCUTT" <manager@alpcrc.org>, "ARENAC MANAGER - BLAIR DYER" <bDyer@arenacarc.org>, "BARAGA MANAGER - DOUG MILLS" <bcrdjm@up.net>, "BARRY MANAGER - BRAD LAMBERG" <bl@baryrc.org>, "Wendling, Brian" <wendlingb@scrc-mi.org>, "BENZIE MANAGER - NANCY ROSEMAN" <BCRCManager@benzieoad.org>, "Rhonda Hildebrand" <rhildebrand@broad.org>, "BRANCH MANAGER - TRENT ARVER" <brcarver@cbpu.com>, "CALHOUN MANAGER - KEVIN HENNING" <khenning@calhouncrc.net>, "CASS MANAGER - Louie Csokasy" 0198a

1/22/2016

Jackson, Ingham, and Calhoun Counties v MCRCSIP - mattnordl@gmail.com - Gmail

----- Forwarded message -----

From: Gayle Pratt <GPratt@mcrsip.org>
 To: William Conklin <IMCEAEX-
 _O=INGHAMCRC_OU=FIRST+20ADMINISTRATIVE+20GROUP_CN=RECIPIENTS_CN=WCONKLIN@ingham.org>
 Cc:
 Date: Wed, 30 May 2012 18:59:33 +0000
 Subject: FW: Ingham Cancellation of Insurance
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 Subject: RE: Ingham Cancellation of Insurance

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Gayle Pratt
 Administrator

Michigan County Road Commission Self-Insurance Pool
 417 Seymour Ave., Suite 2, Lansing, MI 48933
 (: [517.482.9166](tel:517.482.9166) | 7: [517.485.4809](tel:517.485.4809) | *: gpratt@mcrsip.org | (: [800.842.4971](tel:800.842.4971)

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Bonnie G. Toskey
 BOHL, STOKER & TOSKEY, P.C.
 601 N. Capitol Ave.
 Lansing, Michigan 48933
 (517) 372-9000

0199a

APPENDIX 25

INGHAM COUNTY

Financial Services Department

Jill Rhode, Director

P.O. Box 319 □ Mason, MI. 48854 □ Phone: (517) 676-7328 □ Fax: (517) 676-7337

Gayle Pratt
Michigan County Road Commission Self Insurance Pool
417 N. Seymour Ave
Suite 2
Lansing, MI. 48933

June 1, 2012

Re: Refund of Insurance Premiums

Dear Ms. Pratt:

Please consider this a written request for a refund of the \$333,930 in insurance premiums paid in advance by the Ingham County Road Commission (ICRC) as a prepaid for the period June 1, 2012, through March 31, 2013

Until Friday, May 23, 2012, it was Ingham County's understanding the rules of the MCRCSIP would be modified to allow the successor to the Ingham County Road Commission, i.e. Ingham County's Department of Transportation and Roads to participate pool and purchase coverage from your organization. The Ingham County Road Commission paid a premium of \$400,716 for the period April 1, 2012, through March 31, 2012, based on this understanding.

On May 23rd, Bill Conklin, the Director of the Ingham County Road Commission, was contacted by you to inform that the MCRCSIP would not allow the successor to continue to participate in your pool and receive coverage.

Because Ingham County was forced to withdraw and not allowed to continue coverage beyond May 31, 2012, Ingham County should be refunded the insurance premium paid for this period per the Cancellation and Withdrawal Agreement. Again, Ingham County had no choice in this matter, as your organization cancelled the prepaid coverage, and therefore, the County is certainly entitled to the pro rata refund.

Thank you for your anticipated cooperation in this matter. If you have any questions or wish to discuss, please contact me.

Sincerely,

Jill E. Rhode
Director of Financial Services

APPENDIX 26

Gayle Pratt
Michigan County Road Commission Self Insurance Pool
417 N. Seymour Ave
Suite 2
Lansing, MI. 48933

June 1, 2012

Re: Demand for Ingham County Road Commission Surplus Equity Payments

Dear Gayle:

This is to confirm that Ingham County is requesting that payout of any surplus equity from closed out prior program years for the Ingham County Road Commission be returned to its successor entity – Ingham County. It is our understanding that the MCRCSIP determines these refunds as prior year's claims are completely closed and the year's income and payouts are finally balanced. Although we understand that surplus funds may not, in the past, have been paid to former members the unique circumstances surrounding the Ingham County Road Commission and Ingham County do not represent those which may have occurred in the past. That is, the Ingham County Road Commission was extinguished by legislative action pursuant to MCL 224.6(7) and its successor, Ingham County, was determined by the MCRCSIP not to be eligible to be a member of the MCRCSIP, apparently, based on the By-Laws and the Inter-Local Agreement that govern membership.

Neither the Ingham County Road Commission nor Ingham County voluntarily withdrew from the MCRCSIP. In fact, as has been confirmed in separate correspondence, it was Ingham County's desire and intent that its Department of Transportation and Roads remain a member of and insured by the MCRCSIP. It was, therefore, action on the part of the MCRCSIP that precluded of Ingham County's participation in the MCRCSIP. Under these unique circumstances it would be inequitable to the taxpayers if the Ingham County Road Commission's successor were not to receive the benefit of both payments made and claims history for the many years in which the Ingham County Road Commission enjoyed participation.

It is on this basis that we request reconsideration concerning distributions of future refunds. The ICRC has been a long-time participant in the Pool. Again, our coverage was canceled due to your rules and regulations and we believe we should be entitled to any future distributions for any year the ICRC was a participant in the Pool. Thank you for your consideration.

Sincerely,

Jill E. Rhode
Director of Financial Services

APPENDIX 27



MICHIGAN
COUNTY
ROAD
COMMISSION
SELF-
INSURANCE
POOL

Board of Directors

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Joseph F. Valente
Marquette

Administrator
Board Treasurer
Gayle A. Pratt

Assistant Administrator
Director of Loss Control
Michael E. Shultz

Member Services
Coordinator
Board Secretary
Kay Newberry

417 N. Seymour Ave.
Suite 2
Lansing, MI 48933

www.mcrcsip.org
(517) 482-9166
(800) 842-4977
Fax: (517) 485-4809

June 25, 2012

Jill E. Rhode
Director of Financial Services
Ingham County
Financial Services Department
P.O. Box 319
Mason, MI 48854

RE: Demands for refund of insurance premiums and for payment of surplus equity

Dear Ms. Rhode:

The Board of the Michigan County Road Commission Self-Insurance Pool ("MCRC SIP") has considered two letters you have directed to me, each of which is dated June 4, 2012, which letters articulate the captioned demands. The Board's response to those letters follows:

Initially, please be advised that a pro rata percentage of the contribution made by the Ingham County Road Commission ("ICRC") which is applicable to the coverage period beginning April 1, 2012 and effective through March 31, 2013, constituting the unused portion of that contribution as of June 1, 2012, will be refunded. You have represented that Ingham County is the successor to the ICRC, and is thus entitled to receive the returned contribution. MCRC SIP notes that it is aware of the terms of Resolution No. 12 of the Ingham County Board of Commissioners, dated April 24, 2012, and is aware of no other entity that may be a successor to the now-dissolved ICRC. Consequently, it is prepared to tender the return of contribution to the County.

Jill E. Rhode
Page #2
June 25, 2012

However, MCRCSSIP's Board confirms its prior advice that no refund of surplus equity that otherwise might have been afforded to the former ICRC will be made to any entity, including Ingham County. Pursuant to its long-standing policy, the Board does not refund surplus attributable to any Member that has withdrawn from the Pool. The authority of the Board to adopt this policy is established by its By-Laws, by the Declaration of Trust that creates the Pool, and by the Inter-Local Agreement pertaining to membership in the Pool and its operation, the latter two of which were duly executed by the ICRC. For example, the Declaration of Trust provides, in pertinent part, as follows:

The Board of Directors may treat members who withdraw from future Trust Years differently and less favorably than they treat members who continue in the Trust for future years. (Declaration of Trust, Section 9(f)).

Similarly, the Inter-Local Agreement provides:

The Pool may treat members who withdraw from future Pool Years differently and less favorably than the Pool treats members who continue in the Pool for future years. (Inter-Local Agreement, Paragraph 3P).

In the process of evaluating the County's position, the Board has considered the arguments advanced by it for an exception to this long-established Board policy, but, with due respect, does not find them to be compelling. Initially, the Board disagrees with the suggestion that withdrawal of the ICRC from the Pool was somehow not "voluntary." The Board finds it significant that the Ingham County resolution identified above authorized the County Controller "... to add the Department of Transportation and Roads to our existing insurance policy with the Michigan Municipal Risk Management Authority effective June 1, 2012, and to take whatever steps are prudent and necessary to withdraw from the existing ICRC insurance carrier, the Michigan Road Commission Self-Insurance Pool Fund [sic]." To the Pool's knowledge, the authorization by the County to withdraw from MCRCSSIP preceded any inquiry into the possible availability of Membership in the Pool by the Ingham County Department of Transportation and Roads.

A representative of the ICRC did eventually make inquiry of the Pool as to the possibility that a successor to the functions of the ICRC might continue as a Member of the Pool with respect to certain coverages after dissolution of the ICRC. However, the Pool determined that an entity other than a Road Commission was not eligible to be a member of the Pool under the terms of its operating documents, and that a change to those documents to allow entities other than Road Commissions to be Members could not be effectuated in time to permit ICRC's successor to

Jill E. Rhode
Page #3
June 25, 2012

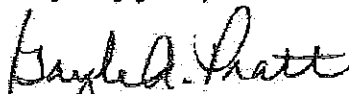
become a Member. Consequently, the inquirer was advised that it would not be possible for that successor to continue to take advantage of any of the coverage afforded to the ICRC once the ICRC was dissolved.

Thereafter, the Pool and the ICRC negotiated a Waiver of Notice that allowed the ICRC to withdraw from the Pool upon its dissolution. That agreement was not forced upon, but rather was voluntarily accepted by the ICRC. Indeed, counsel for the County of Ingham was advised of this agreement in advance, and concurred with it, in part because that attorney concluded that dissolution of the Road Commission would automatically end its membership status in the Pool whether or not withdrawal occurred. Consequently, it would appear to be the decision of Ingham County to dissolve the ICRC on a fixed time table, without apparent concern for, and indeed an expressed intention to terminate, continued Membership in the Pool, that precipitated the withdrawal of ICRC from Membership in the Pool.

Nor does the Board consider its policy not to pay surplus to withdrawn members, or its refusal to make an exception in the immediate instance, to be inequitable. Instead, it notes that the ICRC received full value from its contributions over time to the Pool, in the form of agreed-upon coverage for potential risk. The possible refund of monies to Members is dependent upon successful operation of the Pool over time, and no such return can thus be guaranteed to any Member, but must instead be left solely to the discretion of the Board. Therefore, entitlement to a refund does not exist, nor is the exercise of the Board's discretion whether or not to refund surplus in any way unfair to a former Member that has received the full value of its contribution.

In brief summary, then, the unused portion of the contribution made by the ICRC will be paid to the County, but no refund of surplus equity will be made to it. We trust that this adequately clarifies the Board's position, but welcome your further inquiries if questions remain.

Very truly yours,



Gayle A. Pratt, CPA
Administrator

APPENDIX 28

MCRC SIP refunds



Ron Wohlford <ronwohlford@gmail.com> 3/20/12

to Kay

Kay,

The JCRC Board is studying taking over the JCRC, and it has been rumored that they have quotes for less than we are currently paying for auto, building, liability insurance, etc. Can you provide us with the total refunds paid back to JCRC since the Pool's inception, or over a period of 5-10 years for an additional rebuke of that claim?

Thanks,

Kay Newberry <KNewberry@mcrcsip.org> 3/20/12

to me

Hi, Ron.

I forwarded your request to Gayle for reply. When do you need the information by?

Thank you!

Kay

From: Ron Wohlford [mailto:ronwohlford@gmail.com]
Sent: Tuesday, March 20, 2012 2:00 PM
To: Kay Newberry
Subject: MCRCSIP refunds

CONFIDENTIALITY NOTICE: This E-mail, including any attachments, may contain confidential information and is intended solely for use by the individual to whom it is addressed. If you received this E-mail in error, please notify the sender, do not disclose its contents to others, and delete it from your system. Any other use of this E-mail and/or attachments is prohibited. Unauthorized interception of this e-mail is a violation of federal criminal law.



Ron Wohlford <ronwohlford@gmail.com> 3/20/12
to Kay

Thanks Kay. I'm putting together the PP presentation now, and while we don't have a date set yet for presentation, the sooner I can get the info, the quicker we can set up a date.

Thanks again,

Gayle Pratt <GPratt@mcrcsip.org> 3/21/12
to me, Kay

Good Morning Ron:

Kay forwarded your request for refund information.

Below are Jackson CRC's refunds 1996-2011. We can get the earlier refund amounts if you need them, but it would take at least part of today, so I am sending you the "easiest" ones first.

Just some information you might want to consider sharing:

1. The actual coverages. MCRCSIP was formed to cover virtually anything the RC does (in one policy form or another). Most insurers are not that accommodating.
2. In the past the private insurers would be less cost in the first year or two, but after receiving a

claim or two, increase the deductibles and/or premiums.

3. We had 6 or 7 members join in 1991 because they were insured with a division of MMRMA that "kicked them out". They were too expensive.

4. Right now, the exposures may not look too bad to other insurers. Mostly because we have a few case law controls in place that we have fought hard for over the last 30 years. That doesn't mean we don't still get demands of \$30 million upward every year in the Road Liability exposure areas. We do!!

5. Our Physical Damage rates are \$0.39 per hundred on vehicles and equipment, and most buildings are \$0.20 per hundred. Off-road equipment can be scheduled at "appreciated value" - which approximates replacement value on the high dollar items. Buildings are at replacement value. We have heard that those rates are really cheap, for the extensive coverage offered - so if the county does find others with a lower rate, for the same coverage....I would really like to see what they are....

I will stop there. ...If you need any other information or details, let me know.

On to your request:

Following are Jackson's refunds 1996-2011. We currently have policy years 2002 forward open for future refunds and if a Member leaves the Pool, they lose their rights to future refunds.

MCRCSIP Refunds	
Jackson County Road Commission -	
1996	44,452.00
1997	104,607.00
1998	327,708.00
1999	423,789.99
2000	291,375.00
2001	99,619.00
2002	74,328.00
2003	-0-
2004	142,100.00
Additional 2004	18,544.00
2005	147,328.00

2006	234,719.00
2007	271,525.00
2008	153,147.00
2009	36,719.00
2010	268,264.00
2011	166,586.00

I will send on anything prior to 1996 as soon as we get the file out of the storage room:

Keep me posted!!!

Gayle Pratt
Administrator

Michigan County Road Commission Self-Insurance Pool

417 Seymour Ave., Suite 2, Lansing, MI 48933

☎: [517.482.9166](tel:517.482.9166) | ☎: [517.485.4809](tel:517.485.4809) | ✉: gpratt@mcrsip.org | ☎: [800.842.4971](tel:800.842.4971)



Ron Wohlford <ronwohlford@gmail.com> 3/21/12

to Ken

Ken,

The total refunds from MCRCSIP since 1996 = \$2,804,811 to the JCRC! Wow.

Ron

p.s. I'm still waiting to hear from Dale at CRASIF....



Ron Wohlford <ronwohlford@gmail.com> 3/21/12

to Gayle, Kay, Ken

Wow! \$2.8 million returned to the JCRC in the past 15 years while keeping premiums consistent through some very tight insurance markets is not too bad.....

Thanks for the help. We'll definitely use the information when presenting to the county board.

Gayle Pratt <GPratt@mcrcsip.org> 3/21/12

to me

Yup...that would have been the insurance company's profit....

From: Ron Wohlford [mailto:ronwohlford@gmail.com]
Sent: Wednesday, March 21, 2012 11:18 AM
To: Gayle Pratt
Cc: Kay Newberry; Ken Straub
Subject: Re: MCRC SIP refunds



Ron Wohlford <ronwohlford@gmail.com> 3/21/12

to Gayle, Ken

Thanks Gayle. That is a very big deal. I hope all CRC's that have county board's looking at a takeover ask you for the same information. The pool is just one example of how innovative county road commissions have been over the years. I am very proud to have been on the ground floor of MCRC SIP with Wexford CRC even if it did nearly end my career during my first year of 1984 (our insurance agent ran for road commissioner the next year....)


Gayle Pratt <GPratt@mercsip.org> 3/21/12

to me

We have been getting lots of requests....and I sooo appreciate those of you who put this together....at their own peril!!!

Glad you stuck around!!

From: Ron Wohlford [mailto:ronwohlford@gmail.com]
Sent: Wednesday, March 21, 2012 11:24 AM
To: Gayle Pratt
Cc: Ken Straub
Subject: Re: MCRCSIP refunds

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Kay Newberry

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APPENDIX 29

Report to Jackson County Board of Commissioners

Feasibility Study for County Operation of Jackson County Road Commission

August 10, 2012



Michael R. Overton
County Administrator/Controller

Adam J. Brown
Deputy County Administrator

August 10, 2012

FEASIBILITY STUDY FOR COUNTY OPERATION OF JCRC

Jackson County Board of Commissioners

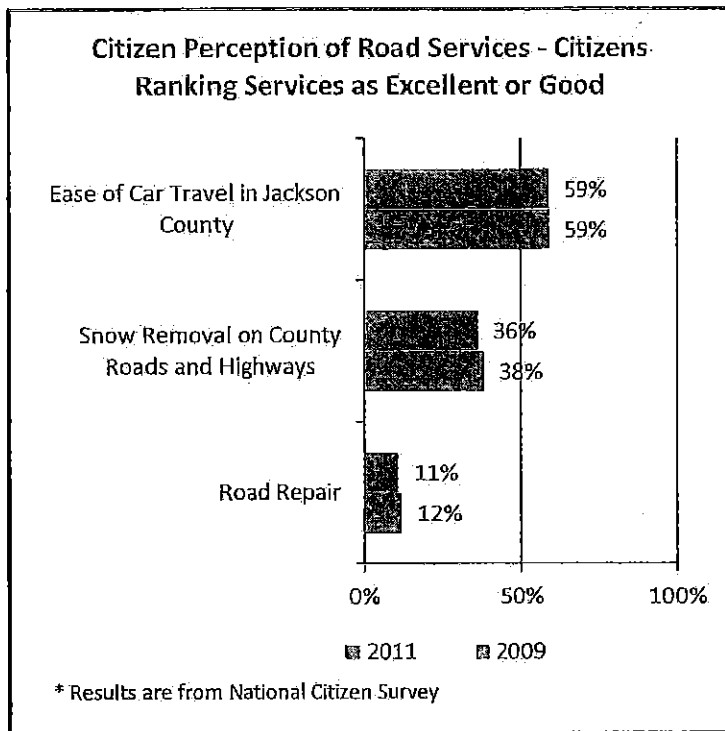
James E. Shotwell, Jr., Chairman
Michael J. Way, Vice-Chairman
Julie Alexander
Philip S. Duckham III
David K. Elwell
Clifford E. Herl
David F. Lutchka
Gail W. Mahoney
Carl Rice, Jr.
Patricia A. Smith
James C. Videto
Jonathan T. Williams

Executive Summary

Earlier this year (2012) the State legislature approved amendments to Public Act 283 of 1909 which allows the Jackson County Board of Commissioners to transfer powers from the Jackson County Road Commissioners to the County Board of Commissioners. Ingham County has already moved to transfer powers and Calhoun County recently received a recommendation from an ad hoc committee for the County to assume the powers of the Road Commission. Other counties have reviewed the issue and have decided to take no action.

Many citizens do not understand that road maintenance and construction are administered by a separate appointed body and that the Board of Commissioners and the Jackson County Administrator/Controller's office do not have any direct control or oversight for this public service.

While the Board of Commissioners may not have any formal oversight responsibilities, citizen perception is otherwise. Thus, County Commissioners frequently find themselves involved in Road Commission matters without the power to effectuate change. Citizen's perceptions are measured multiple ways. Jackson County participates in the National Citizen Survey every other year. Results from the most recent two surveys are shown to the left.



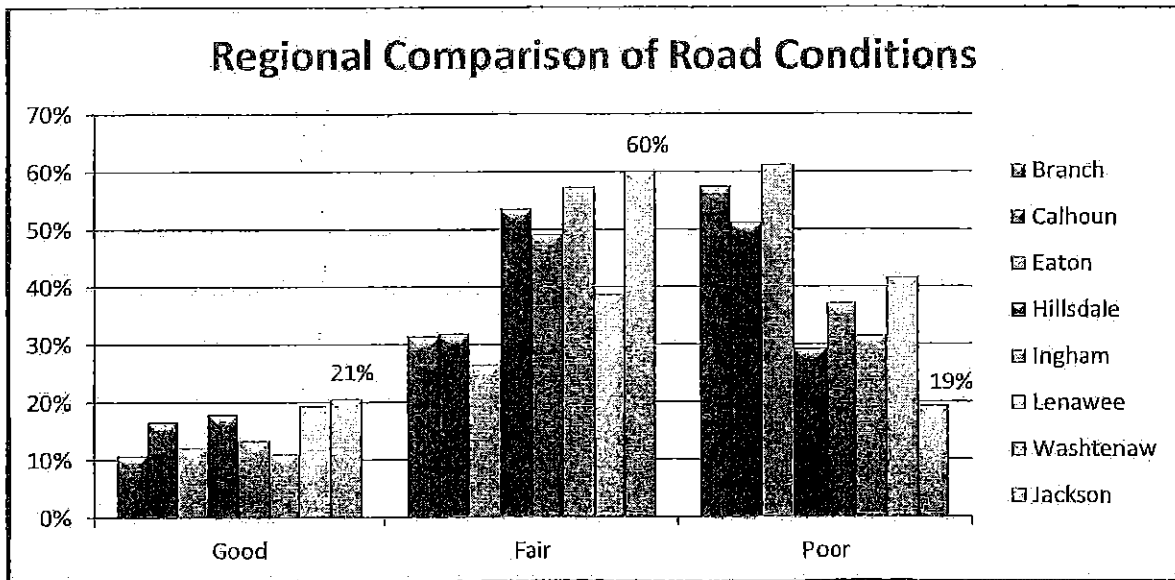
The County uses benchmark data to compare our services with other communities nationally and regionally. When compared to these other communities, Jackson County Roads

measure either similar-to or below their regional and the national benchmarks. With respect to the ease of car travel in the County, we are similar to the national comparison, but below the north central region comparison. The north central region includes Wisconsin, Iowa, Illinois, Indiana, Ohio, and Michigan. With road repair and snow removal we rank 'much below' the national and north central region comparison.

It's important to note when making interstate comparisons that each State manages their road programs differently and have varying governance models. Thus, some of the best comparisons come from within Michigan, given the same governance constraints. The Jackson County Road Commission competes well when compared with other counties in Michigan. The chart on the following page shows a comparison of road conditions from each county surrounding Jackson.

August 10, 2012

FEASIBILITY STUDY FOR COUNTY OPERATION OF JCRC



The chart above suggests that the Jackson County Road Commission is doing better than our surrounding counties within the constraints in which they operate. Of all eight (8) comparison counties, Jackson had the lowest number of roads rated poor. While everyone wants good roads to drive on, the biggest inhibitor is a structural revenue problem. The revenue stream does not meet the level of service desired by citizens, nor is there the political will to change it.

With the lack of understanding by citizens about how road maintenance and construction is administered, the de facto responsibility by the Board of Commissioners, and the perception by citizens of the services provided, it is appropriate for the County to conduct a feasibility study of the potential to transfer powers from the Jackson County Road Commission to the County Board of Commissioners.

At the Board's request we have analyzed the issues surrounding the transfer of power from the Jackson County Road Commission to the Jackson Board of Commissioners. The following study outlines the different issues surrounding this decision.

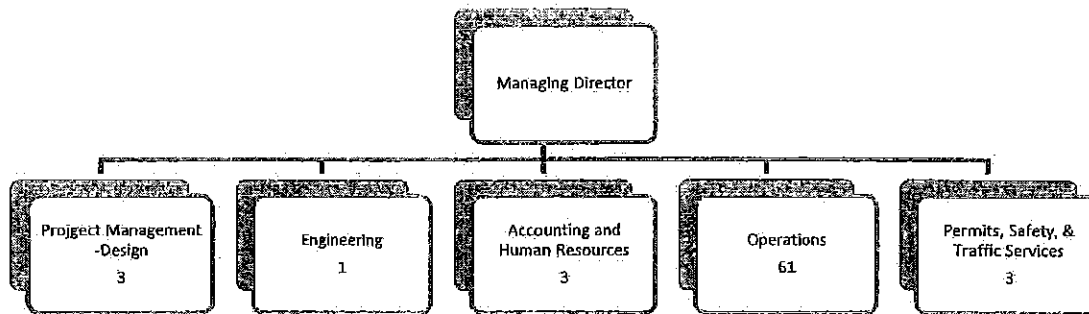
While this may not represent the views of the Road Commission staff, we acknowledge that they have been very accommodating in providing us the necessary information to complete the study and providing feedback. We met with the executive staff and Road Commissioners at the outset of this study and the executive staff at the conclusion. We appreciate their contribution and openness.

Basic Description of Organization

Jackson County has 544 miles of primary roads, 1,039 miles of local roads, and 280.5 miles of state trunk line, all of which are under the direct or contractual responsibility of the Jackson County Road Commission. The Road Commission's 2011 expenses totaled \$15,943,645. Revenues were slightly less at \$15,377,800.

The Road Commission is governed by a five member Board of Road Commissioners appointed by the Jackson County Board of Commissioners. Road Commissioners are appointed for six-year staggered terms.

The Road Commission has 76 employees and is composed of basically five work functions under the Managing Director as shown below. The Managing Director reports to the five appointed Road Commissioners.



Personnel

The obvious savings would be the elimination of compensation for Road Commissioners. That is approximately \$28,200 per year.

Regardless of which Board, appointed or elected, has oversight for road services, a Director level position would be needed to manage this as a County department. There is a possibility that the salary may be less as a Department Head than as a Managing Director, however, it will really depend on the job market for that type of position. Intuitively, even as a Department Head, the responsibility level will not change substantially. The Department Head would have less responsibility for the financial and administrative functions of the organization, but the candidate pool would be roughly the same as if you were hiring a Managing Director, with the compensation expectations the same or slightly less.

The Road Commission Administration is lean. While there will be some salary and benefit savings, it is not expected to be significant. The County Finance Director would serve as the financial officer for the Road Commission, but the County would definitely need an additional accountant knowledgeable about Act 51. Thus, there would likely be some additional savings by reducing another Director level position to that of a staff accountant.

It may be possible to reorganize the Road Commission given the additional economy of scale provided by the larger County organization creating greater efficiency and effectiveness. The organizational chart

August 10, 2012

FEASIBILITY STUDY FOR COUNTY OPERATION OF JCRC

suggests there are three director level positions with two subordinates, one director level with no subordinates, and one director level position with 60 subordinates.

Personnel Implications:

- The Road Commission Administration is lean, yet there is some savings to be gained.
- Economies of scale are available and would also add strength and depth to the County's organization too.

Financial

The JCRC finances are in acceptable condition. Total expenses in 2011 were \$15,943,645, while revenues were \$15,971,379. They added \$27,657 to fund balance in 2011, which leaves them an undesignated unreserved fund balance of \$2,686,171.

Other Post-Employment Benefits (OPEB) – The Road Commission has a large OPEB when you look at percentage of retirement payroll similar to the County general. They have not been making the annual required contributions (ARC) and have accrued a liability on their balance sheet of \$1,758,487. They have a total OPEB unfunded liability of \$11,579,460. Even with this, they were able to reduce the ARC from \$1.27 million in 2010 to \$652,908 in 2011 by eliminating an escalator clause for retiree health insurance.

Pension System – The Road Commission has 98 Retirees, four inactive vested members, and 77 active plan participants, for a total of 179 members in the Jackson County Pension System. Whereas the County has closed off any new participation in the pension system, the Road Commission is still open. They are funded at a rate of 83.1%, which is much better than the General County pension system.

A transfer of authority would allow the Board of Commissioners to potentially close new JCRC participation in the pension system. As we have seen in the General County pension system this would cause a short to mid-term increase in obligations for the JCRC.

The other factor to consider is that the Road Commission employees split the cost for the pension system, which is much larger contribution than what is required from County General employees. Changing that arrangement would leave that provision open for negotiation, because of the potential increased contribution requirements for a closed system.

Long Term Debt – The Road Commission has very little in terms of long-term debt, other than accrued paid time off (PTO). They use a pay as you go strategy (cash) for road improvements and construction.

Segregating Finances – The elimination of the County Road Commissioners and the operation of JCRC by the County Administrator/Controller do not bring any additional funds to the program. The Road Department would still operate as a component unit under the County's authority and the operation

FEASIBILITY STUDY FOR COUNTY OPERATION OF JCRC August 10, 2012

should be treated as a discrete business line, where revenues must equal expenses without County general fund support.

Facilities & Fleet – The Road Commission has downsized considerably, in 2008 they had 101 employees, and in 2012 they have 76 employees. Many of those employee reductions had need of office space and thus the JCRC currently has some excess office space. Therefore, it may be possible to lease or collaborate or co-locate thereby more fully utilizing the available space. It may be possible to reduce the number of facilities altogether.

The County has not explored combining fleet services or maintenance, but this could be explored regardless of whether the Board takes over the Road Commission. The Road Commission garage is primarily set up to work on large diesel vehicles, but there is likely some economy of scale to be achieved regardless. Road Commission currently contracts out regular minor maintenance such as oil changes. The County contracts out all vehicle maintenance with the exception of the Sheriff's Department. Thus, we have three groups performing fleet maintenance differently...clearly there is an opportunity to work together to reduce overall costs.

Financial Implications:

- Elimination of Road Commission Board savings.
- Administration, where there is most likely to be savings, is already lean.
- There are potential savings in salaries, but most likely not a material change.
- Incongruent retirement systems, Board would be in the DB pension business again.
- The County is considering movement to a new financial system; the potential exists to find one financial system that serves both entities.
- Opportunities exist, regardless of the outcome of this study, to collaborate with fleet and facilities repair and maintenance.

Technology

The County has already worked out contractual arrangements to provide information technology services to the Road Commission. The financial benefits have already been obtained.

Information Systems – The County is considering purchase of a new financial system. Should the Board of Commissioners be inclined to make this change, we would include this in our review of vendors, such that we could share a financial system, which would alleviate some redundancies in payroll, accounting, and auditing. Nearly all County Road Commissions use one of two off-the-shelf systems or have a customized in-house system. The in-house systems come from the larger Michigan Counties like Washtenaw and Oakland. The County would explore how Cities track their road expenses, as a large number of them use the BS&A enterprise system.

August 10, 2012 FEASIBILITY STUDY FOR COUNTY OPERATION OF JCRC

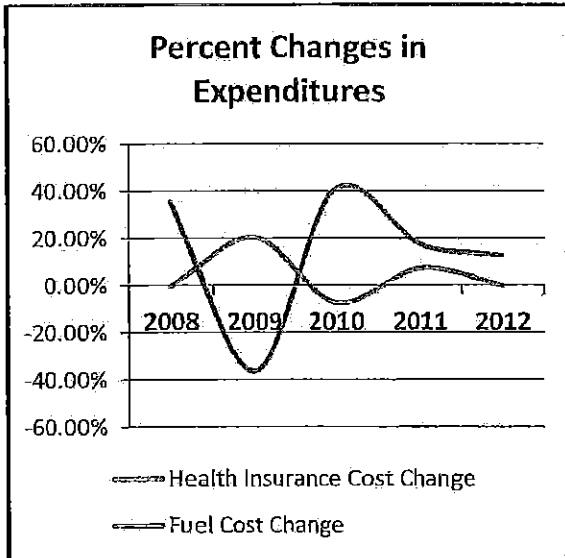
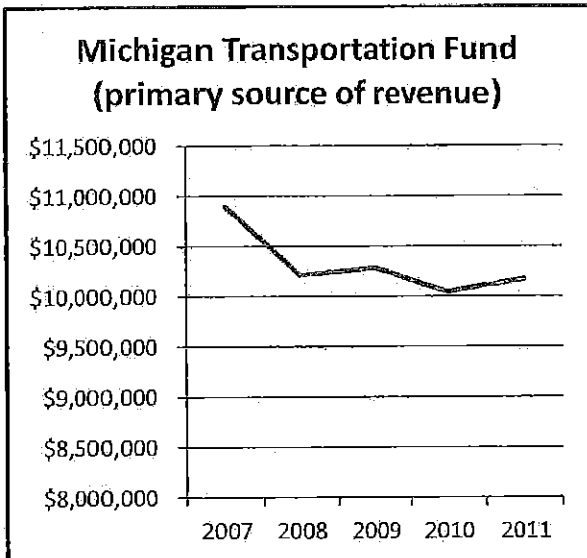
Technology Implications:

- The County already provides IT support for the Road Commission. The savings have been realized.
- The County is considering movement to a new financial system; the potential exists to find one financial system that serves both entities.

Political

The current system provides a buffer between citizens and the Board of Commissioners. Beyond appointments to the Road Commission, the Jackson County Board of Commissioners holds no direct oversight of the agency. Appointees versus elected district based leadership. The change in oversight for the Road function undoubtedly changes the atmosphere in which decisions are made.

Managing Expectations – Expectations may, at least for the short term, be high. There will be an expectation that if the Board of Commissioners assumes powers of the Road Commission that the Board of Commissioners has the ability to improve the service level. There is no additional capacity within the County’s general fund to subsidize road programs. Without any revenue changes, the County would still be limited to the same constraints that hinder the Road Commission. The chart below on the left shows the change in the Michigan Transportation Fund, the Road Commission’s primary source of income. That income has been reduced by 7% since 2008. During this same period of time, they have dealt with oscillating expenses such as health care and fuel costs. Expectations will be difficult to meet without revenue enhancements.



District Based Representation versus County Wide Appointments – The authorization of the Board of Commissioners to have direct oversight of the Road Commission may increase pressure on Commissioners to vote for what's in their district's short-term best interest versus what's in the overall long-term County's best interest.

Centralized Decision Making – One of the proponent values to assuming powers of the Road Commission is centralized decision making. There is value in one group enabled to deliberate and balance competing priorities as opposed to having segmented advocacy boards without the need to balance between priorities. Citizens can petition one body as opposed to a fragmented system. Frankly, it's easier for Citizens to know who to call when the need arises!

Political Implications:

- Expectations will be high, should the County assume powers from the Road Commissioners.
- No additional revenues will be received, but an expectation of improved service and visible results will be expected.
- Project selection has the potential to be adversarial amongst Commissioners who may think it is their responsibility to fight for "district" dollars.

Cultural

Cultural assimilation of two groups is perhaps the most difficult form of change. Most likely due to recent painful union negotiations, County staff and Commissioners have experienced a high volume of contacts from Road Commission personnel expressing dissatisfaction. The union initiated negotiations late and then pushed for de-certification which halted negotiations. After the de-certification attempt failed, negotiations resumed in late December of 2011. An agreement was reached and then voted down. A second tentative agreement was passed in late March of 2012. We received a letter from the Chief Steward of the local AFSCME unit assuring us that the recent outreach to the County staff was due to negotiations. In his opinion, now that the contracts are settled, membership will feel more comfortable about their work environment.

Differences in contracts, work conditions, and history may create an initial conflict between employees of the two organizations. The two entities will need to agree upon organizational values to resolve these issues. The compensation and benefit structures of the two entities will need to move toward greater alignment.

August 10, 2012

FEASIBILITY STUDY FOR COUNTY OPERATION OF JCRC

Cultural Implications:

- Cultural adjustments will take time.
- There may be an initial conflict between employees of the two entities due to differences in contracts, work conditions, and history.

Management

From a management perspective, the Administrator/Controller's office is a coordinating office for the Board of Commissioners for many diverse business lines. As with other departments, the Administrator/Controller need rely on trained professionals to lead their departments. The Road Department would simply be another business line to coordinate with the Board of Commissioners.

Learning Curve – Road Commission appointees are not expected to have any immediate experience or qualifications with road construction and maintenance or the scores of legislative boundaries within which they operate; however there is a significant learning curve. The learning curve is surmounted with time and training/coaching from professional Road Commission staff. Commissioners would also have to go through the educational process to fully appreciate the Road Commission complexities. Road Commissioners are appointed for six years versus every two years for County Commissioners. Thus, training and learning will be an ongoing and continuous process.

Single Point of Services – One of the benefits of the Road Commission coming under the Board of Commissioners is the concept of single point of service. As noted, most citizens do not know that the Board of Commissioners has no direct oversight over the Road Commission other than the appointment of the Road Commissioners.

The Jackson Way – Commissioners and County staff have seen much conflict within the Road Commission over the last few years. This is typical of any organization faced with the downsizing the Road Commission has endured. Difficult decisions have been made by the County Road Commissioners, and they have remained financially solvent. We believe the Road Commission could benefit from our leadership philosophy of high performance organizations, the Jackson Way, which takes an employee engagement and long-term planning approach to the business of the County.

Communication - From our perspective the communication has improved over the past few years. Our office, however, continues to receive calls, emails, and other communication from citizens frustrated with their inability to talk with someone at the Jackson County Road Commission. This would improve with economy of scale.

In this day of open government, there is surprisingly very little information available on the Road Commission website with respect to their finances and budget. Neither the budget nor the annual audit is available on the website. Meeting minutes, as well, are not posted online for the public to view. We were provided a copy of the 2011 Road Commission budget, approximately \$16 million, which consists

FEASIBILITY STUDY FOR COUNTY OPERATION OF JCRC

August 10, 2012

of a two page spreadsheet. We believe the County Road Commission would benefit from our budget approach, which includes descriptions of the programs, what funds are expended, and performance measures to show accountability.

Management Implications:

- The Road Commission would exist as another department, amidst a broad range of services under the direction of the Administrator/Controller and the Board of Commissioners.
- Road Commission business learning curve for County Commissioners.
- The acquisition of the Road Commission promotes the concept of a single point of service. Citizens become frustrated with poor access to government because of the split services.
- The County would improve the amount of information available about the Road Commission budget.
- Opportunities exist to improve communication with citizens.

Timing

Change has become the unofficial theme of local government for the last few years. The Board of Commissioners has made difficult decisions to scale back County government to live within our means. More changes will be required in the coming year to conform to unexpected challenges. Not only has County staff been reduced but the Board of Commissioners will be operating with three fewer Commissioners in 2013 as a result of the Reapportionment Commission. Assuming control of the Road Commission as a County department will require additional time from elected officials, this may be time they do not have.

The managing director is expected to retire in June of 2013. This is a key leadership position in the organization. Were the Board to assume this as a County Department, the Administrator/ Controller's Office would need to look at continuity of leadership early in the transition of authority. The selection process for a new Department Head would begin in early 2013. This would ensure not only a timely selection, but the best fit to manage the change and work with the existing County leadership.

The change may occur at any date specified in a resolution before January 1, 2015. If the Board is inclined to take on this challenge we believe it would be cleanest to do it at the beginning of the fiscal year, January 1, 2013.

August 10, 2012

FEASIBILITY STUDY FOR COUNTY OPERATION OF JCRC

Implications:

- The current changes amongst the Board and the organization will make assuming this responsibility challenging.
- Cleanest time to make the change would be at the beginning of the fiscal year.

Other Collaboration

Opportunities exist for the Road Commission to do preventative and regular maintenance to County vehicles as stated earlier. This collaboration should be doable with or without consolidation. The Road Commission has expressed an interest in providing this service for the County. The County is interested in examining this as well.

The idea of collaborating with other County's for road services has been suggested. Should the Board of Commissioners choose to assume power of the Road Commission, they would be in a position to explore those efficiencies and contracts. The Road Commission has already been used, contractually, by the neighboring counties of Washtenaw, Ingham, and even Kalamazoo which has resulted in savings for the Jackson County Road Commission. Without direct supervision of the Road Commission, the Board of Commissioners cannot compel the Road Commission to seek these opportunities.

Implications:

- Opportunities exist for regular and preventative maintenance on County vehicles with or without consolidation.
- Were the Board of County Commissioners to assume power from the Road Commissioners, collaboration with other counties could be explored as directed to the Board of Commissioners.

Procedural

The County must conduct, at minimum, two public hearings before acting by resolution to transfer powers, duties, and functions of the Board of County Road Commissioners to the County Board of Commissioners. As noted in MCL 224.6 (7) the Board of County Commissioners has until January 1, 2015 to transfer powers from the appointed Board of County Road Commissioners to the Jackson County Board of Commissioners.

We support the recommendation to convene a special Road Commission Ad Hoc Committee, following the acceptance of this report, to work through the issues and provide a recommendation to the Board of Commissioners.

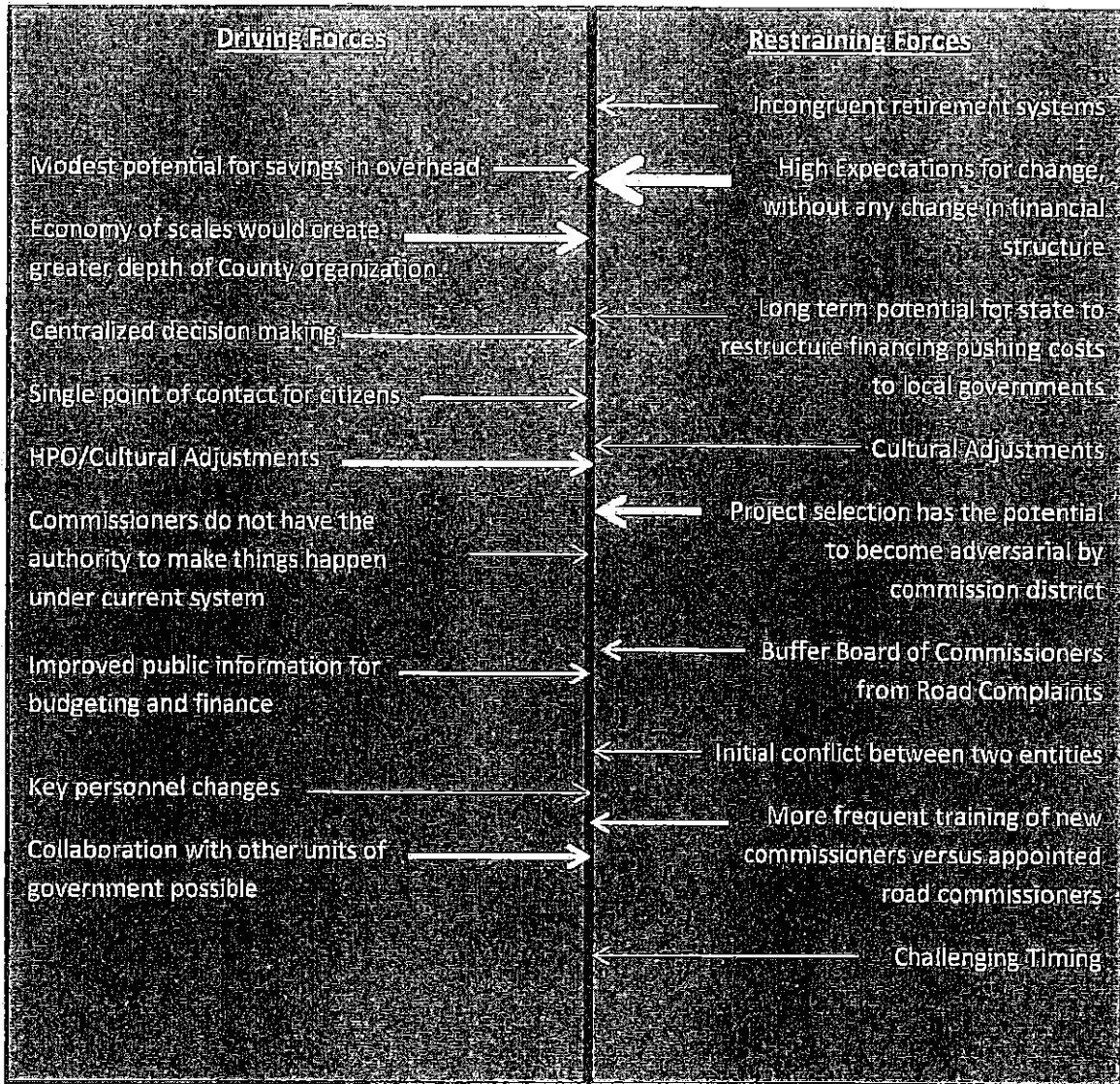
Conclusion

After reviewing the implications of the Board of Commissioners assuming powers of the appointed Road Commissioners, we find no compelling analytic reason to make a change, nor do we find a compelling reason not to change the current system. There's no reason to believe that service will decline if taken over by the Board of Commissioners. There would be some monetary savings, and we believe citizen access and communication would improve through a single point of service and centralized decision making. Is this enough to warrant change? There are restraining forces and driving forces for this question. The Board should carefully consider the implications and weigh the benefits with the opposing forces.

We recommend the Jackson County Board of Commissioners create a committee to further study the issue and make a recommendation to the full Board of Commissioners.

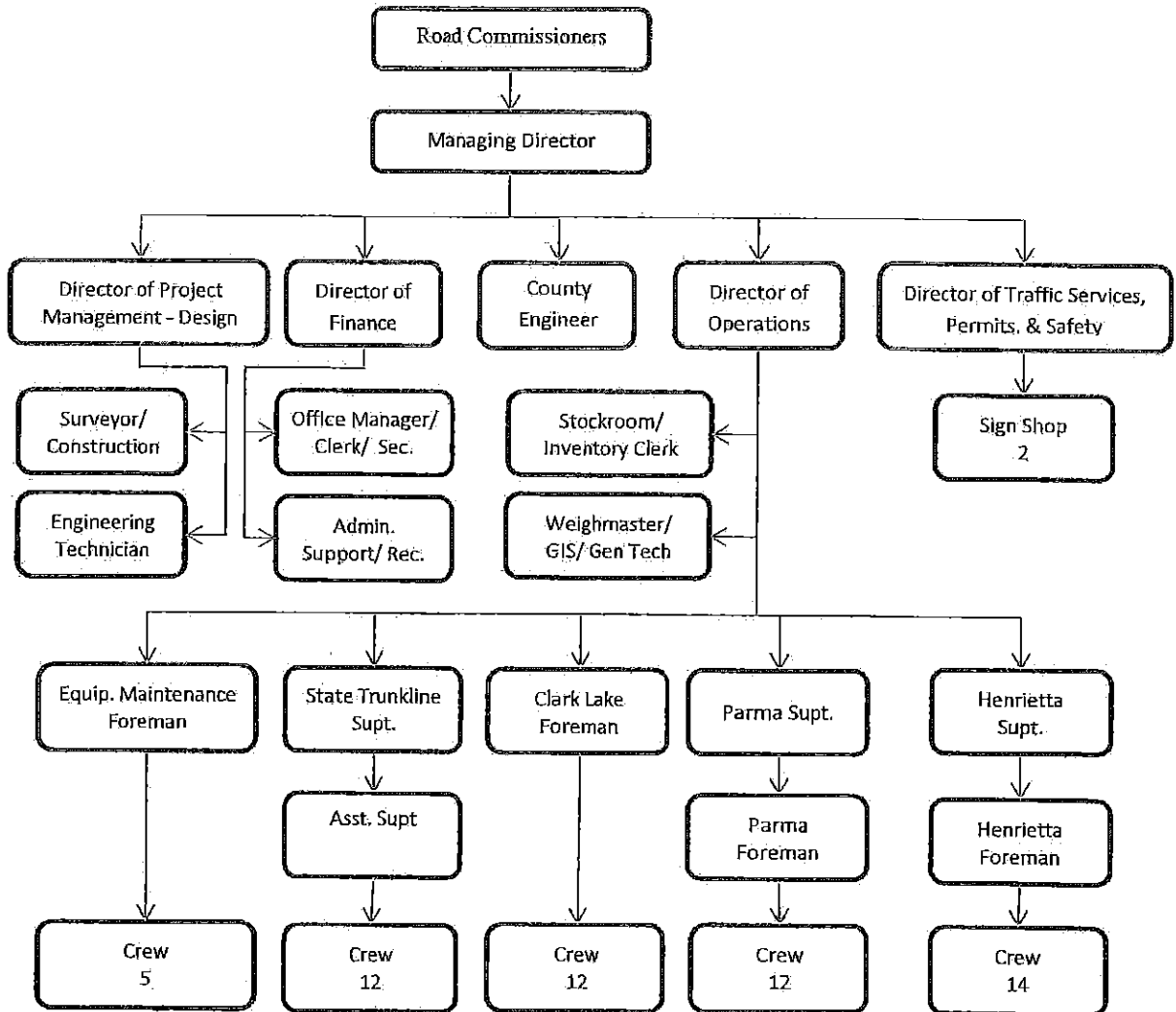
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Force Field Analysis



Appendix A

Organizational Chart



APPENDIX 30

Nicole Moles

From: Ronald Wohlford <rwohlford@jcr-roads.org>
Sent: Thursday, October 18, 2012 3:56 PM
To: Mike Overton
Cc: Kenneth Straub
Subject: FW: Liability refunds
Attachments: MCRCSIP Refunds.doc

Mike,

Here's the report I provided to my Board last month. If you have any other questions feel free to contact me at any time.

Thanks,

Ron

Liability Insurance Refunds from the
Michigan County Road Commission Self Insurance Pool (MCRCSIP)

2004	\$142,100.00
2005	\$147,328.00
2006	\$234,719.00
2007	\$271,525.00
2008	\$159,147.00
2009	\$ 36,719.00
2010	\$268,264.00
2011	\$166,586.00
2012	\$130,322.00
Total Refunds from MCRCSIP 2004-Present	\$1,556,710.00

MCRCSIP covers Buildings and content, auto liability, trunk line liability, errors and omissions, as well as general liability for accidents, etc.

IN THE SUPREME COURT

On Appeal from the Michigan Court of Appeals
O'Brien, PJ, and Gleicher and Stephens, JJ

THE COUNTIES OF INGHAM, JACKSON, and
CALHOUN, Municipal corporations and bodies politic
and corporate,

Plaintiffs-Appellees,

v

THE MICHIGAN COUNTY ROAD COMMISSION
SELF-INSURANCE POOL, an unincorporated
voluntary association,

Defendant-Appellant.

Supreme Court Docket No. 160186

Court of Appeals Docket No. 334077

Ingham County Circuit Court
Case No. 15-432-NZ

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DEFENDANT-APPELLANT'S APPENDIX TO SUPPLEMENTAL BRIEF

VOLUME B
(APPENDICES 31 – 44)

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	36	12/13/12 Email Exchange	0294a – 0296a
	37	11/29/12 Email Exchange	0297a – 0307a
	38	12/6/12 Email regarding Final Feasibility Study	0308a – 0326a
	39	10/18/12 Brennan Correspondence	0327a – 0330a
	40	12/21/12 Jackson CRC Confidential Update	0331a – 0349a
	41	12/23/12 Public Notice regarding Jackson CRC Dissolution	0350a – 0351a
	42	1/8/13 Correspondence regarding Public Hearing on Dissolution	0352a – 0355a
	43	2013 Jackson CRC Transition Plan	0356a – 0358a
	44	1/18/13 Email Exchange	0359a – 0375a

Dated: November 4, 2020

/s/ Jonathan B. Koch
 Jon D. Vander Ploeg (P24727)
 D. Adam Tountas (P68579)
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APPENDIX 31



**Road Commission Ad Hoc Committee
Agenda
October 18, 2012**

1. **Public Comment:**
2. **Approval of Minutes**
 - a. September 17, 2012
 - b. October 2, 2012
3. **Interviews**

Liberty Township Supervisor, **Jim Spink**
Past Union Chief Stewart, **John Brennan**
Working Foreman (union), **Alan Vogt** (Clark Lake Facility)
JC Road Commissioner, **Mike Jones**
4. **Open Discussion**
5. **Next Steps**
6. **Next Meeting**
7. **Public Comment**
8. **Adjournment**

Road Commission Ad Hoc Committee Interview Questions

What changes have you seen since the Board Changed? (All)

What are some of the concerns if it was rolled under the County Administration? (All)

If the decision is to bring the Road Commission under the County do you think the relationship between Supervisors would change? (All)

Do you feel that the Road Commission provides you good planning and direction? (Union Steward, Foreman, and Supervisor)

Do you have concerns with the level of transparency, trust, communication, and honesty within the Jackson County Road Commission Organization? (All)

Describe the level of satisfaction amongst employees or constituents you work regularly with? (All)

Do you feel that accountability for ones actions is consistent throughout the Road Commission organization? (All)

Do you and the employees you work with have the equipment, support, skills, and training you need to do your job well? (Foreman, Road Commissioner, and Union Steward)



**Road Commission Ad Hoc Committee
Minutes
September 17, 2012**

Committee Members Present: Jim Dunn, Supervisor; Larry Baam, Supervisor; David Lutchka, Commissioner; Jim Videto, Commissioner; James Shotwell, Commissioner and Chair; John Tallis, Supervisor; David Elwell, Commissioners

Staff: Mike Overton, Administrator/Controller; Adam Brown, Deputy Administrator

Public: None

1. Public Comment: None

2. Suspension of the Road Commissioner Replacement Process

Chair recommends that the ad hoc committee suspend their appointment process until after the group provides a recommendation to the Board of Commissioners on the consolidation of the road commission.

Motion by Commissioner Elwell supported by Tallis

Votes all agreed.

3. Summary by Administrator/Controller of Study

Administrator/Controller Overton gave a summary of the report.

4. Ad Hoc Committee Discussion

Supervisor Larry Baam - concerned about the citizens perception that there will be more available if the county takes over.

Supervisor Tallis questioned the intention of the state with regard to funding.

Commissioner Elwell asked about sharing services. Administrator commented that they were relatively lean, but that there were possibilities.

Commissioner Videto expressed concern that there are communication and culture issues.

Supervisor Tallis concerned about how issues are addressed throughout the County. Commissioner Videto reiterated the concern about how issues were addressed. Both shared experiences about when the Road Commission reacted or failed to react to issues.

Mr. Overton responded that no matter who did it, there would be priority challenges. Chairman Shotwell talked about how the County overcame similar issues with the County.

Supervisor Dunn expressed concern that the elimination of the Road Commission increases the politicization of the process.

Chairman Shotwell invited the committee to think about individuals who they wanted to hear from. Suggestions were:

- Jim Spink
- Kenneth Straub
- Representative of the Employees but not the union president
- Superintendents from the Road Commission
- An official recommendation from the Administrator/Controller's Office
- Jackson County Commissioner Mike Jones

Supervisor Dunn commented that a big problem is resources.

Chairman Shotwell commented that commissioners already get a significant number of calls about roads.

Several of the committee members discussed the organization of how the road commission would be operated under the County. They requested that the County Administrator/Controller bring back a brief of how the Road Commission would be run under the County Administrator/Controller.

Several of the committee members expressed concerns about the transparency of all the actions at the Road Commission. There are concerns about why the minutes and other financial information are not published online.

David Lutchka questioned what authority the Road Commissioners had over the Managing Director. He said that there are other ways to address the issue by putting the right people in the Road Commission. Commissioner Lutchka commented that he lives so close to Washtenaw County that he can see a major difference of how the Jackson Road Commission looks much better than the Washtenaw County Road Commissioner.

The Chairman noted that the report requested that the decision be made before a new fiscal year begins.

Supervisor Baam submitted feedback from trustees from his township. It was received by the committee.

Lutchka is very interested in hearing from the bottom of the organization.

The committee would like members to think about questions and submit them to the Administrator/Controller.

Meet in another two weeks.

Supervisor Dunn wanted to get feedback at the Supervisors meeting.

5. Next Steps

- Administrator will get enabling legislation.
- Get a copy of the Road Commission budget
- Schedule interviews
- Ask Board the powers of the executive in the Road Commission

6. Next Meeting

Two weeks. October 2, 2012

7. Public Comment - None

Meeting ended at 8:00 AM



**Road Commission Ad Hoc Committee
Minutes
October 2, 2012**

Committee Members Present: Jim Dunn, Supervisor; Larry Baam, Supervisor; David Lutchka, Commissioner; Jim Videto, Commissioner; Steve Shotwell, Commissioner and Chair; John Tallis, Supervisor; David Elwell, Commissioners

Staff: Mike Overton, Administrator/Controller; Adam Brown, Deputy Administrator

Public: Julie Alexander, Michael Way, John Wilson, Tony Phillips, Lisa Satayut, Donna Zimmerman

1. **Public Comment:** None
2. **Interviews**
 - Superintendent, **Ted Kinch** (State Maintenance)
 - Superintendent, **Greg Ives** (Henrietta Facility)
 - Superintendent, **Steve Tompkins** (Parma Facility)

Superintendents:

What changes have you seen since the Board Changed? - There seems to be a lot more team sharing amongst employees. There is a separation between the appointed board and the employees.

What are some of the concerns if it was rolled under the County Administration: We would be constantly putting out fires. Decision on work assignments would be more political. We know where our priorities need to be and

Do they listen to you (the Superintendents)? Yes, they listen to us. We meet and talk more than we ever did before. We know the finances better than we did before. Where as now it is one Road Commission it used to be three. We attend township meetings and communicate regularly.

If the decision is to bring the Road Commission under the County do you think the relationship between Supervisors would change? I don't see any reason for it to change.

Do you feel that the Road Commission provides you good planning and direction? Working with Ken is a plus because he has been there and knows what we have been doing. How involved are you in the planning? We are involved in the 3-5 year planning. We go out and make the decisions on what needs to be done. Federal goes through our Engineering Department. Do you have a budget in your section? How do you make priorities? We will go out and check the roads and suggest what we think is needed. Engineering goes through the Pacer rating scale. How about the communication with equipment replacements, do you get involved with that? Yes, we talk regularly with Ron about what we need.

Supervisor Baam asked the Administrator/Controller questions about the organizational structure.

Do you have concerns with the level of transparency, trust, communication, and honesty within the Jackson County Road Commission Organization? It's average. It's not any worse than it has ever been. Employees would like to have more, but they understand times are tough. Supervisor Tallis shared an experience about a crew in his attention who stopped work and restarted much later in the day. The citizens didn't understand what's going on. Response: If there is ever a complaint we always follow up on it. There are lots of things going on, work crews get pulled at times for different things.

Describe the level of satisfaction amongst employees you work regularly with? There are always complainers, but the majority of the employees recognize we don't have the money to get new stuff and we have a job to do. How do you address the employee with the unacceptable attitude? We talk to them. The majority of them want to do a good job and take pride in their work. The majority of the complaints are about compensation or equipment and not about leadership. Supervisor Dunn asked, about a policy switch for when they initiate overtime for snow removal. How did that impact employees? At first it was tough but the employees get used to it because they understand the financial impact. It was a hard change to not do as much sealcoat and wedging. We used to go out and cut a lot of trees, but we can't do that anymore. We have to talk with the public about those concerns. Commissioner Elwell asked about other places in the operation that they feel they could cut back to save money. We contracted out mowing. The trees may be something we could contract out. Chairman asked about his perception of an equipment rotation program they used to have? They have lots of equipment 6, 12, and 20 years old. Ron Wolford has worked it out so that the state purchased the trucks. After 5 years on the state highways, they can be transferred to the county roads. We have enough trucks for everyone to do their job, but they are 10-12 year old trucks. It's just not feasible to keep the fleet that new. Administrator/Controller asked are the truck rotations data driven decisions? Yes it is. We keep records of all the trucks.

Do you feel that accountability for ones actions is consistent throughout the organization? For the most part the accountability, ...we are held accountable for what gets done and the employees are held accountable too. If one of us is inconsistent then word travels around and it's not good for everyone. Over the last five years managers have put more emphasis on accountability. Ken is making sure we do our job. Supervisor Baam asked, so you are saying you have standard operating procedures to recognize and correct employees? Yes we do. A lot of our direction comes out of the union contract book. Policies are distributed to everyone. Supervisor Dunn asked what the grievance level now compared to five years ago? There are not many grievances that we know of. They are the same type of grievances just a lot less of

them. Supervisor Baam, asked if there was a change how would you react to the interference between Commissioners? I would hope that we can accommodate requests. Commissioner Elwell asked do any supervisors or elected officials call you directly or do they go through Ken? Supervisor Dunn and Tallis answered the question that they put stuff in and it generally gets answered.

Do you and the employees you work with have the equipment, support, skills, and training you need to do your job well? Yeah, I think so. We can always use better newer equipment, but funds are limited. The big things over the last two years is having laptops. This saves a ton of time. I don't have to go back and forth to the office. This saves fuel and response time. A pot hole gets taken care of most of the time before 24 hours. Commissioner Lutchka asked if the superintendents go out and check job sites and ask when there are delays. Yes. We worked our way up and we know the operation and what to expect. Most employees take pride in their work. They don't like to hear negative comments from the public. I usually drive through jobs twice a day. We get there every day when possible.

3. Enabling Legislation (Attachment MCL 224-6)

The legislation was provided. The Chairman explained that it would be best for the Committee to act in time for the Commissioners to act before the end of the year.

4. County Run (See Attached Organizational Chart and Employee Chart) – Administrator/Controller

The Road Department under the County would report to the Agencies and Affairs Committee. The revenues would remain restricted as a special revenue fund.

Supervisor Dunn asked if there was any opportunity for the County General Fund to provide monetary support. Administrator/Controller answered, no.

Supervisor Dunn asked, Is there a possibility for a county wide millage for Roads? They discussed the feasibility and the politics of that idea.

Commissioner Elwell: Would it eat away at the General Fund because of the high expectations of the public? Yes the potential exists.

5. Open Discussion

Chair directed questions to email questions to Mike Overton or Adam Brown.

6. Next Steps

David Lutchka asked about lawsuits against the Road Commission: What is the exposure the County has against law suits if we are combined. There are

Administrator/Controller: commented that the Road Commission risk management association moved to disallow counties taking over road commissions. There is plenty of other insurance available under a combined situation.

7. Next Meeting

October 18th Interviews

Liberty Township Supervisor, Jim Spink
Past Union Chief Stewart, John Brennan
Working Foreman (union), Alan Vogt (Clark Lake Facility)
JC Road Commissioner, Mike Jones

8. Public Comment

Michael Way: I have asked my constituents for feedback. Sandstone township raves about the Road Commission. I have a good relationship with the Road Commission. I call Ken and it gets corrected within 24 hours. Mike urges the committee to determine if they can make the RC better. At present, he does not feel the County could make it better.

Julie Alexander: How many Road Commission employees are there? Of Michigan Counties how many have made the switch? Ingham and Calhoun. Oakland and another county do it by charter.

John Wilson: Is there a current org chart for the Road Commission? Yes it is online on the Counties front page.

Tony Phillips: Only 2 county millages existed in 2007, and now there are 19. Counties have inacted millages to help support roads.

Meeting ended at 8:12 AM



**Road Commission Ad Hoc Committee
Agenda
November 29, 2012**

1. **Public Comment:**
2. **Approval of Minutes**
 - a. November 27, 2012
3. **Administrator/Controller's Summary of Findings**
 - a. Attachment
4. **Open Discussion**
5. **Next Steps**
6. **Public Comment**
7. **Adjournment**



**Road Commission Ad Hoc Committee
Meeting Minutes
November 27, 2012**

Ad Hoc Committee Attendees: Jim Dunn, Jim Videto, David Elwell, Jim Shotwell, John Tallis,

Staff: Mike Overton, Adam Brown

Public: Ken Straub, Ron Wolford, Carl Rice, Donna Zimmerman, Tony Phillips

1. **Public Comment:** None
2. **Approval of Minutes: Approved**
 - a. November 27, 2012
3. **Survey Report from Administrator**

Mike Overton gave an introduction to the survey. Adam presented the data. There were 28 respondents out of the 76 employees. We expect more surveys to come in today. The Administrator will enter data and disseminate the survey response back out to the ad hoc committee members.

4. **Open Discussion**

Supervisor Jim Dunn said that it's possible for the Road Commission to come under the County now and if it does not work combination can be reversed and go back to the way it is today.

Supervisor John Tallis commented that there has been a loss of faith amongst employees. He questioned how the best way to turn that around. He was contacted by a Road Commission employee who felt the system was broken. The employee was frustrated by the employees he works with.

Commissioner Jim Videto said that he is glad that we did the survey because it gives a greater definition of how the organization exists today.

Supervisor John Tallis commented that he thought the Road Commission was too large. He would prefer to see 3. He suggested a plan where we still having a Road Commission, but the director would report to the Administrator and the Board of Commissioners.

Chairman Jim Shotwell commented that he thought most of the work of the Road Commission is handled within the bureaucracy of the organization. He does not see any more conflict with the Commissioners than with the Supervisors.

Commissioner David Lutchka commented that a 3-member group can be dominated by an alpha personality. A 5 member group or more has less of an opportunity for that to happen. He is not sure if making it a County department will make it more efficient or improve some of the issues we have heard about today. He feels like we haven't had any Road Commissioners over the last 8 years who had any type of agenda. They have taken a "greater good" approach rather than a single agenda approach.

Supervisor Jim Dunn commented that the ad hoc committee has probably sensitized employees and that may be reflected in the survey results. He felt that the survey alone would not be enough of a driver to make the change. He sees an absence of HR as a significant issue. The County could fill that role. He also sees the financial component as important to this decision.

Commissioner David Elwell commented that he thought the way the County operates could benefit the staff. He thought that taking out some of the administrative ends may benefit the Road staff by allowing them to focus on roads.

Commissioner David Lutchka received only a few comments from employees. They commented about the health benefits being different.

The Road Commission staff commented that the only difference was with the copay. Non-union employees pay \$10 office visit copays and the union contract calls for \$20 office visit copays.

Supervisor Jim Dunn asked what was next and if there was a plan on how the change would happen if it was decided to merge.

Commissioner Jim Videto asked the ad hoc committee if they felt there was more information that was needed.

Supervisor John Tallis commented that he has asked questions to stir thinking, but he has most of the information he believes he needs.

Supervisor Jim Dunn asked if the Road Commission staff or board had any final comments or summary of the process as well as additional thoughts.

Tony Phillips, a County Road Commissioner, answered that he believes that the Road Commission can operate efficiently under the current organization and under the County. He believes the process has been fair. He is not surprised about the survey results, but he does not believe the system is broken. It can be tweaked. All organizations need improvement. He commented that the 5 County Road Commissioners will all support the decision made by the County.

Supervisor John Tallis said he believes you can be an effective boss and still have satisfied employees. He asked questions about a staff member that Mr. Phillips mentioned.

Ken Straub, Managing Director, commented that there has been a lot of change in the organization and it has been difficult to handle. Many opportunities were given for the union to come through the negotiations, but they went through a decertification process that failed. I am confident in the people that we have put in charge. We are increasing the accountability in the organization and that is difficult. We are stressing safety and that has an impact on efficiency. MDOT has changed because of funding and personnel. Comparing us to other Road Commissioners would show anyone that we are financially very sound. I take the survey very personal, I have taken the whole process personal, but I will work with the County with whatever decision is made. He expressed appreciation for the current board. They have been exceptional.

Administrator/Controller Overton said that he thought it was appropriate for his office to summarize the findings.

5. Next Meeting: November 29, 2012

6. Public Comment:

Mike Way: In your deliberations I believe the Ad Hoc Committee should ask: Is the Road Commission broke. If it is broke can the board of 9 County Commissioners make it better? If we chose to do that can our present administration handle the changes? I have had great response from the Road Commission over the years. I have worked through the staff and they have been great to work with.

7. Adjournment

Attachments: Survey Report & Presentation

2012 Road Commission
Ad Hoc Committee
Employee Satisfaction Survey
November 27, 2012
Jackson County, Michigan





Survey Design

- Same survey conducted by Jackson County every other year
- Jackson County data just shown for frame of reference
- 52 Questions
 - > Questions on scale of 1-4
 - > All positively worded
- 2 Open-ended questions
- Format – all completed hard copy
 - > A sealed envelop addressed to each employee was distributed. Postage paid pre-addressed envelope included.



Survey Categories

- Communication 8
- Creativity, Initiative, & New Ideas 4
- Supervision 12
- Management 7
- Meaning 4
- Work Environment 6
- Empowerment 4
- Performance Evaluations 3
- Teamwork 3
- Overall Satisfaction 1



Demographic Factors

Only two demographic breakdowns

- Union / Non-Union
- Years of Employment

Survey Population - 76
Respondents to date - 32

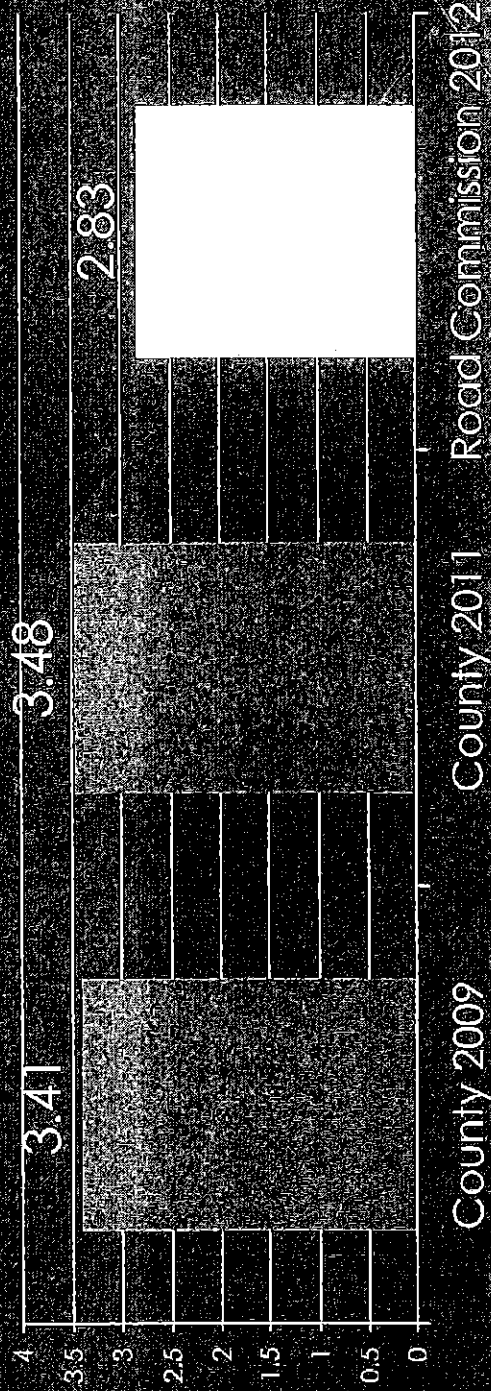
4 Non-Union
2 Anonymous
26 Union



Overall Satisfaction

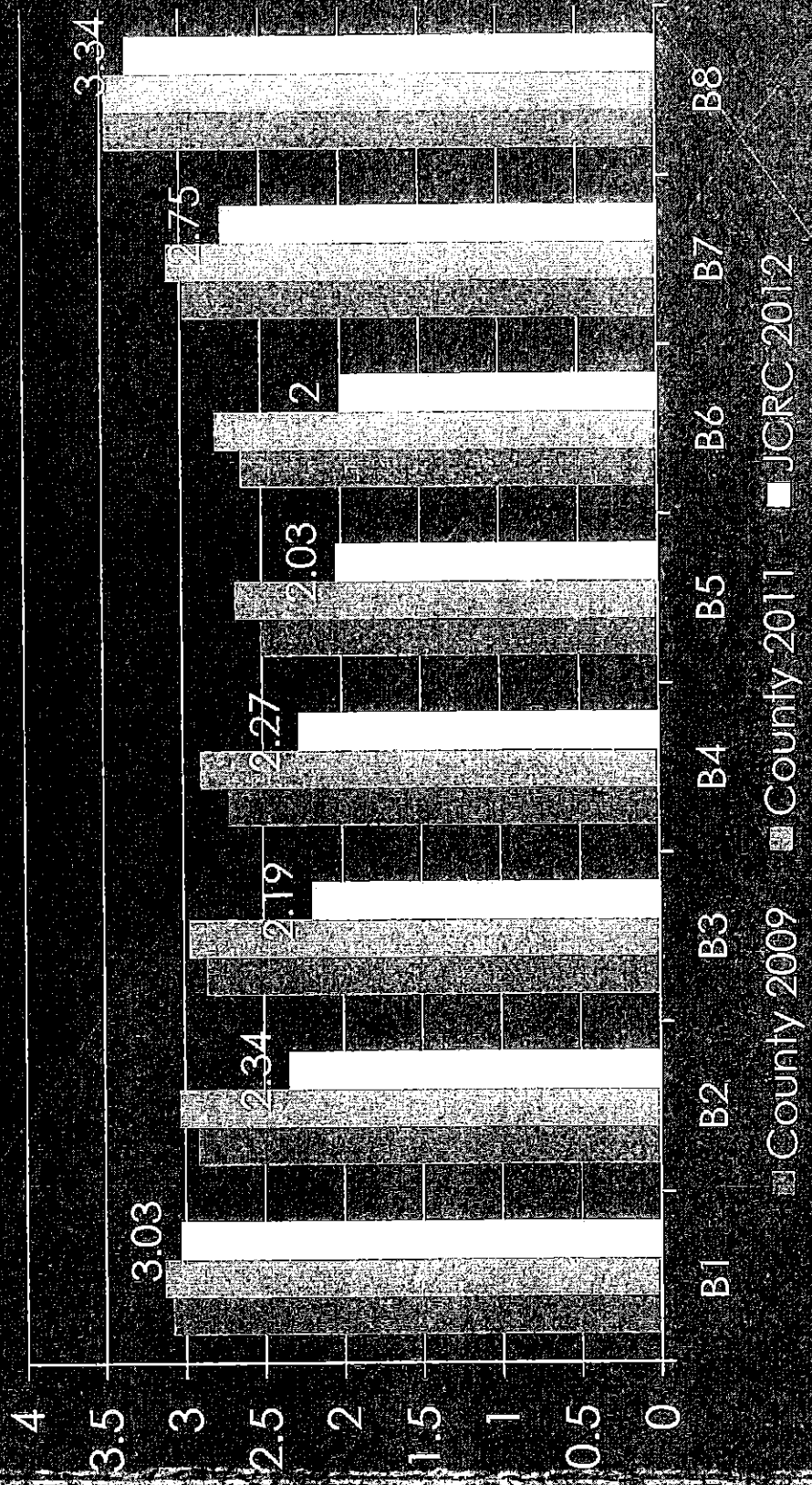
I am satisfied with Jackson County Road Commission as a place to work. (Compared With County Results)

Overall Satisfaction

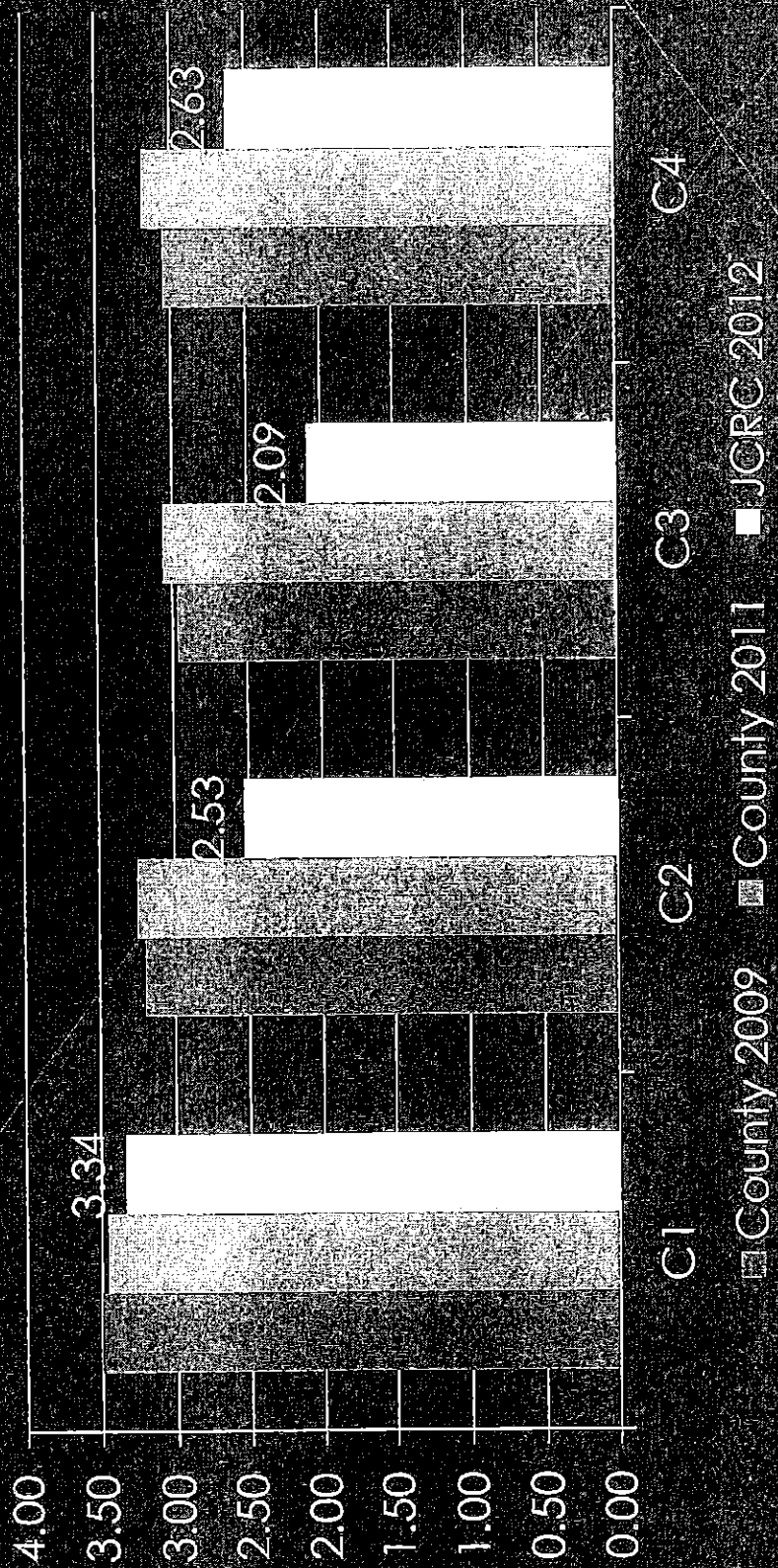




Communication

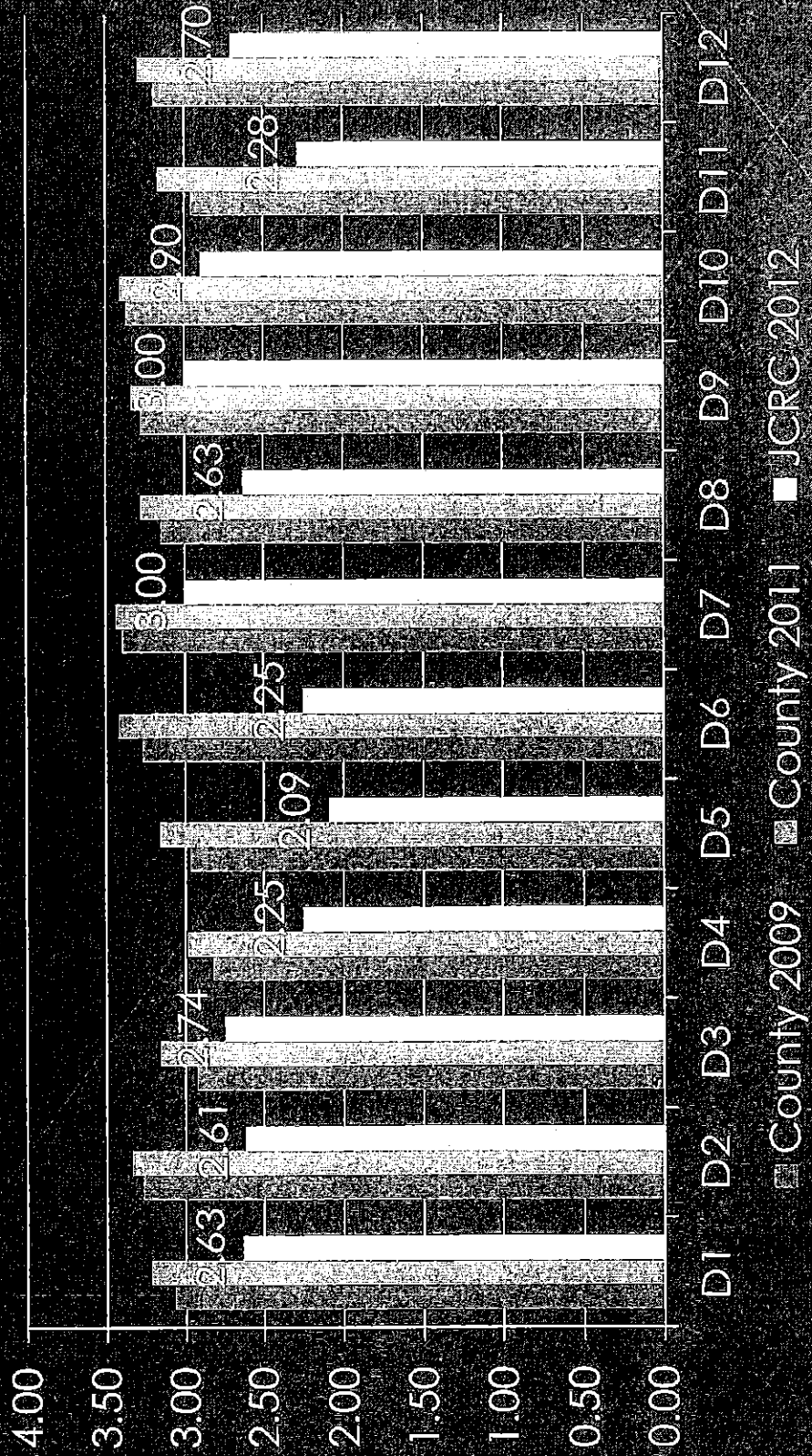


Creativity, Initiative, & New Ideas



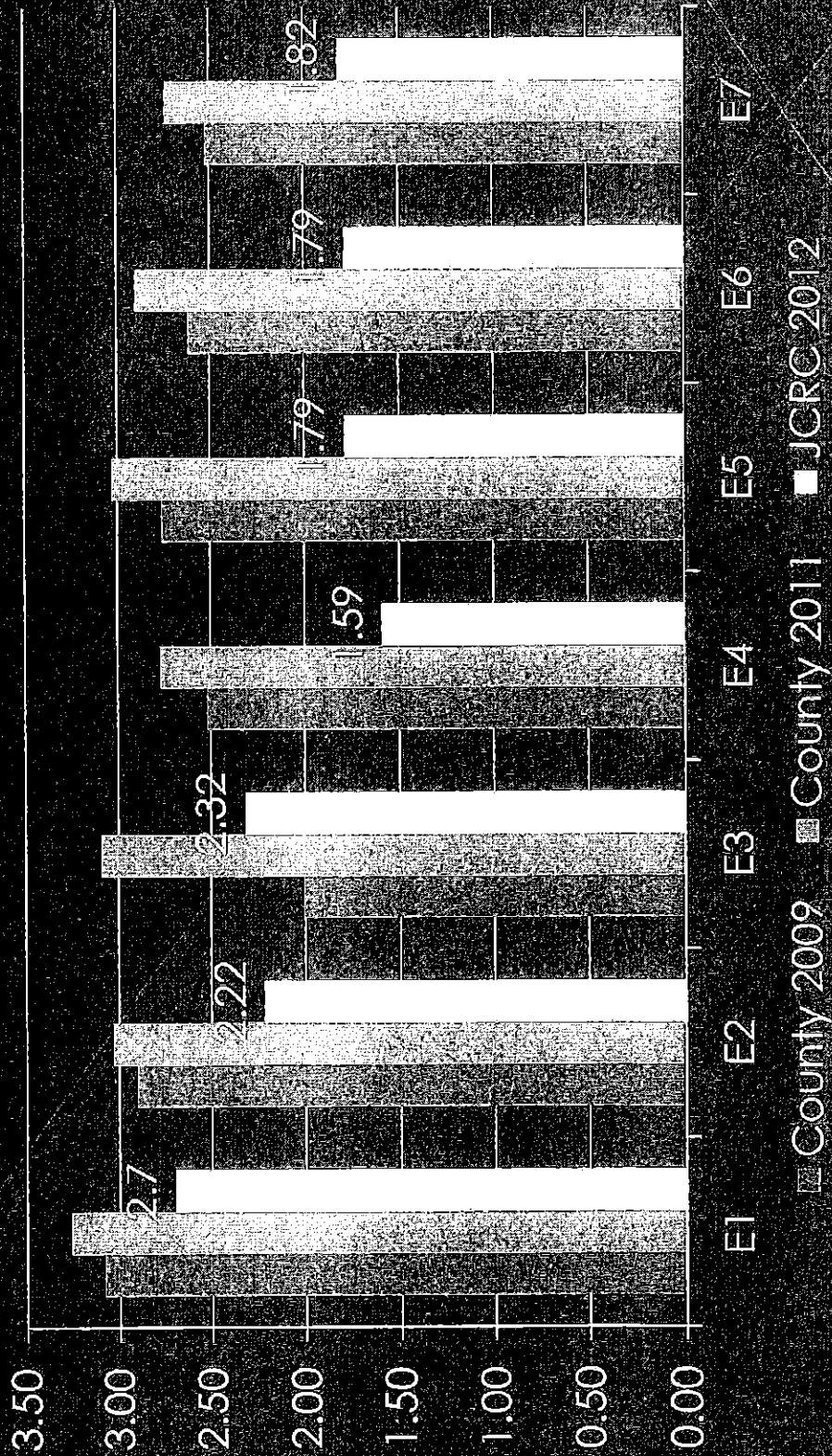


Supervision

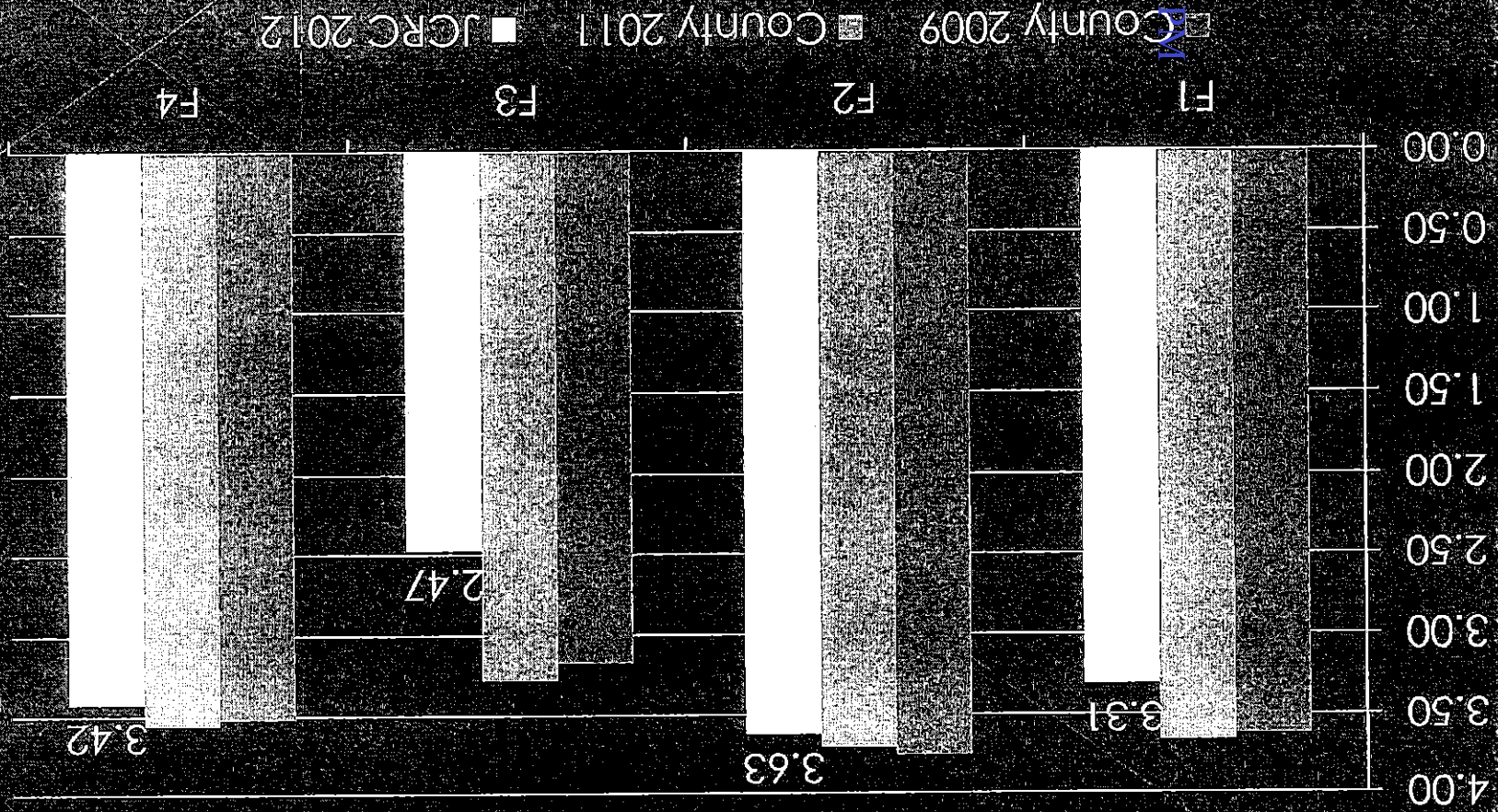




Management



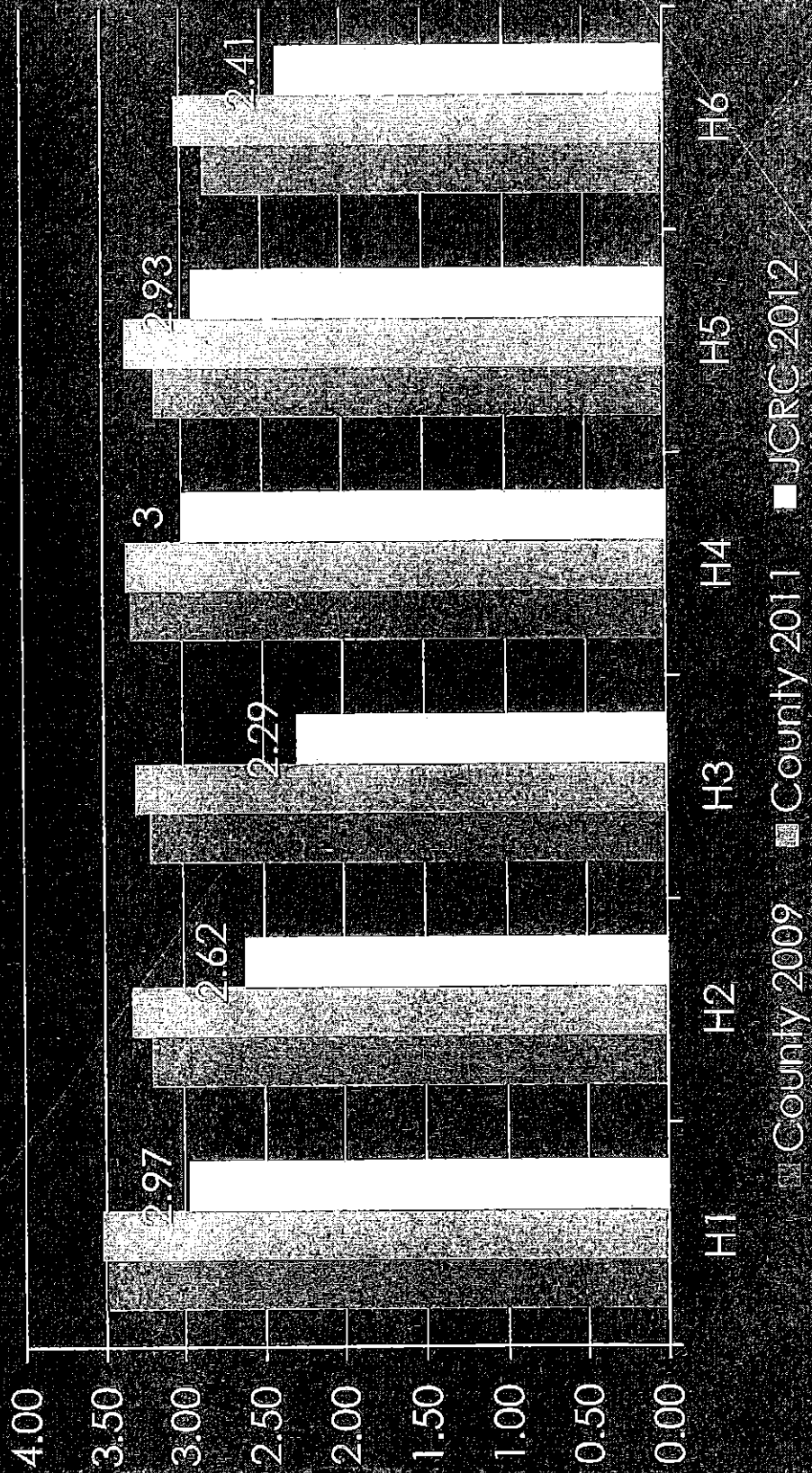
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Meaning

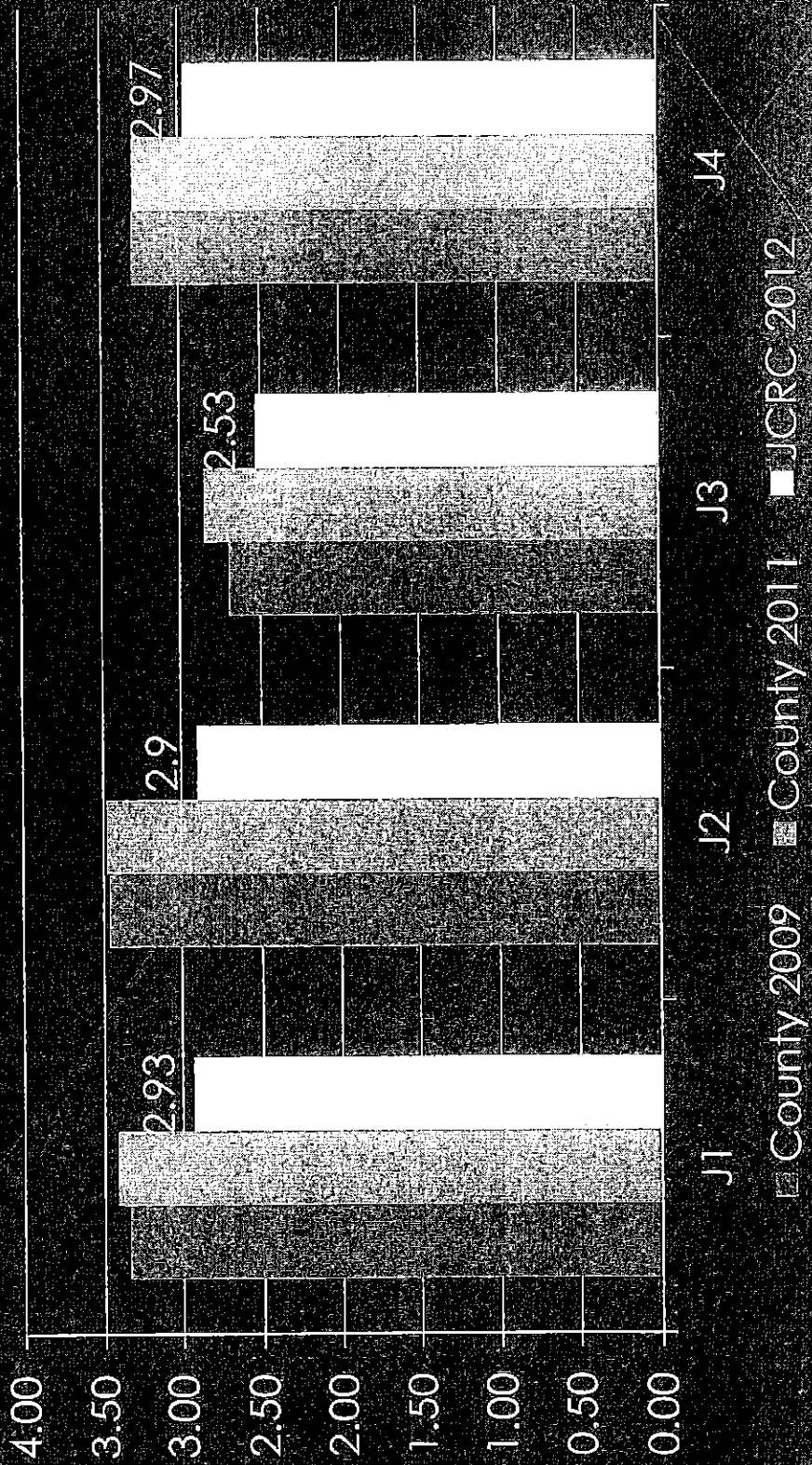


Work Environment





Empowerment

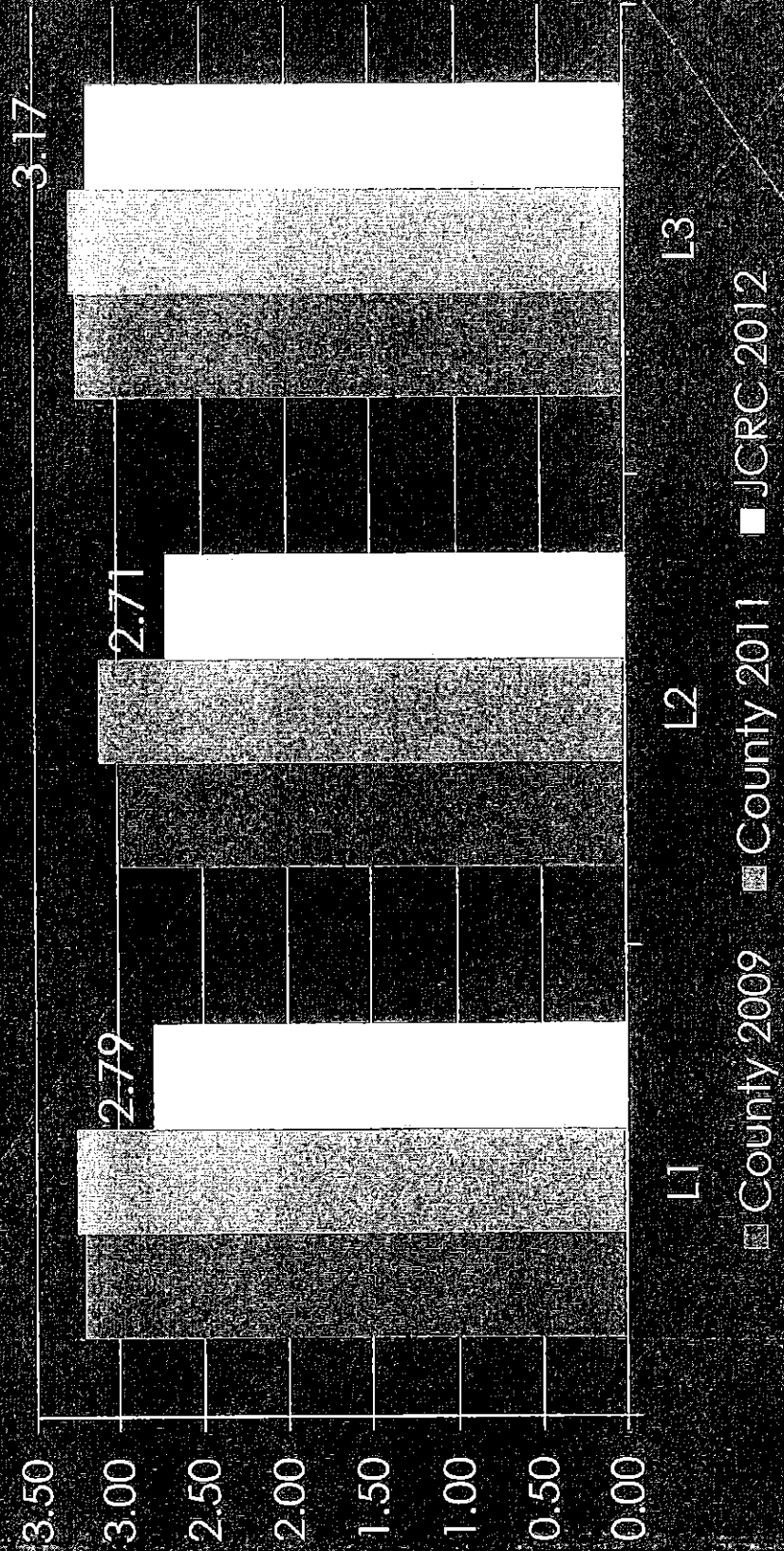




Performance Evaluation

- ⊙ Not enough data to draw assumptions
 - > Only 12 out of 28 answered question
- ⊙ Respondents are told not to answer if they have not received a performance evaluation

Teamwork



2012 Road Commission Survey



1. Communication

	Strongly Disagree	Somewhat Disagree	Somewhat Agree	Strongly Agree	Rating Average	Response Count
B1 I feel free to share constructive feedback with coworkers.	9.4% (3)	12.5% (4)	43.8% (14)	34.4% (11)	1.00	32
B2 I can let managers above my immediate supervisor know how I feel about things.	21.9% (7)	37.5% (12)	25.0% (8)	15.6% (5)	1.00	32
B3 In general, I am kept informed about Road Commission issues that are important to me.	34.4% (11)	31.3% (10)	15.6% (5)	18.8% (6)	1.00	32
B4 Jackson County communications are timely.	30.0% (9)	30.0% (9)	23.3% (7)	16.7% (5)	1.00	30
B5 I hear about important changes through management not gossip.	46.9% (15)	25.0% (8)	6.3% (2)	21.9% (7)	1.00	32
B6 Changes that affect my job are discussed with me before they are implemented.	43.8% (14)	21.9% (7)	28.1% (9)	6.3% (2)	1.00	32
B7 I receive the information I need to do my job well.	9.4% (3)	28.1% (9)	40.6% (13)	21.9% (7)	1.00	32
B8 I understand what is expected of me in my job.	3.1% (1)	9.4% (3)	37.5% (12)	50.0% (16)	1.00	32
						answered question 32
						skipped question 0

2. Creativity, Initiative, & New Ideas

	Strongly Disagree	Somewhat Disagree	Somewhat Agree	Strongly Agree	Rating Average	Response Count
C1 I am regularly on the lookout for new ways to improve our service.	3.1% (1)	9.4% (3)	37.5% (12)	50.0% (16)	1.00	32
C2 I am free to try things in new ways.	25.0% (8)	15.6% (5)	40.6% (13)	18.8% (6)	1.00	32
C3 I am often asked to share my ideas.	40.6% (13)	18.8% (6)	31.3% (10)	9.4% (3)	1.00	32
C4 My department is open to suggestions for changes and improvements.	21.9% (7)	21.9% (7)	28.1% (9)	28.1% (9)	1.00	32
					answered question	32
					skipped question	0

3. Supervisors (Refers to the person from whom you receive direction on a day to day basis)

	Strongly Disagree	Somewhat Disagree	Somewhat Agree	Strongly Agree	Rating Average	Response Count
D1 My supervisor encourages me to speak openly about problems in my work group.	21.9% (7)	28.1% (9)	21.9% (7)	28.1% (9)	1.00	32
D2 My supervisor deals with me fairly.	19.4% (6)	32.3% (10)	3.2% (1)	45.2% (14)	1.00	31
D3 My supervisor handles discipline fairly and consistently.	37.5% (12)	21.9% (7)	18.8% (6)	21.9% (7)	1.00	32
D4 My supervisor is mentoring me to grow within the organization.	37.5% (12)	31.3% (10)	15.6% (5)	15.6% (5)	1.00	32
D5 My supervisor asks for input from those affected by decisions.	34.4% (11)	18.8% (6)	34.4% (11)	12.5% (4)	1.00	32
D6 My supervisor is available when I have a problem or complaint.	6.3% (2)	21.9% (7)	37.5% (12)	34.4% (11)	1.00	32
D7 My supervisor shows confidence and trust in me.	18.8% (6)	12.5% (4)	28.1% (9)	40.6% (13)	1.00	32
D8 I receive helpful feedback from my supervisor.	21.9% (7)	21.9% (7)	28.1% (9)	28.1% (9)	1.00	32
D9 I feel free to talk to my supervisor about anything related to work.	9.4% (3)	28.1% (9)	18.8% (6)	43.8% (14)	1.00	32
D10 I am treated with respect by my supervisor.	18.8% (6)	18.8% (6)	18.8% (6)	43.8% (14)	1.00	32
D11 My supervisor applies policies and procedures fairly to all employees.	38.7% (12)	19.4% (6)	16.1% (5)	25.8% (8)	1.00	31
D12 My supervisor has effectively communicated work expectations to me.	15.6% (5)	21.9% (7)	34.4% (11)	28.1% (9)	1.00	32
					answered question	32
					skipped question	0

4. Management Refers to the responsibility of using resources such as staff, budget, materials, and policies, by persons in positions of authority (e.g. directors, managers, superintendants, foremans).

	Strongly Disagree	Somewhat Disagree	Somewhat Agree	Strongly Agree	Rating Average	Response Count
E1 The managers of my department use resources (e.g. staff, budget, materials, and policies) effectively.	40.6% (13)	12.5% (4)	31.3% (10)	15.6% (5)	1.00	32
E2 Managers in different work groups cooperate well with each other.	32.3% (10)	16.1% (5)	38.7% (12)	12.9% (4)	1.00	31
E3 Responsibilities are delegated at the appropriate level.	29.0% (9)	22.6% (7)	29.0% (9)	19.4% (6)	1.00	31
E4 People are promoted to management positions based on their ability to manage effectively.	68.8% (22)	9.4% (3)	15.6% (5)	6.3% (2)	1.00	32
E5 I feel confident in the direction that management is leading the organization.	62.5% (20)	12.5% (4)	12.5% (4)	12.5% (4)	1.00	32
E6 Management's actions are consistent with their messages.	62.5% (20)	12.5% (4)	6.3% (2)	18.8% (6)	1.00	32
E7 Management will do something about the issues raised in this survey.	50.0% (15)	20.0% (6)	6.7% (2)	23.3% (7)	1.00	30
						answered question 32
						skipped question 0

5. Meaning

	Strongly Disagree	Somewhat Disagree	Somewhat Agree	Strongly Agree	Rating Average	Response Count
F1 I am proud to work for the Jackson County Road Commission.	3.1% (1)	6.3% (2)	43.8% (14)	46.9% (15)	1.00	32
F2 My work really matters.	3.1% (1)	3.1% (1)	18.8% (6)	75.0% (24)	1.00	32
F3 I feel appreciated, respected and valued at work.	21.9% (7)	34.4% (11)	25.0% (8)	18.8% (6)	1.00	32
F4 My job gives me a feeling of personal accomplishment.	3.2% (1)	6.5% (2)	29.0% (9)	61.3% (19)	1.00	31
						answered question 32
						skipped question 0

6. Work Environment

	Strongly Disagree	Somewhat Disagree	Somewhat Agree	Strongly Agree	Rating Average	Response Count
H1 If experienced harassment or discrimination; I would know where to go.	22.6% (7)	6.5% (2)	25.8% (8)	45.2% (14)	1.00	31
H2 If experienced harassment or discrimination; I would feel comfortable asking for help.	29.0% (9)	16.1% (5)	19.4% (6)	35.5% (11)	1.00	31
H3 Jackson County Road Commission treats all employees with fairness and respect regardless of their race, color, religion, sex, age, national origin, disability, or veteran status.	33.3% (10)	23.3% (7)	23.3% (7)	20.0% (6)	1.00	30
H4 My physical work conditions are conducive to fulfilling my responsibilities.	10.0% (3)	13.3% (4)	40.0% (12)	36.7% (11)	1.00	30
H5 I have materials, equipment, and resources to do my work.	6.5% (2)	22.6% (7)	35.5% (11)	35.5% (11)	1.00	31
H6 There is an effective process for addressing employee problems or concerns.	32.3% (10)	19.4% (6)	25.8% (8)	22.6% (7)	1.00	31
						answered question 31
						skipped question 1

7. Empowerment

	Strongly Disagree	Somewhat Disagree	Somewhat Agree	Strongly Agree	Rating Average	Response Count
J1 I have the flexibility I need at work to balance my work and my personal life.	20.0% (6)	3.3% (1)	40.0% (12)	36.7% (11)	1.00	30
J2 I can make decisions I need to make to do my job well.	16.7% (5)	10.0% (3)	40.0% (12)	33.3% (10)	1.00	30
J3 I am satisfied with the availability of career related training opportunities.	16.7% (5)	36.7% (11)	23.3% (7)	23.3% (7)	1.00	30
J4 Given the opportunity, I would volunteer in the community during my paid workday.	6.7% (2)	13.3% (4)	56.7% (17)	23.3% (7)	1.00	30
						answered question 30
						skipped question 2

8. Performance Evaluation (Do not circle any response if you have not received a performance evaluation.)

	Strongly Disagree	Somewhat Disagree	Somewhat Agree	Strongly Agree	Rating Average	Response Count
K1 My performance reviews help me know how well I am doing in my job.	38.5% (5)	15.4% (2)	15.4% (2)	30.8% (4)	1.00	13
K2 My performance reviews help me know how I can improve in my job.	38.5% (5)	7.7% (1)	23.1% (3)	30.8% (4)	1.00	13
K3 I have a clear understanding of how my performance is evaluated.	46.7% (7)	13.3% (2)	13.3% (2)	26.7% (4)	1.00	15
						answered question 15
						skipped question 17

9. Teamwork

	Strongly Disagree	Somewhat Disagree	Somewhat Agree	Strongly Agree	Rating Average	Response Count
L1 I receive the support I need from other Road Commission employees to do my job effectively.	16.7% (5)	13.3% (4)	43.3% (13)	26.7% (8)	1.00	30
L2 Employees have a shared public service vision and work toward the common good.	6.9% (2)	27.6% (8)	51.7% (15)	13.8% (4)	1.00	29
L3 Members of my work group perform well together.	3.3% (1)	6.7% (2)	60.0% (18)	30.0% (9)	1.00	30
						answered question 30
						skipped question 2

10. Motivation

	Strongly Disagree	Somewhat Disagree	Somewhat Agree	Strongly Agree	Rating Average	Response Count
M1 I am satisfied with the Jackson County Road Commission as a place to work.	6.7% (2)	33.3% (10)	33.3% (10)	26.7% (8)	1.00	30
						answered question 30
						skipped question 2

11. Demographics

	Union	Non-Union	Rating Average	Response Count
P4 Are you a member of a collective bargaining unit?	86.7% (26)	13.3% (4)	1.00	30
				answered question 30
				skipped question 2

12. Demographics

	0-5	6-10	11-20	More than 20	Rating Average	Response Count
P5 How many years have you been employed with the Jackson County Road Commission?	3.6% (1)	21.4% (6)	50.0% (14)	25.0% (7)	1.00	28
						answered question 28
						skipped question 4

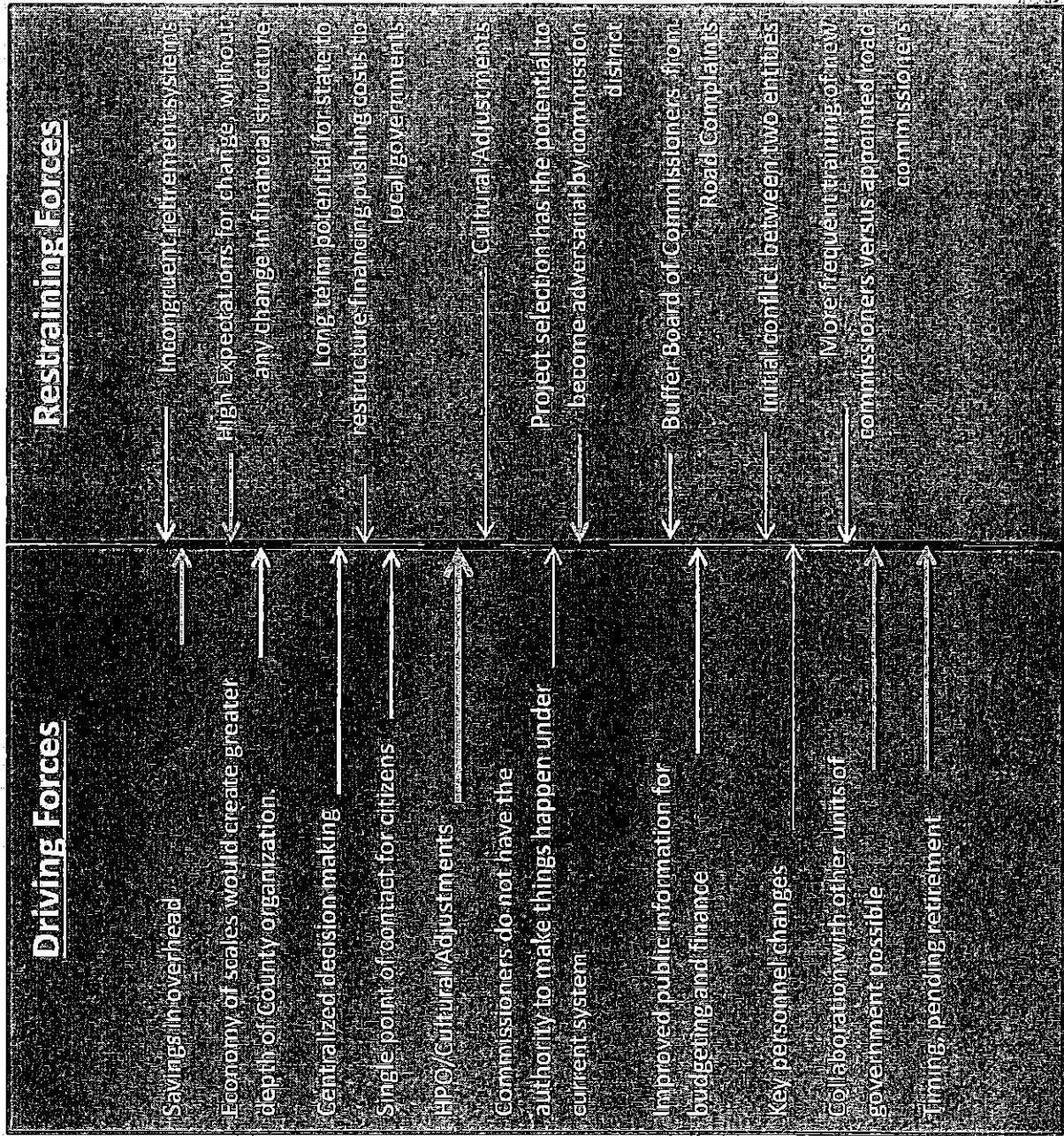
13. What do you like about working for the Jackson County Road Commission?

	Response Count
	27
	answered question 27
	skipped question 5

14. What additional things could the Jackson County Road Commission do to make this a premier place to work?

	Response Count
	27
	answered question 27
	skipped question 5

Summary of Findings



APPENDIX 32

Talking Points for Jackson.docx

Gayle Pratt <GPratt@mcrsip.org>

10/10/12

to MICHAEL, Ken, me

Good afternoon:

Attached to this email is a summary of information about MCRCSIP that I prepared based on our discussion last week, and a request from Ron. It's brief. If you want more, please let me know. I can talk about this stuff all day.

Hopefully this information will help. If there is anything else I can do, please give me a call.

Respectfully,

Gayle

Gayle Pratt
Administrator

Michigan County Road Commission Self-Insurance Pool
417 Seymour Ave., Suite 2, Lansing, MI 48933

☎: [517.482.9166](tel:517.482.9166) | 📠: [517.485.4809](tel:517.485.4809) | ✉: gpratt@mcrsip.org | 📠: [800.842.4971](tel:800.842.4971)

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Attachments area

Preview attachment Talking Points for Jackson.docx

Gayle
Pratt

speech notes



Ron Wohlford <ronwohlford@gmail.com> 10/11/12


to MICHAEL, Ken

Good morning Mike,

I've scoured all my files looking for speech notes from my Act 51 Report speech, and I've been doing it for so long, I no longer needs notes, but simply use the Act 51 Report as my guide. If I find anything else that could be helpful, I'll send it your way. I presume you saw Gayle's notes that she sent this morning. If not, let me know and I'll forward that to you.

People (2)

MICHAEL M. JONE

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MCRCSIP Facts
October 2012

- **County road commissions are exposed to liability for personal injury and property damage arising from, among other things, the repair and maintenance of roads and bridges, the operation of road commission vehicles, and the gross negligence of road commission employees. County road commissions are independent governmental entities. If the road commission becomes a department of county government, the county's exposure to tort liability will increase.**
- **The Michigan County Road Commission Self-Insurance Pool (the Pool) was formed in 1984 in response to the road commissions' inability to obtain insurance at a consistent cost.**
- **The Pool was structured to cover all of the risks of the Road Commission Boards.**
- **The Pool currently has 77 of the 83 road commissions as members.**
- **Since 1984, the Pool has paid out \$29 million for Auto Liability claims; \$19 million for Physical Damage claims and \$93 million for General Liability claims on behalf of its members.**
- **Refunds of equity totaling \$109 million have been returned to the members through 2012. As of March 31, 2012, \$50 million in equity remains in the Pool's open years.**
- **More than \$82 million in net investment income has been earned for the members.**
- **Physical damage rates are based on \$1.136 billion in assets. Reinsurance premiums are added to actuarial estimates and those totals are allocated among the members based on the value of their assets. Equivalent 2012 rates: 39¢ per \$100 of value for mobile equipment and 15¢ - 20¢ per \$100 of value for buildings and contents.**

APPENDIX 33

Nicole Moles

From: Mike Overton
Sent: Monday, October 22, 2012 1:47 PM
To: Adam Brown (abrown@co.jackson.mi.us)
Subject: FW: Road Commission doc Self Insurance Pool
Attachments: Fillable Renewal Questionnaire.pdf

Michael R. Overton
Administrator/Controller
Jackson County Tower Bld.
120 W. Michigan Ave.
Jackson, MI 49201
517-788-4335

-----Original Message-----

From: Craig Manser [mailto:CraigM@ibexagency.com]
Sent: Monday, October 22, 2012 1:25 PM
To: Mike Overton
Cc: Anne Walts
Subject: RE: Road Commission doc Self Insurance Pool

Hi Mike,

I would be happy to do this for you, but I do need a little bit more information before the MMRMA will release a quote. If you could please complete the remainder of this questionnaire, attach their most recent budget, and provide a 5 year loss history report, that will be enough for the MMRMA to get me a quote. Also, do you know an approximate date that you would be taking them over?

Thanks!

Craig

-----Original Message-----

From: Mike Overton [mailto:moverton@co.jackson.mi.us]
Sent: Monday, October 22, 2012 9:38 AM
To: Craig Manser
Subject: Road Commission doc Self Insurance Pool

Hello Craig,

This is a copy of the Jackson County Road Commission's insurance policy. Please provide me a price to add them to Jackson County's policy.

Thanks,

Michael R. Overton
Administrator/Controller
Jackson County Tower Bld.
120 W. Michigan Ave.
Jackson, MI 49201
517-788-4335

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APPENDIX 34



**Road Commission Ad Hoc Committee
Minutes
October 18, 2012**

Committee Members Present: Jim Videto, Larry Baam, David Elwell, James Shotwell, John Tallis

Staff: Mike Overton, Administrator/Controller; Adam Brown, Deputy Administrator

Invited Guests: John Brennan, Chief Steward; Alan Vogt, Foreman; Jim Spink, Supervisor; Mike Jones, County Road Commissioner

Public: Brad Flory, John Wilson, Julie Alexander, Marv Jester, Michael Way, Ken Straub, Lisa Satayut, Bob Griffiths, Donna Zimmerman

1. **Public Comment: None**
2. **Interviews**

Jim Spink, Supervisor Liberty Township

Opening remarks by Supervisor Spink: There is a culture of consolidation in the state and in the community. Supervisor Spink says he sees duplicity in government. He says there is a lot of administrative oversight in government. There are multiple boards and there are multiple finance committees, which are unnecessary.

There are accountability issues at the Road Commission. Before the Administrator/Controller published his report, most people did not know what the managing director made.

The experience and the knowledge are in the County organization between the Administrator/Controller and the Deputy Administrator to be able to oversee the Road Commission.

Supervisor Tallis - If you could re-create the system, what would it look like?
Supervisor Spink said that Director Straub should be a department head and there should be a three member advisory committee.

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Addressing the Administrator/Controller, Larry Baam said that it was his understanding that the funds needed to stay separate. That is correct. Will the county then charge back an indirect cost allocation to the Road Commission for their services? The administrator responded, yes, there will be if we share resources. We use a maximums cost allocation study is used to determine chargebacks.

John Brennan, Chief Steward of Jackson County Road Workers AFSCME Local 905

Mr. Brennan prepared a written statement that was received by the Ad Hoc Committee. In his opening remarks Mr. Brennan said that his two reasons for becoming steward was to make sure that union contracts got approved to their satisfaction and to be involved in the grievance procedure. He said that there were some communication problems but that he can't fault Ken for prohibiting the free flow of information. More of an explanation was provided in his written statement. Mr. Brennan state that he was not worried about any acts of retribution from his comments. He feels like he can freely state his opinion.

Question 1 - Do you think the level of service is going to change if it comes under the Board of Commissioners? He said he was not sure if there are opportunities for improvement and saving. That is outside of his scope. He stated that he was a mechanic and that he fixes trucks. The fact is that resources are limited. Bob and Ken have done a good job making sure we have the tools, supplies and training we need to keep the trucks up to date. They have been taking some steps with equipment over the last few years that have been very beneficial to the organization. The Road Commission shop is probably the best equipped shop he has ever worked in.

As an employee your ideas are accepted with an open mind? Yes I think so. I'm low in the organization, but I have never felt like my ideas were not listened to. We had an experience a few years ago, where we had to get a replacement part. The dealer charged to much so we went out and found another vendor to sell them for 1/3 the cost.

Do you have concerns for the level of transparency? Mr. Brennan stated, from a mechanic perspective, no, I do not. From a steward perspective, yes there are transparency problems.

Describe the level of satisfaction with the employees you work with? We have people who are content and no matter what, they will be satisfied. On the other end we have other employees who are not satisfied. Some of the employees have cause; some do not. Things could get worse. **Supervisor Tallis asked for more information on what getting worse means.** If the financial situation were to get worse we could have more dissatisfaction. There are also people who would still be content.

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Do you believe accountability is consistent throughout the organization? No, I don't. Some individuals in parts of the county are seemingly not subject to discipline. **Supervisor Tallis asked about the presence of personnel policies for discipline.** Individuals are being punished for accidental damage to equipment. **Are there any recognition programs for performance?** Other than verbal appreciation, which I have heard, I don't think so. There is an employee appreciation based on years of service, but not other than that.

Do you and the employees you work with have the training, equipment, and tools necessary to do your job? Yes. We have had two of our mechanics who have gone to a program for two days. It happens a few times a year, which is consistent with other organizations I have worked with. The equipment is much broader in terms of equipment, so it's more difficult to stay up to speed. For what we do have, we do a good job. **How much interaction do you have with Road Commissioners yourself?** Frankly, I almost never see them. The former director, Bob Zenz went through the shop regularly.

Are there benefits you can see if the Board of Commissioners were to take over? Are there operational efficiencies? I am sure there are. I have very little experience in these types of things. If you segregated the funds, you could have a lot of opportunities to share. I understand our crews worked on the Henrietta Library for 3 days. I'm not really qualified and I don't have the training to say.

Comment by Supervisor Videto - Thanked John for his written statement and said that he appreciated his openness.

Alan Vogt, Working Foreman at the Jackson County Road Commission

Do you see opportunities to work better and can you share? I think we have done well the last few years. We have been working better and saving money. Our new hot patch machine has saved a lot of money. We are getting water off the road which saves the roads. We have been taking berms off. Those are three things we haven't been doing, but we are now.

As an employee are your ideas received? I feel like I am listened to.

Do you feel like the Road Commission provides you good planning and direction? Does a 3 or 5 year plan for the organization exist? I have never heard about a 5 year plan. We are going to keep doing the things we have been doing?

Do you have concerns about the level of transparency, trust, communication, and honesty within the Jackson County Road Commission Organization? I have in the past, but we are getting better. We have really improved over the last few years. When it comes to my job, I know where I stand. **Supervisor Tallis asked about employee morale.** I have very little problems at our garage. **Supervisor Tallis asked about the discipline process.** I don't do discipline. I tell the guys what

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I think. I handle one-time issues myself, but would escalate bigger issues up the organization. I haven't had to do that.

Is there a recognition system that goes up the chain? Not really

Describe the level of satisfaction within the organization. For the most part employees are ok. There are guys that feel like they can get ahead by stepping on someone, but for the most part guys are ok.

Do you and the employees you work with have the equipment and support you need to get the job done? We are short on money, but for what we have we are doing ok. When I hired in, 10-year old trucks were antiques. Now we are happy to have a 12-year old truck. Guys are taking better care of them. We did not have a power washer before, but now we do and we wash it off. We are in a position now where we can make the trucks last longer. **Supervisor Baam asked, How long have you been with the road commission?** 27 years. **Do you think the employees consider themselves County employees?** Yes. **Would that mindset change if the county took over?** No.

Mike Jones, Jackson County Road Commissioner

Opening Remarks – Mr. Jones said that he will answer questions from the perspective of one making strategy.

How does information flow back from employees to the Board of Road Commissioners? It comes through the managing director. In some cases, we have had employees come to the Road Commission meetings. Policy includes the opportunity to come directly to the Board.

Supervisor Baam expressed his opinion that he believed anyone should always be able to access management one on one. Mr. Jones said that we as road commissioners try real hard to push things back to Ken. We try to work within the chain of command first. We (the Road Commission) need to be a last resort.

Do you see opportunities to save money and work better? I don't see a lot of opportunities. We are a legal entity. Our funding comes from Act 51. By law, we have to be separate. We can't be like the Airport or Health Department because we are a separate legal entity. He expressed that there would be problems with risk management costs.

Mr. Overton responded: I have spoken with adjoining counties and risk management. From the other two administrators, they have said it will not cost any different. I have talked to the counties own insurance who said I can't guarantee anything but it shouldn't change.

Do you feel that Road Commission provides good planning and direction? We have a long range operations plan that goes through 2014. We are proud that our

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roads are in pretty good shape. The big problem is money. We had hoped to purchase a certain amount of trucks each year, but we can't afford it. Our finance director gives us an update every month. He makes recommendations where we are to spend money.

Supervisor Tallis asked, How does the long term operation plan get developed? Mike Rand responded that it is an annual process which is included in the budget process. Input is received from all of the organization. The Board takes their recommendations and projects the financing.

Tallis asked how decisions are ultimately made. It's based on the PACER rating system. We talk together regularly to make those decisions.

Do you have concerns with the level of transparency? We try to be open. We could probably be better. We have increased our communication with the supervisors. We have a newsletter that we update monthly. We attend many meetings to improve the communication.

Do you produce an action list following the Board Meetings? I am not aware of a document like that, but we do have all employee meetings.

Supervisor Baam asked how many meetings you are expected to attend? We are expected to attend two meetings a month for the Road Commissioners. We try to attend study sessions. We are very purposeful about what conferences we attend. Jackson County is a great example throughout the state.

How many hours a week do you attend meetings? Mr. Spink recommended an advisory Committee, How effective do you think that would be? All of the commissioners not only spend time in meetings, but we all meet regularly with Ken and we take many calls. We have two former or active police officers. That gives us a good perspective. We have a real estate perspective, a human resource background, and a former County Commissioner. That really helps with the diversity of the Board. Could you make it work, probably, but it's hard to speculate on the future.

Supervisor Tallis explained that over the past two weeks, he has been approached by employees who are having bad experiences with someone in management. They refer to him as third in command. Mike says that without some information it is hard to speculate. Every organization has some level of dissatisfaction among employees.

Chairperson Shotwell - What is your schedule of review for the personnel policies? We review them regularly, at least annually. We review them as they come up.

3. Ad Hoc Committee Member Comments

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Commissioner Elwell commented: It has to be difficult to sit and answer questions with your employer in the room. I recommend that Administration should meet with employees one on one to make sure we get the most honest feedback possible.

Commissioner Videto said: It has been a very interesting process. On one hand it appears perfect out there. There are no efficiencies and no improvements to be made. On the other hand he appreciated John's open response. His response echoed things he had heard from other employees. There is a danger when a board becomes strictly a policy setting board. We went from one extreme to another. Maybe there is a better place somewhere in the middle. I haven't made up my mind yet, I'm still thinking this through.

4. Chairperson's Comments

Chairperson Shotwell - Our next interview will be with the Managing Director, Ken Struab. He believes Administration should take up the suggestion of Commissioner Elwell to interview employees.

Mr. Overton said: Adam and I thought about doing a survey through survey monkey. The managing director said they could provide email. The Administrator/Controller's Office would be happy to provide one on one discussions with employees.

5. Public Comment

Michael Way - Mr. Brennan alluded to shared services. He mentioned work done for Henrietta Library. That worked started because we are bordered by the Road Commission and the Township. Ken stepped up and said they could add to the parking lot at cost. He understands that there are rumors that the Road Commission did this work as a favor. It was totally above board and bid as it should have been.

In response to Supervisor Spinks comments, he believes there could be collaboration with the County, but he has issues with the money part. It was murky. He doesn't think the comparisons made by Supervisor Spink are the same.

Mike Rand - Road Commissioner Rand said that if we walk away from the Road Commission Risk Management pool we walk away from 9 years of potential refunds. We share services with Washtenaw County and we have townships that participate in equipment and our staff. To address Supervisor Baam's questions about time, we spend a significant amount of personal time. We try to rotate who we send to conferences to get a lot of information back to our Board. We are making better decisions based on information we bring back.

Road Commission Ad Hoc Committee Minutes

10/18/2012

Mike Jones - When this came before the Risk Pool Association, Jackson County voted to include County run Road Commissions, but the rest of the state disagreed.

John Wilson - We have heard the term chain of command. Can someone explain what that means? He posed several questions to the staff of the Road Commission.

6. **Meeting Adjourned** – Approximately 8:30

Attachment: Written Statement by John Brennan

APPENDIX 35



**Road Commission Ad Hoc Committee
Meeting Minutes
November 29, 2012**

Ad Hoc Committee Attendees: Jim Dunn, Jim Videto, Larry Baam, David Elwell, Jim Shotwell, John Tallis, David Lutchka

Staff: Mike Overton, Adam Brown

Public: Donna Zimmerman, Carl Rice, Julie Alexander, Michael Way, Mike Jones, Ken Straub, Lisa Satayut, Al Roden, Jeff Steers

1. Public Comment:

Mike Jones: Mr. Jones expressed disappointment with the ad hoc committee. He said the committee has been unfair, unethical, and unprofessional. The initial study said that there were no financial savings. Even so, the Board appointed an Ad Hoc Committee charged with finding financial savings. After there was no financial savings, the Board looked at other ways they could justify what they wanted to do. He commented that the Ad Hoc Committee's work appeared as if they were desperately looking for a reason to assume the Road Commission responsibilities.

2. Approval of Minutes

- a. November 27, 2012 - Approved

3. Administrator/Controller's Summary of Findings

- a. Attachment

We have modified the findings from the initial report to reflect the information found in the ad hoc committee process. Some items we have increased the weighting of the line and some items we have decreased the weighting of the line. See the attached chart.

4. Open Discussion

Supervisor Larry Baam: Larry asked about whether the Road Commission will lose the insurance returns. The Administrator/Controller confirmed that we would lose it from the Road Commissions current insurance carrier. The new insurer would also have a year-end dividend.

Supervisor Larry Baam: I have listened to all of the employees, staff, Road Commissioners. The question I have to answer is which organization can get to where we need to be faster, better, and cheaper. I approve of the process that we have used.

Commissioner David Elwell: He believes that all of the administrative services currently being conducted by the Road Commission would more likely be more effective combined with the County allowing the Road Commission to focus on what they do best.

Supervisor John Tallis: Would the County need to incur more cost in the short term to make the transition?

Committee members conversed about the staffing of administrative functions under the County umbrella.

Commissioner Jim Dunn: The employee survey will have no bearing on my decision. The insurance issue is the biggest concern I have about the decision, but that is something the Board of Commissioners will have to debate. I am comfortable with the reasons for my decisions.

Commissioner Jim Videto: I also have the same concerns as have already been expressed. I am appreciative of the progress the current Road Commission and staff have made. I have to ask though if this new opportunity allow us to go to a new level.

Commissioner David Lutchka: I have listened to all of the presentations. There are some concerns, but the Board of Commissioners will have an opportunity to change whatever decision it makes if it is not working.

Supervisor Larry Baam: I have been through change like this before. It may be hard, but you come through. He stressed the importance of satisfied employees in achieving high performance.

5. Next Steps

Chairman Jim Shotwell made the following motion: Because of the financial savings and synergies in Human Resources, Information Technology, Geographic Information Services (GIS), Finance and the true dollar savings from elimination of the Road Commissioners, the ad hoc committee recommends that the Jackson County Board of

Commissioners assume the powers and duties of the Jackson County Road Commission as a county department under the supervision of the County Administrator/Controller with oversight and policy direction from the County Board of Commissioners. It was seconded by Jim Videto.

The vote was unanimously approved.

Supervisor John Tallis: I would like to thank the Board of Commissioners for allowing us to serve on this committee

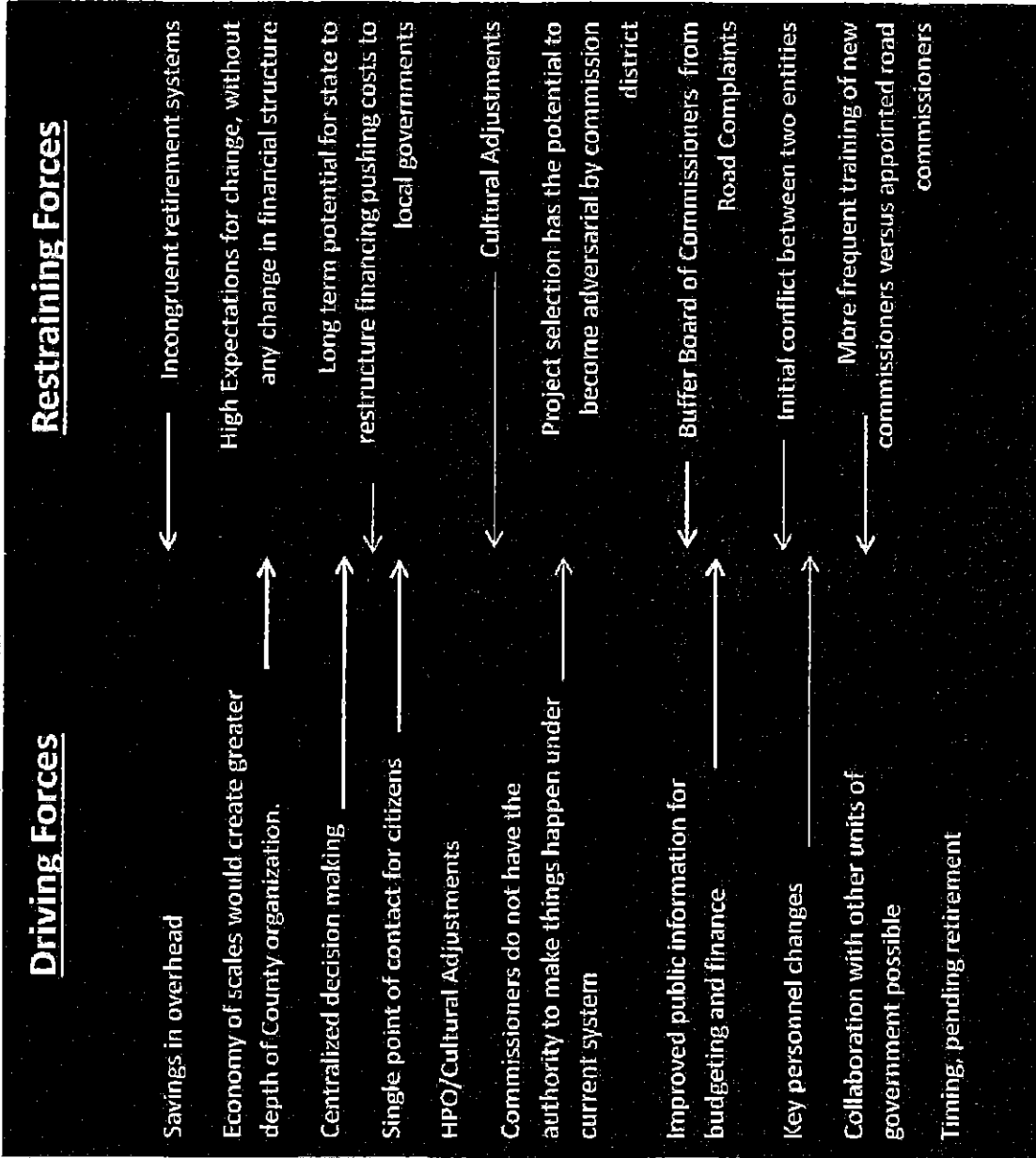
Chairman Shotwell: I would like to thank the supervisors for participating in the ad hoc committee.

6. Public Comment

Mike Jones: We do not have an HR department or an IT department. There are not a lot of savings to be gleaned there, because you (the County) already do it.

7. Adjournment

Summary of Findings



APPENDIX 36

Nicole Moles

From: Mike Overton
Sent: Thursday, December 13, 2012 9:40 AM
To: 'Craig Manser'
Subject: RE: JC Road Comm

Hello Craig,

I have requested a complete policy from the Road Commission, and I have also requested a listing of all claims over the last few years. I'll send it your way upon receipt.

Thanks,

Michael R. Overton
 Administrator/Controller
 Jackson County Tower Bld.
 120 W. Michigan Ave.
 Jackson, MI 49201
 517-788-4335



From: Craig Manser [<mailto:CraigM@ibexagency.com>]
Sent: Wednesday, December 05, 2012 2:46 PM
To: Mike Overton; Dlane Armstrong
Cc: Anne Walts
Subject: RE: JC Road Comm

Good afternoon,

I reviewed what you sent and unfortunately it only contains a portion of the policy for the Road Commission. Per your request, here are some changes if you were to switch to the MMRMA:

- Total Premium with Road Commission Pool is \$491,513; Total Premium with MMRMA is \$360,039
- General Liability deductible is \$1,000 with RC Pool, \$75,000 with MMRMA
- Employment Practices and Errors and Omissions policy with RC Pool is a "Claims Made" policy, MMRMA policy is "Occurrence" based. This means that if there was a loss under the RC Pool program after you leave, no coverage would apply. The MMRMA policy would protect employees and board members even after they leave service. I can explain this in more detail later if you would like.
- Employment Practices and Errors and Omissions policy with the RC Pool has an aggregate limit of \$10,000,000 for the entire program; MMRMA has no aggregate limit, which would protect you better in the event of multiple losses.
- Blanket Employee Fidelity and Faithful Performance Coverage (Bond) is \$50,000 with RC Pool; \$1,000,000 with the MMRMA

Please let me know if you have any questions.

Craig

From: Dlaine Armstrong [<mailto:DArmstro@co.jackson.mi.us>]
Sent: Wednesday, December 05, 2012 11:19 AM
To: Craig Manser
Cc: Anne Walts
Subject: JC Road Comm
Importance: High

Please let me know if you need anything else.

Thank you!

Dlaine Armstrong

Administrative Assistant
Jackson County Administrator/Controller's Office
120 W. Michigan Ave
Jackson, MI 49201
517-768-6621
Fax 517-780-4755
darmstro@co.jackson.mi.us

APPENDIX 37

Nicole Moles

From: Mike Overton
Sent: Thursday, November 29, 2012 6:43 PM
To: Commissioners
Cc: Sarah Lightner (me41582@yahoo.com); John Polaczyk; Adam Brown (abrown@co.jackson.mi.us)
Subject: FW: MMMRA Coverage Proposals for Jackson County
Attachments: Jackson County Renewal -Does NOT incl Road Comm.pdf; Jackson County Renewal - INCLUDES Road Comm.pdf; C2827@aos-sharp.com_20121129_184455.pdf

Importance: High

One more piece of information I received today that you should be aware of.

Please note that the \$360,039 additional cost to include the Road Commission on the County's policy is \$131,474 less than the Road Commission paid in 2012.

Michael R. Overton
 Administrator/Controller
 Jackson County Tower Bld.
 120 W. Michigan Ave.
 Jackson, MI 49201
 517-788-4335



From: Anne Walts [mailto:AnneW@ibexagency.com]
Sent: Thursday, November 29, 2012 11:10 AM
To: Mike Overton
Cc: Craig Manser; Dlane Armstrong
Subject: MMMRA Coverage Proposals for Jackson County
Importance: High

Mike,

The attached files contain two MMRMA proposals; one for the County (does not include the Road Commission) and the second for the County including the Road Commission. Page 4 of each proposal lists the premium/contribution. To include the Road Commission in the County's MMRMA coverage the additional premium is \$360,039.

If you have any questions, please contact me.
 Thank you,

Anne Walts
 Ibex Insurance Agency
 PO Box 3355
 Farmington Hills, MI 48333-3355
 248-538-0470

MICHIGAN MUNICIPAL RISK MANAGEMENT AUTHORITY COVERAGE PROPOSAL

Member:	County of Jackson	Proposal No: Q00000350
Date of Original Membership:	January 1, 1998	
Proposal Effective Dates:	January 01, 2013 To January 01, 2014	
Member Representative:	Michael Overton	Telephone #: (517) 768-6602
Regional Risk Manager:	Ibex Insurance Agency	Telephone #: (248) 538-0470

A. Introduction

The Michigan Municipal Risk Management Authority (hereinafter "MMRMA") is created by authority granted by the laws of the State of Michigan to provide risk financing and risk management services to eligible Michigan local governments. MMRMA is a separate legal and administrative entity as permitted by Michigan laws. County of Jackson (hereinafter "Member") is eligible to be a Member of MMRMA. County of Jackson agrees to be a Member of MMRMA and to avail itself of the benefits of membership.

County of Jackson is aware of and agrees that it will be bound by all of the provisions of the Joint Powers Agreement, Coverage Documents, MMRMA rules, regulations, and administrative procedures.

This Coverage Proposal summarizes certain obligations of MMRMA and the Member. Except for specific coverage limits, attached addenda, and the Member's Self Insured Retention (SIR) and deductibles contained in this Coverage Proposal, the provisions of the Joint Powers Agreement, Coverage Documents, reinsurance agreements, MMRMA rules, regulations, and administrative procedures shall prevail in any dispute. The Member agrees that any dispute between the Member and MMRMA will be resolved in the manner stated in the Joint Powers Agreement and MMRMA rules.

B. Member Obligation - Deductibles and Self Insured Retentions

County of Jackson is responsible to pay all costs, including damages, indemnification, and allocated loss adjustment expenses for each occurrence that is within the Member's Self Insured Retention (hereinafter the "SIR"). County of Jackson's SIR and deductibles are as follows:

Table I
Member Deductibles and Self Insured Retentions

COVERAGE	DEDUCTIBLE	SELF INSURED RETENTION
Liability	N/A	\$100,000
Vehicle Physical Damage	\$1,000 / Vehicle	\$15,000 / Vehicle \$30,000 / Occurrence
Property and Crime	\$1,000 / Occurrence	None
Sewage System Overflow	None	None

The member must satisfy all deductibles before any payments are made from the Member's SIR or by MMRMA.

The **County of Jackson** is afforded all coverages provided by MMRMA, except as listed below:

1. Sewage System Overflow

All costs including damages and allocated loss adjustment expenses are on an occurrence basis and must be paid first from the Member's SIR. The Member's SIR and deductibles must be satisfied fully before MMRMA will be responsible for any payments. The most MMRMA will pay is the difference between the Member's SIR and the Limits of Coverage stated in the Coverage Overview.

County of Jackson agrees to maintain, at all times, on account with MMRMA, sufficient funds to pay its SIR obligations. The Member agrees to abide by all MMRMA rules, regulations, and administrative procedures pertaining to the Member's SIR.

C. MMRMA Obligations - Payments and Limits of Coverage

After the Member's SIR and deductibles have been satisfied, MMRMA will be responsible for paying all remaining costs, including damages, indemnification, and allocated loss adjustment expenses to the Limits of Coverage stated in Table II. The Limits of Coverage include the Member's SIR payments.

The most MMRMA will pay, under any circumstances, which includes payments from the Member's SIR, per occurrence, is shown in the Limits of Coverage column in Table II. The Limits of Coverage includes allocated loss adjustment expenses.

Table II
Limits of Coverage

Liability and Motor Vehicle Physical Damage	Limits of Coverage Per Occurrence		Annual Aggregate	
	Member	All Members	Member	All Members
1 Liability	15,000,000	N/A	N/A	N/A
2 Judicial Tenure	100,000	N/A	N/A	N/A
3 Sewage System Overflows	0	N/A	0	N/A
4 Volunteer Medical Payments	25,000	N/A	N/A	N/A
5 First Aid	2,000	N/A	N/A	N/A
6 Vehicle Physical Damage	1,500,000	N/A	N/A	N/A
7 Uninsured/Underinsured Motorist Coverage (per person)	100,000	N/A	N/A	N/A
Uninsured/Underinsured Motorist Coverage	250,000	N/A	N/A	N/A
8 Michigan No-Fault	Per Statute	N/A	N/A	N/A
9 Terrorism	5,000,000	N/A	N/A	5,000,000

Property and Crime	Limits of Coverage Per Occurrence		Annual Aggregate	
	Member	All Members	Member	All Members
1 Buildings and Personal Property	178,501,652	350,000,000	N/A	N/A
2 Personal Property in Transit	1,000,000	N/A	N/A	N/A
3 Unreported Property	5,000,000	N/A	N/A	N/A
4 Member's Newly Acquired or Constructed Property	5,000,000	N/A	N/A	N/A
5 Fine Arts	1,000,000	N/A	N/A	N/A
6 Debris Removal (25% of Insured direct loss plus)	25,000	N/A	N/A	N/A
7 Money and Securities	1,000,000	N/A	N/A	N/A
8 Accounts Receivable	1,000,000	N/A	N/A	N/A
9 Fire Protection Vehicles, Emergency Vehicles, and Mobile Equipment (Per Unit)	0	10,000,000	N/A	N/A
10 Fire and Emergency Vehicle Rental (12 week limit)	0 per week	N/A	N/A	N/A
11 Structures Other Than a Building	5,000,000	N/A	N/A	N/A
12 Storm or Sanitary Sewer Back-Up	1,000,000	N/A	N/A	N/A
13 Marine Property	250,000	N/A	N/A	N/A
14 Other Covered Property	10,000	N/A	N/A	N/A
15 Income and Extra Expense	1,000,000	N/A	N/A	N/A
16 Blanket Employee Fidelity	1,000,000	N/A	N/A	N/A
17 Earthquake	5,000,000	N/A	5,000,000	100,000,000
18 Flood	5,000,000	N/A	5,000,000	100,000,000
19 Terrorism	50,000,000	50,000,000	N/A	N/A

D. Contribution for MMRMA Participation

County of Jackson

Period: January 01, 2013 To January 01, 2014

Coverages per Member Coverage Overview:	\$567,402
Stop Loss Coverage:	\$0
Member Loss Fund Deposit:	\$150,000
TOTAL ANNUAL CONTRIBUTIONS:	\$717,402

E. List of Addenda

This document is for the purpose of quotation only and does not bind coverage in the Michigan Municipal Risk Management Authority, unless accepted and signed by both the authorized Member Representative and MMRMA Representative below.

Accepted By:
County of Jackson

Proposal No:
Q000000350

MMRMA

Member Representative

MMRMA Representative

Date

Date

MICHIGAN MUNICIPAL RISK MANAGEMENT AUTHORITY COVERAGE PROPOSAL

Member:	County of Jackson	Proposal No: Q000000391
Date of Original Membership:	January 1, 1998	
Proposal Effective Dates:	January 01, 2013 To January 01, 2014	
Member Representative:	Michael Overton	Telephone #: (517) 768-6602
Regional Risk Manager:	Ibex Insurance Agency	Telephone #: (248) 538-0470

A. Introduction

The Michigan Municipal Risk Management Authority (hereinafter "MMRMA") is created by authority granted by the laws of the State of Michigan to provide risk financing and risk management services to eligible Michigan local governments. MMRMA is a separate legal and administrative entity as permitted by Michigan laws. County of Jackson (hereinafter "Member") is eligible to be a Member of MMRMA. County of Jackson agrees to be a Member of MMRMA and to avail itself of the benefits of membership.

County of Jackson is aware of and agrees that it will be bound by all of the provisions of the Joint Powers Agreement, Coverage Documents, MMRMA rules, regulations, and administrative procedures.

This Coverage Proposal summarizes certain obligations of MMRMA and the Member. Except for specific coverage limits, attached addenda, and the Member's Self Insured Retention (SIR) and deductibles contained in this Coverage Proposal, the provisions of the Joint Powers Agreement, Coverage Documents, reinsurance agreements, MMRMA rules, regulations, and administrative procedures shall prevail in any dispute. The Member agrees that any dispute between the Member and MMRMA will be resolved in the manner stated in the Joint Powers Agreement and MMRMA rules.

B. Member Obligation - Deductibles and Self Insured Retentions

County of Jackson is responsible to pay all costs, including damages, indemnification, and allocated loss adjustment expenses for each occurrence that is within the Member's Self Insured Retention (hereinafter the "SIR"). County of Jackson's SIR and deductibles are as follows:

Table I
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COVERAGE	DEDUCTIBLE	SELF INSURED RETENTION
Liability	N/A	\$100,000
Vehicle Physical Damage	\$1,000 / Vehicle	\$15,000 / Vehicle \$30,000 / Occurrence
Property and Crime	\$1,000 / Occurrence	None
Sewage System Overflow	None	None

The member must satisfy all deductibles before any payments are made from the Member's SIR or by MMRMA.

The County of Jackson is afforded all coverages provided by MMRMA, except as listed below:

1. Sewage System Overflow

All costs including damages and allocated loss adjustment expenses are on an occurrence basis and must be paid first from the Member's SIR. The Member's SIR and deductibles must be satisfied fully before MMRMA will be responsible for any payments. The most MMRMA will pay is the difference between the Member's SIR and the Limits of Coverage stated in the Coverage Overview.

County of Jackson agrees to maintain, at all times, on account with MMRMA, sufficient funds to pay its SIR obligations. The Member agrees to abide by all MMRMA rules, regulations, and administrative procedures pertaining to the Member's SIR.

C. MMRMA Obligations - Payments and Limits of Coverage

After the Member's SIR and deductibles have been satisfied, MMRMA will be responsible for paying all remaining costs, including damages, indemnification, and allocated loss adjustment expenses to the Limits of Coverage stated in Table II. The Limits of Coverage include the Member's SIR payments.

The most MMRMA will pay, under any circumstances, which includes payments from the Member's SIR, per occurrence, is shown in the Limits of Coverage column in Table II. The Limits of Coverage includes allocated loss adjustment expenses.

Table II
Limits of Coverage

Liability and Motor Vehicle Physical Damage	Limits of Coverage Per Occurrence		Annual Aggregate	
	Member	All Members	Member	All Members
1 Liability	15,000,000	N/A	N/A	N/A
2 Judicial Tenure	100,000	N/A	N/A	N/A
3 Sewage System Overflows	0	N/A	0	N/A
4 Volunteer Medical Payments	25,000	N/A	N/A	N/A
5 First Aid	2,000	N/A	N/A	N/A
6 Vehicle Physical Damage	1,500,000	N/A	N/A	N/A
7 Uninsured/Underinsured Motorist Coverage (per person)	100,000	N/A	N/A	N/A
Uninsured/Underinsured Motorist Coverage:	250,000	N/A	N/A	N/A
8 Michigan No-Fault	Per Statute	N/A	N/A	N/A
9 Terrorism	5,000,000	N/A	N/A	5,000,000

Property and Crime	Limits of Coverage Per Occurrence		Annual Aggregate	
	Member	All Members	Member	All Members
1 Buildings and Personal Property	197,149,452	350,000,000	N/A	N/A
2 Personal Property in Transit	1,000,000	N/A	N/A	N/A
3 Unreported Property	5,000,000	N/A	N/A	N/A
4 Member's Newly Acquired or Constructed Property	5,000,000	N/A	N/A	N/A
5 Fine Arts	1,000,000	N/A	N/A	N/A
6 Debris Removal (25% of Insured direct loss plus)	25,000	N/A	N/A	N/A
7 Money and Securities	1,000,000	N/A	N/A	N/A
8 Accounts Receivable	1,000,000	N/A	N/A	N/A
9 Fire Protection Vehicles, Emergency Vehicles, and Mobile Equipment (Per Unit)	0	10,000,000	N/A	N/A
10 Fire and Emergency Vehicle Rental (12 week limit)	0 per week	N/A	N/A	N/A
11 Structures Other Than a Building	5,000,000	N/A	N/A	N/A
12 Storm or Sanitary Sewer Back-Up	1,000,000	N/A	N/A	N/A
13 Marine Property	250,000	N/A	N/A	N/A
14 Other Covered Property	10,000	N/A	N/A	N/A
15 Income and Extra Expense	1,000,000	N/A	N/A	N/A
16 Blanket Employee Fidelity	1,000,000	N/A	N/A	N/A
17 Earthquake	5,000,000	N/A	5,000,000	100,000,000
18 Flood	5,000,000	N/A	5,000,000	100,000,000
19 Terrorism	50,000,000	50,000,000	N/A	N/A

D. Contribution for MMRMA Participation

County of Jackson

Period: January 01, 2013 To January 01, 2014

Coverages per Member Coverage Overview:	\$927,441
Stop Loss Coverage:	\$0
Member Loss Fund Deposit:	\$150,000
TOTAL ANNUAL CONTRIBUTIONS:	\$1,077,441

E. List of Addenda

This document is for the purpose of quotation only and does not bind coverage in the Michigan Municipal Risk Management Authority, unless accepted and signed by both the authorized Member Representative and MMRMA Representative below.

Accepted By:

Proposal No:

County of Jackson

Q000000391

MMRMA

Member Representative

MMRMA Representative

Date

Date

Michigan County Road Commission Self Insurance Pool

417 Seymour Street
Lansing, MI 48933

CONTRIBUTION INVOICE

DATE: 4/2/2012

INVOICE NO.: 4089

BILL TO:

Jackson County Road Commission
2400 N. Elm Road
Jackson, MI 49201-07643

Due Date: 5/2/2012

DESCRIPTION	AMOUNT
General Liability - Comprehensive	236,368.00
Auto Liability	34,237.00
Trunk Line Liability	21,232.00
Employment Practices & Public Officials E&O	57,194.00
Excess Umbrella	23,550.00
Employee Fidelity and Faithful Performance	250.00
Physical Damage - Licensed Vehicles	40,234.00
Physical Damage - Off-Road Equipment	16,092.00
Physical Damage - Building & Contents	38,582.00
Michigan Catastrophic Claims Association	19,720.00
Michigan Assigned Claims Assessment - Final 2011	480.00
Michigan Assigned Claims Facility Assessment	3,574.00
If installment payments desired, pay:	
\$ 245,756.50 by 05/01/2012	
\$ 122,878.25 by 06/30/2012	
\$ 130,250.95 by 08/31/2012 *	
* Includes Finance Charges of 1.0 % per month	
Please send payment with gold copy of invoice to:	
Dept. #77943 Michigan County Road Commission Self-Insurance Pool P.O. Box 77000 Detroit, MI 48277-0943	Total Contribution Due: \$491,513.00

All Contributions are due in full within 30 days from the date of the invoice.
Interest of 1% per month will accrue on amounts paid after the 30 day period.
If installment payments are desired, please contact the Pool Office at 800-842-4971 to arrange a payment schedule.

APPENDIX 38

Nicole Moles

From: Adam Brown
Sent: Thursday, December 06, 2012 2:44 PM
To: Mike Overton
Subject: Report to BOC on Road Commission Operatio Post Ad Hoc
Attachments: Report to BOC on Road Commission Operatio Post Ad Hoc.docx

Road Commission Final

Report to Jackson County Board of Commissioners

Feasibility Study for County Operation of Jackson County Road Commission

December 6, 2012



Michael R. Overton
County Administrator/Controller

Adam J. Brown
Deputy County Administrator

December 6, 2012

FEASIBILITY STUDY FOR COUNTY OPERATION OF JCRC

Jackson County Board of Commissioners

James E. Shotwell, Jr., Chairman

Michael J. Way, Vice-Chairman

Julie Alexander

Philip S. Duckham III

David K. Elwell

Clifford E. Herl

David F. Lutchka

Gail W. Mahoney

Carl Rice, Jr.

Patricia A. Smith

James C. Videto

Jonathan T. Williams

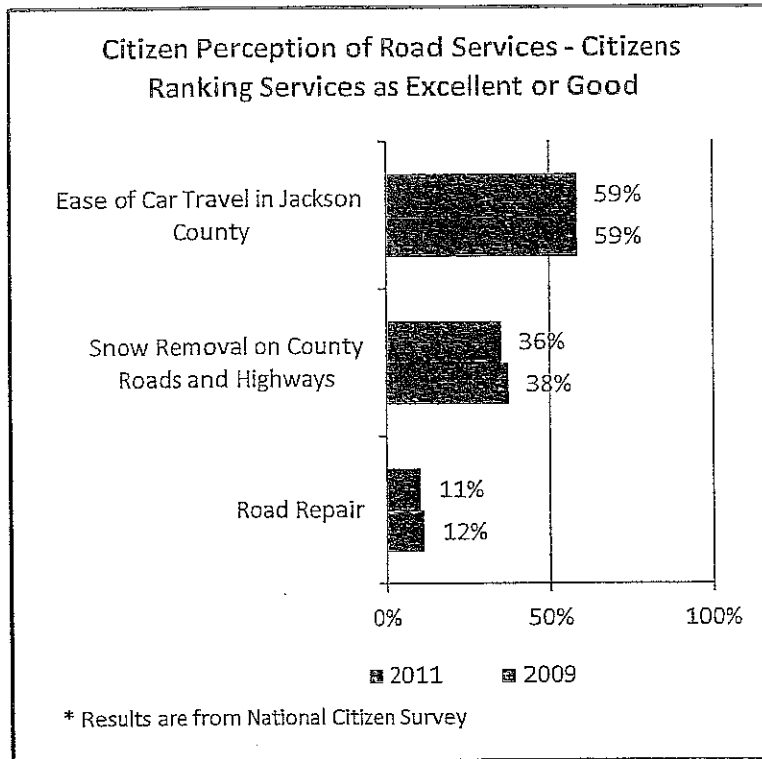
RECEIVED by MSC 11/4/2020 4:34:25 PM

Executive Summary

Earlier this year (2012) the State legislature approved amendments to Public Act 283 of 1909 which allows the Jackson County Board of Commissioners to transfer powers from the Jackson County Road Commissioners to the County Board of Commissioners. Ingham County has already moved to transfer powers and Calhoun County recently received a recommendation from an ad hoc committee for the County to assume the powers of the Road Commission. Other counties have reviewed the issue and have decided not to change anything.

Many citizens do not understand that road maintenance and construction are administered by a separate appointed body and that the Board of Commissioners and the Jackson County Administrator/Controller's office do not have any direct control or oversight for this public service.

While the Board of Commissioners may not have any formal oversight responsibilities, citizen perception is otherwise. Thus, County Commissioners frequently find themselves involved in Road Commission matters without the power to effectuate change. Citizen's perceptions are measured multiple ways. Jackson County participates in the National Citizen Survey every other year. Results from the most recent two surveys are shown to the left.



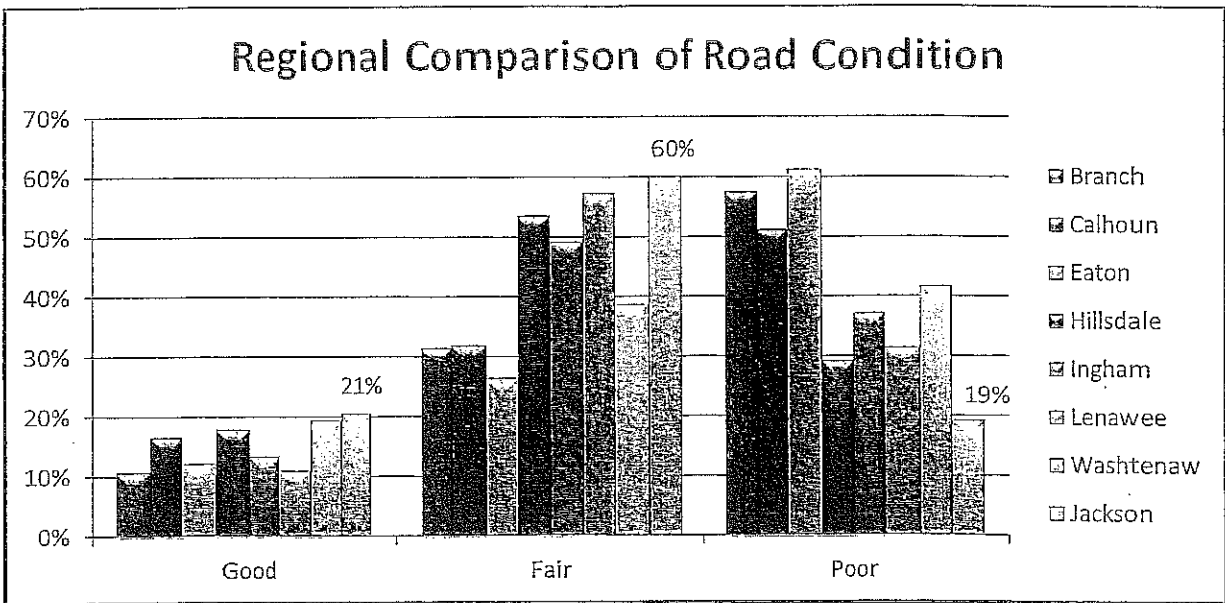
The County uses benchmark data to compare our services with other communities nationally and regionally. When compared to other communities, Jackson County stacks

up either similar-to or below their regional and national benchmarks. With respect to the ease of car travel in the County, we are similar to the national comparison, but below the north central region comparison. The north central region includes Wisconsin, Iowa, Illinois, Indiana, Ohio, and Michigan. With road repair and snow removal we rank 'much below' the national and north central region comparison.

As each state manages their road programs differently, it's important to look at where Jackson County falls in comparison to other counties who are bound to the same constraints of governance we are. When looking at just Michigan, as compared with other counties, the Jackson County Road Commission competes well. The chart on the following page shows a comparison of road conditions from each county surrounding Jackson.

December 6, 2012

FEASIBILITY STUDY FOR COUNTY OPERATION OF JCRC



The chart above suggests that the Jackson County Road Commission is doing better than our surrounding counties within the constraints in which they operate. Of all eight (8) comparison counties, Jackson had the lowest number of roads rated poor. While everyone wants good roads to drive on, the biggest inhibitor is a structural revenue problem. The revenue stream does not meet the level of service desired by citizens, nor is there the political will to change it.

With the lack of understanding by citizens about how road maintenance and construction is administered, the de facto responsibility by the Board of Commissioners, and the perception by citizens of the services provided, it is appropriate for the County to conduct a feasibility study of the potential to transfer powers from the Jackson County Road Commission to the County Board of Commissioners.

At the Board's request we have analyzed the issues surrounding the transfer of power from the Jackson County Road Commission to the Jackson Board of Commissioners. The following study outlines the different issues surrounding this decision.

While this may not represent the views of the Road Commission staff, we acknowledge that they have been very accommodating in providing us the necessary information to complete the study and providing feedback. We met with the executive staff and Road Commissioners at the outset of this study and the executive staff at the conclusion. We appreciate their contribution and openness.

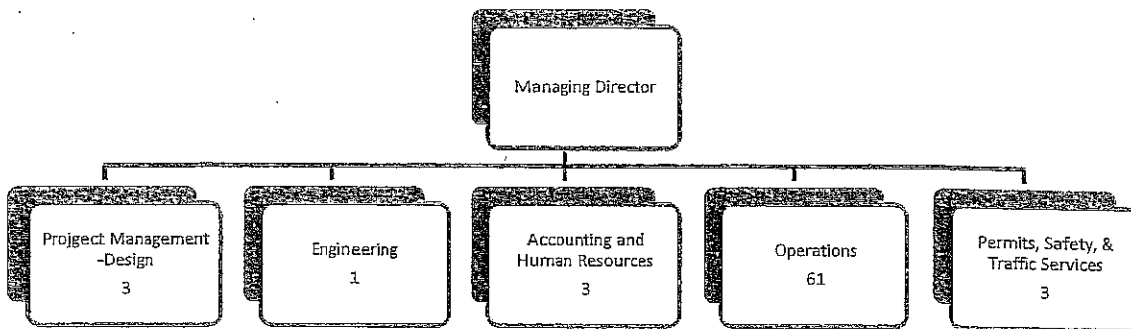
The Road Commission Ad Hoc Committee was reconvened to review the Administrator/Controller's recommendation, originally given on August 10, 2012. The Ad Hoc Committee met 6 times from September through November 29, 2012. The narrative and numbers, in the following pages, have been updated to reflect the information learned through the Ad Hoc Committee process. The Road Commission Ad Hoc Committee unanimously approved a recommendation for the Board of Commissioners to assume the powers and duties of the Jackson County Road Commission.

Basic Description of Organization

Jackson County has 544 miles of primary roads, 1,039 miles of local roads, and 280.5 miles of state trunk line, all of which are under the direct or contractual responsibility of the Jackson County Road Commission. The Road Commission's 2011 expenses totaled \$15,943,645. Revenues were slightly less at \$15,971,379.

The Road Commission is governed by a 5 member Board of Road Commissioners appointed by the Jackson County Board of Commissioners. Road Commissioners are appointed for 6-year staggered terms.

The Road Commission has 76 employees and is composed of basically 5 work functions under the Managing Director as shown below. The Managing Director reports to the 5 appointed Road Commissioners.



Personnel

The obvious savings would be the elimination of compensation for Road Commissioners. That is approximately \$28,200 per year.

Regardless of which Board, appointed or elected, has oversight for road services, a Director level position would be needed to manage this as a County department. There is a possibility that the salary may be less as a Department Head than as a Managing Director, however, it will depend on the job market for that type of position. Intuitively, even as a Department Head, the responsibility level will not change severely. The Department Head would have less responsibility for the financial and administrative functions of the organization, but the candidate pool would be roughly the same as if you were hiring a Managing Director, with the compensation expectations the same or slightly less. Savings can expect to be around \$5,000 to \$10,000 per year.

The Road Commission Administration is lean. While there will be some salary and benefit savings, it is not expected to be significant. The County Finance Director would serve as the financial officer for the Road Commission, but the County would definitely need an additional accountant knowledgeable about Act 51. Thus, there would likely be some additional savings by reducing another Director level position to that of a staff accountant. Savings from the reclassification of this position would be around \$10,000 to \$15,000.

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Our intent for both the Director and the Finance Officer position is to make these changes through attrition. Our hope is that the current staff will remain to assist with transition.

It may be possible to reorganize the Road Commission given the additional economy of scale provided by the larger County organization creating greater efficiency and effectiveness. The organizational chart suggests there are three director level positions with 2 subordinates, one director level with no subordinates, and one director level position with 60 subordinates.

Personnel Implications:

- The Road Commission Administration is lean, yet there is some savings to be gained.
- Approximately \$50,000 in reoccurring savings can be realized.
- Economies of scale are available and would also add strength and depth to the County's organization too.

Financial

The JCRC finances are in acceptable condition. Total expenses in 2011 were \$15,943,645, while revenues were \$15,971,379. They added \$27,657 to fund balance in 2011, which leaves them an undesignated unreserved fund balance of \$2,686,171.

Other Post-Employment Benefits (OPEB) – The Road Commission has a large OPEB when you look at percentage of retirement payroll similar to the County general. They have not been making the annual required contributions (ARC) and have accrued a liability on their balance sheet of \$1,758,487. They have a total OPEB unfunded liability of \$11,579,460. Even with this, they were able to reduce the ARC from \$1.27 million in 2010 to \$652,908 in 2011 by eliminating an escalator clause for retiree health insurance.

Pension System – The Road Commission has 98 Retirees, 4 inactive vested members, and 77 active plan participants, for a total of 179 members in the Jackson County Pension System. Whereas the County has closed off any new participation in the pension system, the Road Commission is still open. They are funded at a rate of 83.1%, which is much better than the General County.

A transfer of authority would give authority to the Board of Commissioners to close new JCRC participation in the pension system. As we have seen in the General County portion this would cause a short to mid-term increase in obligations for that entity.

The other factor to consider is that the Road Commission employees split the cost for the pension system, which is much greater than what is required from County General employees. Changing that arrangement would leave that provision open for negotiation, because of the potential increased contribution requirements for a closed system.

Long Term Debt – The Road Commission has very little in terms of long-term debt, other than accrued PTO. They use a pay as you go strategy (cash) for road improvements and construction.

Segregating Finances - The elimination of the County Road Commissioners and the operation of JCRC by the County Administrator/Controller do not bring any additional funds to the program. The Road Department would still operate as a component unit under the counties authority and the operation should be treated as a discrete business line, where revenues must equal expenses without county general fund support.

Risk Management – During the ad hoc process, Road Commission staff brought to our attention that the Commission has received a payout each year from its pooled insurance association (Michigan County Road Commission Self-Insurance Pool) averaging approximately \$160,000 over the past nine years. In a defensive move, this insurance organization recently voted not to extend membership to Road Organizations where County Boards have assumed the powers and duties of the Road Commission. Our Road Commission did not support this move at the time the vote was taken. It must be noted that refunds are not guaranteed, but are based on the success of the pooled insurance of all its members.

We have received a quote from the County's insurance carrier the Michigan Municipal Risk Management Association (MMRMA) which came in at \$130,000 less than the Road Commission is currently paying. This is a \$130,000 annual savings to the Road Commission for the purchase of insurance. As for the rebates, the County general fund also receives an annual rebate. The 2011 county rebate from MMRMA was almost \$200,000. These rebates are also not guaranteed, but we can assume that a County Road Department would also receive a rebate as a member of MMRMA. Thus, the savings between the annual premium and the rebate would negate any loss of refund from the existing carrier.

Facilities & Fleet – The Road Commission has been reduced in size from 101 in 2008 to 76 in 2012, with additional plans to downsize through attrition. Many of those reductions were office positions and so the office space is more than is currently needed. There may be possibilities to collaborate or co-locate.

The County has not explored combination of fleet services or maintenance, but this could be explored regardless of whether the Board takes over the Road Commission or not. The road commission garage is primarily set up to work on diesel vehicles, which is much larger than the majority of the county fleet. Even the Road Commission contracts out regular maintenance such as oil changes. The County contracts all vehicle maintenance with the exception of the Sheriff's Department.

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Financial Implications:

- Administration, where there is most likely to be savings, is already lean.
- There are savings in salaries of around \$50,000 annually.
- Incongruent retirement systems, Board would be in the DB pension business again.
- The County is considering movement to a new financial system; the potential exists to find one financial system that serves both entities.
- With savings on the insurance premiums and assuming similar county insurance rebates, the organization would likely see a net gain of approximately \$130,000 annually.
- Opportunities exist, regardless of the outcome of this study, to collaborate with fleet and facilities repair and maintenance.

Technology

The County has already worked out contractual arrangements to provide information technology services to the Road Commission. The financial benefits have mostly already been reaped.

Information Systems – The County is considering purchase of a new financial system. Should the Board of Commissioners be inclined to make this change, we would include this in our review of vendors, such that we could share a financial system, which would alleviate some redundancies in payroll, accounting, and auditing. Nearly all county road commissions use one of two off-the-shelf systems or have a customized in-house system. The in-house systems come from the larger Michigan Counties like Washtenaw and Oakland. The County would explore how cities track their road expenses, as a large number of them use the BS&A enterprise system.

Technology Implications:

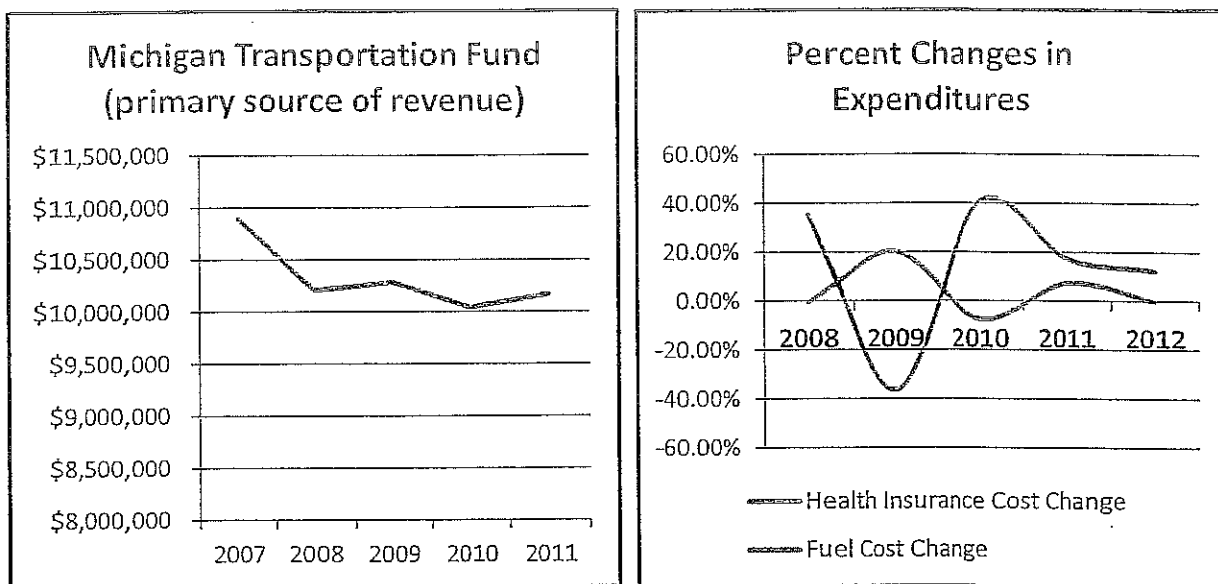
- The County already provides IT support for the Road Commission. Most savings have been realized.
- The County is considering movement to a new financial system; the potential exists to find one financial system that serves both entities.

Political

The current system provides a buffer between citizens and the Board of Commissioners. Beyond appointments to the Road Commission, the Jackson County Board of Commissioners holds no direct oversight of the agency. Appointees versus district based leadership. The change in oversight for the Road function undoubtedly changes the atmosphere in which decisions are made.

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Managing Expectations – Expectations may, at least for the short term, be high. There will be an expectation that if the Board of Commissioners assumes powers of the Road Commission that the Board of Commissioners has the ability to improve the service level. There is not additional capacity within the County's general fund to subsidize the road program. Without any revenue changes, the County would still be limited to the same constraints the hindering the Road Commission. The chart below on the left shows the change in the Michigan Transportation Fund, the Road Commissions primary source of income. That income has been reduced by 7% since 2008. During the same space of time, they have dealt with oscillating expenses such as health care and fuel show to the lower right. Expectations will be difficult to meet without revenue changes.



District Based Representation versus County Wide Appointments – The authorization of the Board of Commissioners to have direct oversight of the Road Commission puts them in a position to fight for resources, based on their constituents versus independent county-wide appointments.

Members of the Ad Hoc Committee shared concerns about the politicizing of County road maintenance and construction. The Ad Hoc Committee was made up of 3 Township Supervisors and three County Commissioners. Both elected officials and the County currently receive many calls and requests for Road maintenance and construction.

Ultimately the committee comments were that this could be overcome through a professional administration and through the strategic planning process employed by the County. Using the logic that nothing will get done, due to an elected board having oversight versus an appointed board; one might wonder how anything gets done. The current Jackson County Board of Commissioners has demonstrated its ability to agree on a plan and stick to the recommendations contained therein.

Centralized Decision Making – One of the proponent values to assuming powers of the Road Commission is centralized decision making. There is value in one group enabled to deliberate and

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balance competing priorities as opposed to having segmented advocacy boards without the need to balance between priorities. Citizens can petition one body as opposed to a fragmented system. Frankly, it's easier for Citizens to know who to call when the need arises!

Political Implications:

- Expectations will be high, should the county assume powers from the Road Commissioners.
- No additional revenues will be received, but an expectation of improved service and visible results will be expected.
- Jackson County has demonstrated its ability to agree on a common set of goals and to support the recommendations underneath those goals.

Cultural

Cultural assimilation of two groups is perhaps the most difficult form of change. Most likely due to recent painful union negotiations, county staff and Commissioners have experienced a high volume of contacts from road commission personnel expressing dissatisfaction. The union initiated negotiations late and then pushed for de-certification which halted negotiations. After the de-certification attempt failed, negotiations resumed in late December of 2011. An agreement was reached and then voted down. A second tentative agreement was passed in late March of 2012. We received a letter from the Chief Steward of the local AFSCME unit assuring us that the recent outreach to the county staff was due to negotiations. In his opinion, now that the contracts are settled, membership will feel more comfortable about their work environment.

The Ad Hoc Committee interviewed managers and the union steward. The same issues that were perceived prior to the Ad Hoc Committee were validated by the comments made by those interviewed from JCRC. As a result the Ad Hoc Committee requested the Administrator and Deputy Administrator to interview and survey employees of the Road Commission. These random phone interviews and employee satisfaction survey's confirmed that employees perceive a lack of fairness, respect, and openness with management at the JCRC. Whether valid or not, there appears to be an informal organization resisting the formal organization. One of the County's value systems is that satisfied employees yield higher production with lower costs. Thus, we believe there are financial savings and production gains to be achieved through greater cooperation between employees and management.

Differences in contracts, work conditions, and history may create an initial conflict between employees of the two organizations. The two entities will need to agree upon organizational values to resolve these issues. If this were to work long-term, the compensation and benefit structures of the two entities would need to move toward greater alignment.

Cultural Implications:

- Cultural adjustments will take time.
- There may be an initial conflict between employees of the two entities due to differences in contracts, work conditions, and history.

Management

From a management perspective, the Administrator/Controller's office is a coordinating office for the Board of Commissioners for many diverse business lines. As with other departments, the Administrator/Controller rely on trained professionals to lead their departments. The Road Department would simply be another business line to coordinate with the Board of Commissioners.

Learning Curve – Road Commission appointees are not expected to have any immediate experience or qualifications with road construction and maintenance or the scores of legislative boundaries within which they operate; however there is a steep learning curve. They are brought up to speed through coaching from professional road commission staff. Commissioners would also have to go through the educational process as do new appointees. A significant difference is that Road Commissioners are appointed for 6 years versus 2 year commissioner elections. Admittedly, the learning curve is steep and more primers will be required with every Board of Commission turnover. Commissioners, however, already hear some about roads, because most citizens do not differentiate between the County and the Road Commission and often go straight to the County Commissioner.

Many of the administrative functions the Road Commissioners oversee now would be transferred to the Administrator/Controller and supporting staff. The County already has policies and processes in place. County Commissioners would see the types of things they currently see from other departments that report through the committee system. Reports as a County Department to the Agencies and Affairs Committee would be more frequent and more in depth. Project planning would be integrated into the County's Capital Improvement Program, which is an annual process. As a County Department, we would continue the use of professional methods for determining ongoing road maintenance issues.

The Administrator/Controller recommends that County Commissioners take advantage of the same training opportunities available to Road Commissioners, particularly members of the Agencies and Affairs Committee.

Single Point of Services – One of the benefits of the Road Commission coming under the Board of Commissioners is the concept of single point of service. As noted, most citizens don't understand that the Board of Commissioners has no direct oversight over the Road Commission other than the appointment of their board members. Whether they have direct or indirect authority, constituents still hold their elected leaders responsible for the state of their local infrastructure.

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The Jackson Way – Commissioners and county staff have seen much conflict within the Road Commission over the last few years. This is typical of any organization faced with downsizing as the Road Commission has. Difficult decisions have been made by the County Road Commissioners, and they have stayed financially solvent. We believe the Road Commission could benefit from our leadership philosophy of high performance organizations, the Jackson Way, which takes an employee engagement and long-term planning approach to the business of the County. If the Board of Commissioners were to combine the organizations we would hold a retreat for Road Commission staff to introduce them to the concepts of the Jackson Way. After training, we would expect and hold employees accountable to live up to the values of our organization. Employees who can adapt to our values will find success and enjoy working in the organization.

Communication – From our perspective the communication has improved over the past few years. Our office, however, continues to receive calls, emails, and other communication from citizens frustrated with their inability to talk with someone at the Jackson County Road Commission.

We were surprised at the lack of information available on the Road Commission website with respect to their finances and budget. Neither the budget nor the annual audit was available on the website. Meeting minutes, as well, were not posted online for the public to view. Road Commission management has responded very positively to this critique and have added all of the above mentioned documents to their website.

We were provided a copy of the 2011 Road Commission budget, approximately \$16 million, which consists of a two page spreadsheet. We believe the County Road Commission would benefit from our budget approach, which includes descriptions of the programs, what funds are expended, and performance measures to show accountability.

Management Implications:

- The Road Commission would exist as another department, amidst a broad range of services under the direction of the Administrator/Controller and the Board of Commissioners.
- Steep Road Commission business learning curve for County Commissioners.
- The acquisition of the Road Commission promotes the concept of a single point of service. Citizens get confused about how to access government because of the split services.
- The County would improve the amount of information available about the Road Commission budget.
- Opportunities exist to improve communication with citizens.

Timing

Change has become the unofficial theme of local government for the last few years. The Board of Commissioners has made difficult decisions to scale back County government to live within our means. More changes will be required in the coming year to conform to unexpected challenges. Not only has County staff been reduced but the Board of Commissioners will be operating with three fewer Commissioners in 2013 as a result of the Reapportionment Commission. Assuming control of the Road Commission as a County department will require additional time from elected officials, this may be time they do not have.

The managing director is expected to retire in June of 2013. This is a key leadership position in the organization. Were the Board to assume this as a County Department, the Administrator/ Controller's Office would need to look at continuity of leadership early in the transition of authority. The selection process for a new Department Head would begin in early 2013. This would ensure not only a timely selection, but the best fit to manage the change and work with the existing County leadership. The change may occur at any date specified in a resolution before January 1, 2015.

Implications:

- The current changes amongst the Board and the organization will make assuming this responsibility challenging.
- Cleanest time to make the change would be at the beginning of the fiscal year.
- Two public hearings are required to make this change.
- Transition planning would begin quickly, but there will be no immediate visible change.

Other Collaboration

Opportunities exist for the Road Commission to do preventative and regular maintenance to county vehicles as stated earlier. This collaboration should be doable with or without consolidation. The Road Commission has expressed an interest in providing this service for the County. The County is interested in examining this as well.

The idea of collaborating with other County's for road services has been suggested. This idea could be explored. Should the Board of Commissioners choose to assume power of the Road Commission, they would be in a position to explore those efficiencies and contracts. The Road Commission has already been used, contractually, by the neighboring counties of Washtenaw, Ingham, and even Kalamazoo which has resulted in savings for the Jackson County Road Commission. Without direct supervision of the Road Commission, the Board of Commissioners cannot compel the Road Commission to seek these opportunities.

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Implications:

- Opportunities exist for regular and preventative maintenance on county vehicles with or without consolidation.
- Were the Board of County Commissioners to assume power from the Road Commissioners, collaboration with other counties could be explored as directed to the Board of Commissioners.

Procedural

The County must conduct, at minimum, two public hearings before acting by resolution to transfer powers, duties, and functions of the board of county road commissioners to the county board of commissioners. As noted in MCL 224.6 (7) the Board of County Commissioners has until January 1, 2015 to transfer powers from the appointed Board of County Road Commissioners to the Jackson County Board of Commissioners.

These two public hearings could be conducted, at the earliest, at the Boards January study session and regular meeting. The Administrator/Controller will proceed with the appropriate advertising of the public notices upon consent by the Board of Commissioners.

On day one of the conversion, no visible change occurs other than disbanding of the appointed Board of Road Commissioners. The organization continues as it now does with the same priorities and day to day functions. The Administrator/Controller's Office will meet with the managing director and develop a transition plan and timeline. Initial priorities / strategies include:

- The Jackson Way Training for all employees
- Recruitment for replacement of the managing director
- Finance staff collaboration and knowledge sharing
- Sharing of the long-term capital plan and integration into the 2014 budget

Conclusion

After reviewing the implications of the Board of Commissioners assuming powers of the appointed Road Commissioners, we find more compelling reasons to make the change than we did prior to the Ad Hoc Committee's evaluation process. There is no reason to believe that service will decline if the responsibilities of the Road Commission are taken over by the Board of Commissioners. In fact, there appears to be some monetary savings, and even more gains to be achieved through employee engagement. The following table summarizes the financial gains in terms of maximum savings and minimum savings.

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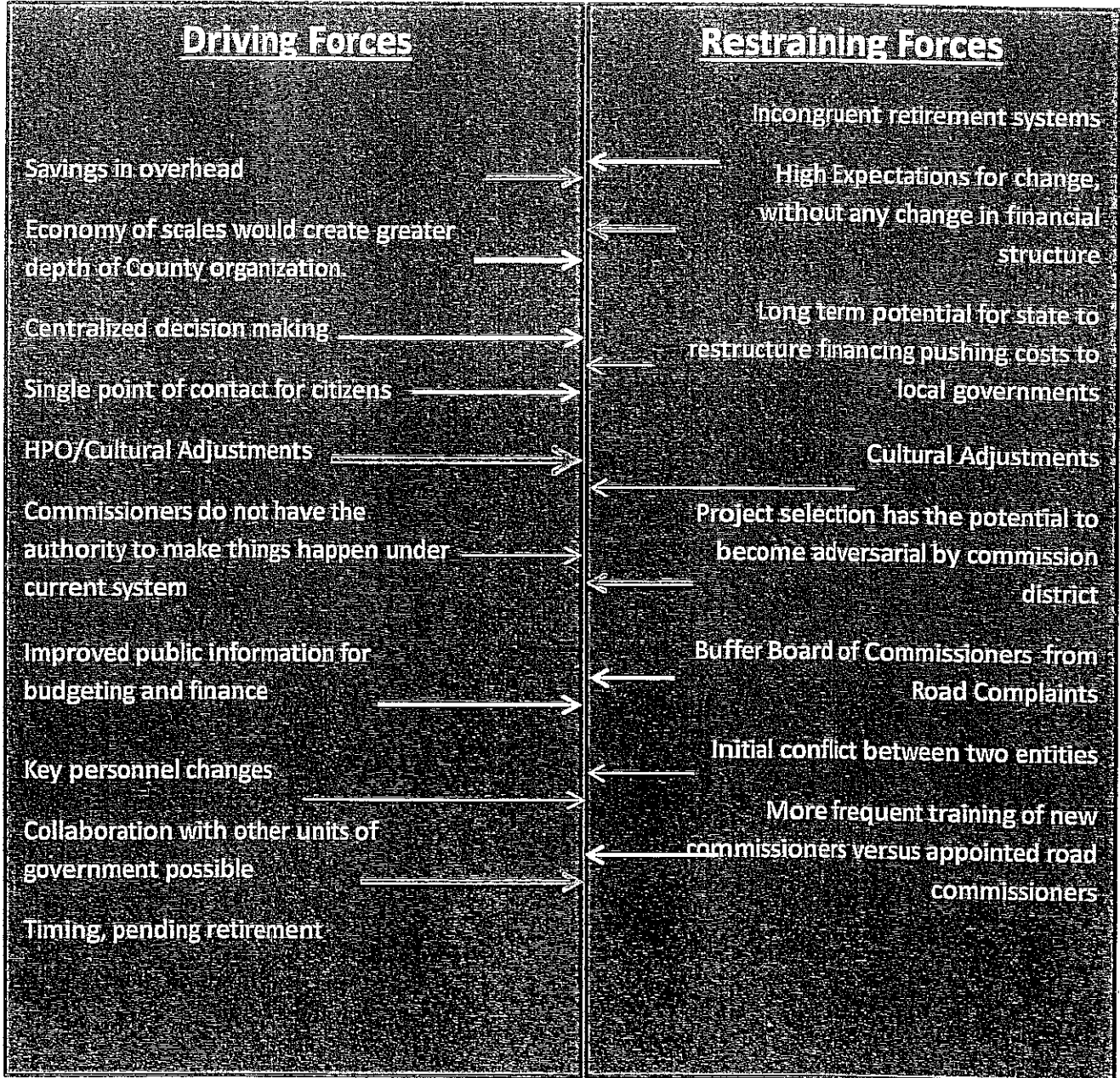
Annual Financial Savings to Tax Payers		
	Minimum	Maximum
Savings on Insurance Costs	\$130,000	\$130,000
Road Commission Salaries	\$28,000	\$28,000
Accounting Position (not immediate)	\$10,000	\$15,000
Director Position (not immediate)	\$5,000	\$10,000
Insurance Rebates from Current Carrier	-\$160,000	-\$160,000
Insurance Rebates from New Carrier	\$80,000	\$160,000
	\$93,000	\$183,000

In addition to the monetary savings we believe citizens would be supportive of having a single point of service and centralized decision making. There are restraining forces and driving forces for this question as shown graphically on the following page. The Board should carefully consider the implications and weigh the benefits with the opposing forces.

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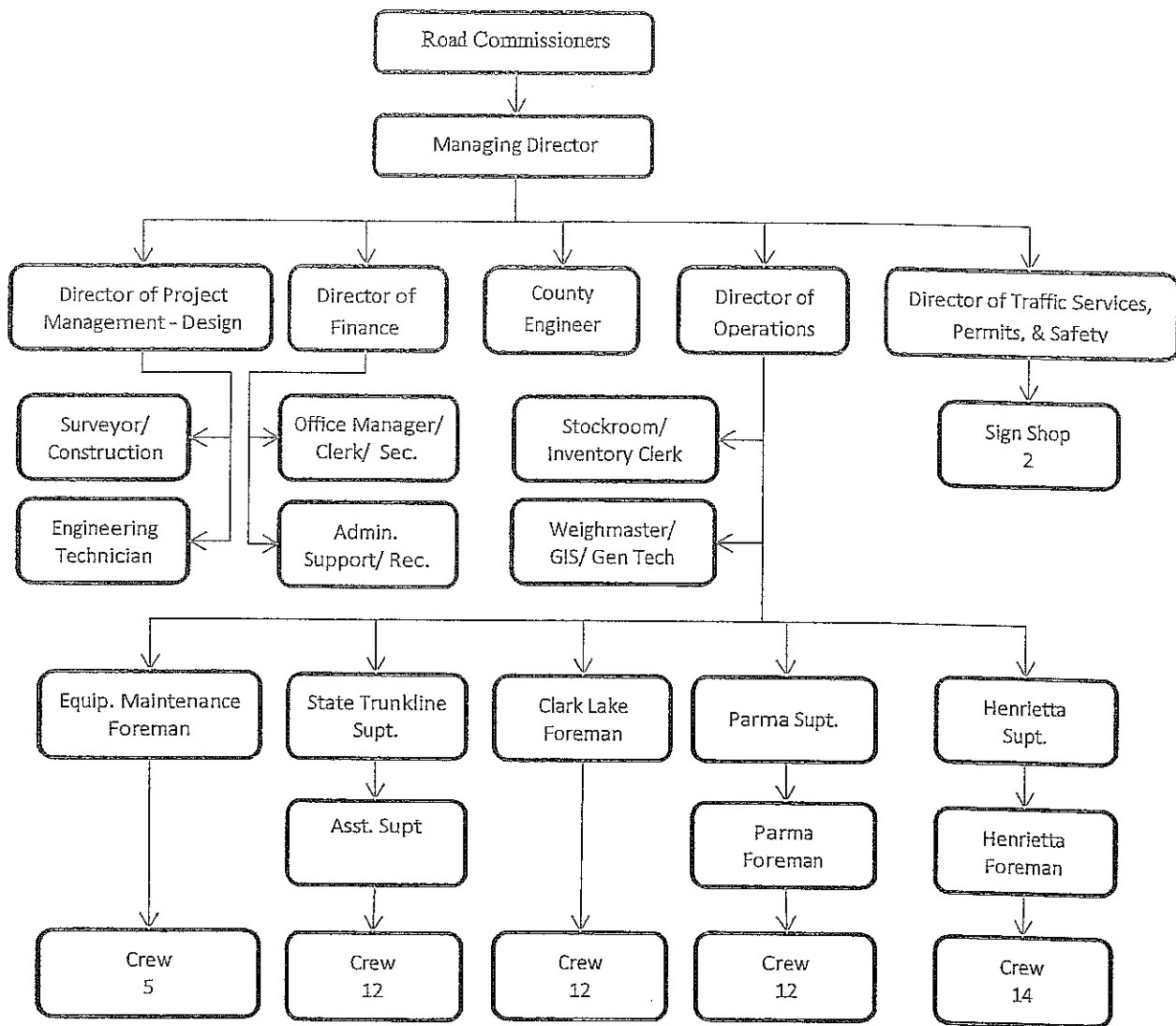
Force Field Analysis



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Appendix A

Organizational Chart



APPENDIX 39

JOHN E. BRENNAN
CHIEF STEWARD
JACKSON COUNTY ROAD WORKERS
AFSCME LOCAL 905
OCTOBER 18, 2012

AD HOC COMMITTEE
BOARD OF COMMISSIONERS
JACKSON COUNTY, MICHIGAN

Gentlemen:

About three weeks ago I received a phone call from someone at the County Administrator's office regarding the hearing today. She asked if I would come down here and speak with you men about matters at the Jackson County Road Commission and answer any questions that you might have. I am willing to do so today, and I have also decided to put down some of my thoughts in writing, as I am a better writer than I am a speaker. I am presenting all seven of you with a copy, and a copy is also being provided to the reporter from the local paper. If her employer gives permission, she is free to use any of my opinions in her news article. She is advised that as these are my opinions and observations, not necessarily material facts. The newspaper has the responsibility to fact-check everything they print.

In January of 2011 the men of AFSCME Local 905 asked me to represent them as Chief Steward. I agreed, first of all because I am proud of them for the difficult and often dangerous work that they do. Secondly I saw a need for assistance with two tasks: due process of law for grievances and negotiating a new contract. I have no interest in partisan politics, strikes, demonstrations, picketing, etc. I have no axe to grind. I am neutral in the matter of which entity manages road maintenance in Jackson County. You can hire Haliburton Corporation to manage road maintenance if your constituents will stand for it. I am confident that I will find employment no matter who is in charge. I believe that I can be objective about the subject matter at hand and can speak with freedom of speech.

The last five or six years have been difficult for the Road Commission from a financial perspective. As with most municipal governments, incoming revenues are declining due to the economic crisis. For example, gasoline purchases at the pump are currently running at about fifty percent down from where they were in 2007, nationwide. At the same time, inflation is eating away at what the declining revenue can purchase. Fuel, new equipment, repair parts and necessary supplies are rising in price. So the Road Commission, just like other municipal governments, really is hard pressed to accomplish its mission.

I have to say that I give the current management at the Commission a great deal of credit. They have managed to accomplish our core mission of keeping roads maintained with the funds available. For example, in my department, the repair garage, management has enabled employees to explore and develop innovative techniques for repairs and purchasing parts so as to save a great deal of money. From my perspective as Steward, I am satisfied that due process of law regarding the grievance procedure is happening. We were also able to negotiate a contract that I believe was fair to both the Road Commission and the union employees.

With that being said, I do have concerns about some management decisions that have been made over the past couple of years. I will express them now, as you have the responsibility to make a weighty decision regarding the Road Commission and I don't believe that it would be proper for me to withhold my observations and opinions on matters at 2400 N. Elm Rd.

One area of concern is that of key at-will employees, particularly at the management level. In the autumn of 2010, Mr. Ron Wohlford was employed as Director of Finance, to replace Mr. Charles Walker, who retired prematurely due to poor health. Mr. Wohlford was able to secure his health insurance at five percent of cost, contrary to JCRC policy for new employees since 2004, when it was set at ten percent. Also, Mr. Wohlford was allowed to work two days at JCRC here in Jackson, and two days at home, due to his residence being in Cadillac.

Now this strikes me as being unusually generous, as municipal governments are notoriously stingy these days. Maybe I'm wrong. It could be that Mr. Wohlford saves the Commission enough money that he was in a position to negotiate a favorable deal like this. I can't fault a man for that. But I think that you men should determine for yourselves if this was proper and ethical for the Road Commission to do.

I do appreciate that in hiring Mr. Wohlford the Road Commission was bringing in fresh outside talent. That's been rare here in recent years. I've thought for a long time the Road Commission was too "inbred" where human resources are concerned. By that I mean the tendency of management to fill key positions only from within the organization, with interviews of outsiders being held really only for show. When you do that, you hurt the organization because you deprive it of fresh approaches to solving problems that new employees can often bring along.

Even worse though, promoting people from within who really aren't ready yet, often makes it look like the top manager is "circling the wagons", so to speak, protecting his little kingdom with loyal "yes men".

Take the position of Director of Operations at the Road Commission. I am not going to judge the man who occupies the office as to whether he is qualified or not. Nor as to how well he is doing his job. But it does seem unusual to take someone who worked for a couple of years as a truck driver and then in the course of about a year, is promoted first to Stockroom Clerk, and then to Equipment Supervisor and then to Director of Operations. All in about a year.

Can it really be true that no suitable talent from the outside world applied for this position? Or is it just possible that the successful applicant was rewarded for being from the right family, or having political connections, or for demonstrations of personal loyalty for the Managing Director? These are tough questions, painful to ask, but they need to be asked, and answers found, by this Ad Hoc committee.

Take the position of receptionist, the gatekeeper for the realm. The position became open when Kathy Tarnowski was suddenly fired late in the summer of 2011. Another truck driver "temporarily" filled the position while a search was made for a replacement.

From my work station in the repair garage, I witnessed a dozen or more hopeful women

applicants approach the front desk, presumably with resumes and job applications. Evidently none of them were as qualified as the truck driver, because he got the position of receptionist permanently. More questions to be asked, and answered by this Ad Hoc committee.

While I'm thinking about people being fired, an exceptionally good one, Donna Zimmerman, our former Human Resources clerk, was suddenly let go in June of 2011. She was replaced partly by adding more responsibilities to other administrative employees and partly by "farming out" some tasks to Cadillac Insurance Company, which firm also became our health insurance broker.

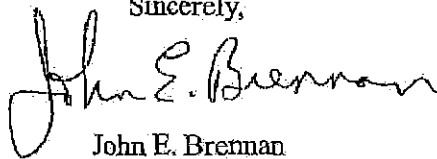
At the same time that all of this was happening, a local firm, JFP Benefit Management, complained in writing to the Road Commission about not being allowed to bid for this same health insurance brokerage business. The owner of JFP stated that Mr Wohlford broke appointments and was eventually "too busy" to even discuss the matter over the phone. The folks at JFP were soon told that they were "too late" for the bidding.

In my view, a big red flag should have popped up in this town over the matter. It should now, for this Ad Hoc committee.

There may be perfectly legitimate explanations for these concerns. These may be things that you are already aware of, and have discussed among yourselves. Maybe you have decided that there are no serious ethical issues or conflicts of interest involved. If you and your constituents are satisfied, then I'm satisfied, and you won't hear another word from me about the matter.

But if you haven't done a proper investigation, I think that you owe it to yourselves and the people of Jackson County to do so. Please start by interviewing terminated employees and more current union employees, folks who are not terrified of being fired for expressing critical opinions.

Sincerely,



John E. Brennan
Chief Steward

APPENDIX 40



CONFIDENTIAL UPDATE

Greetings Commissioner,

December 21, 2012

Road Commission – Had a meeting with Ken Straub, Tony Philips, and Bob Griffiths this week at their request. They wanted to discuss what they could expect if the Commissioners assumed responsibility for the Road Commission. I explained that there would not be wholesale change, that we would systematically review policy and procedure, and schedule HPO training for all of management and employees. They indicated that they have advertised for the Ken's position and received 9 resumes of which Ken stated that 5 were good ones. I wish they would have waited for you to make a determination before advertising Ken's position, he's not retiring until June. They also agreed to engage Ron Wohlford contractually to continue as Finance Director through April. Apparently, they have been training an existing employee to help with the bookkeeping. Not to take Ron's place, but to assist. This might prove to be a significant cost savings if she really can do the work. She could work in our Finance Department under our Director who is a CPA, thereby allowing us to not replace Ron Wohlford.

In answer to the question about the County's insurance provider distributions/dividends, MMRMA only started a distribution program in 2006. When asked why, the answer was, it took that long to build up enough reserves to be able to return some since they try to keep their rates as low as possible. Since 2006 they have returned \$806,657 to Jackson County. This breaks down as follows:

2006	\$15,962
2007	\$26,379
2008	\$56,560
2009	none
2010	\$60,432
2011	\$195,515

2012 \$451,809

They continued to increase the amount of the distribution because the amount of their reserves has continued to grow. However, they now expect the amount of distribution to level off and fluctuate with overall performance of investments and claims.

MMRMA's insurance policy and MCRCSIP are similar save for the following:

Total Premium with Road Commission Pool is \$491,513; Total Premium with MMRMA is \$360,039

General Liability deductible is \$1,000 with MCRCSIP and \$75k with MMRMA. I have made enquiry, but not received an answer as to why the Road Commission needs a deductible more in line with one's personal auto verses a multimillion dollar organization. In fact, MMRMA does not offer anything less than \$75k. When asked why, I was told it's not cost effective/practical for organizations our size to have such a low deductible.

Employment Practices and Errors and Omissions policy with MCRCSIP is a "Claims Made" policy, MMRMA policy is "Occurrence" based. This means that if there was a loss under the MCRCSIP after you leave, no coverage would apply. The MMRMA policy would protect employees and board members even after they leave service. It's sort of a way of making it less likely that you'll ever leave...too great a risk.

Employment Practices and Errors and Omissions policy with the MCRCSIP has an aggregate limit of \$10 million for the entire program, meaning all the Road Commissions covered combined; MMRMA has no aggregate limit, which would protect the County much better in the event of multiple losses from Counties across the State.

Blanket Employee Fidelity and Faithful Performance Coverage (Bond) is \$50k with MCRCSIP; \$1 million with the MMRMA.

Jackson County Medical Care Facility – This will most likely come up in January, so I want to give you a heads-up on two issues. First, the JCMCF sent two employees to purchase properties adjacent to the current facility at the county tax sale. The problem is that the JCMCF does not own any property. It is all in the name of Jackson County. Essentially, they were buying property on behalf of you without your permission. One of the properties has a dilapidated house on it, and the city is asking for money to demolish the structure. For now, they have been advised not to pay that charge. They will likely be coming to the Board in January to request the Commissioners to accept the two properties they purchased. It's unclear what will happen if the County does not accept them. If nothing is done they will eventually end up back in the treasurer's hands

(over a 3 year process). In the interim, it is unclear who would hold legal ownership. As you can see it will be a very messy issue.

Secondly, last month the Human Services Committee approved the use of MOE funds for a payout of a tenant (Community Respite Center) at the JCMCF. Our office did not have time to review it, so we pulled it from the agenda. We are now learning a little more about the lease. The original lease was approved by the county in 2001. A donor paid a lump sum amount, over three payments, to the JCMCF for Community Respite Center in lieu of a monthly or annual lease payment. As I understand there were no provisions to pay the amount back if the lease ended. In 2008 the JCMCF renegotiated the lease without the knowledge of the Jackson County Board of Commissioners and thereby committed to giving back some of the amount donated should the lease be ended by either party. We do not know the logic of why they renegotiated the lease yet, but we do believe they did not have the authority to renegotiate a lease between Jackson County and the Community Respite Center. Assuming that is true, they would still be bound to the terms of the original lease, so we believe. I'm not an attorney...just sound like one occasionally.

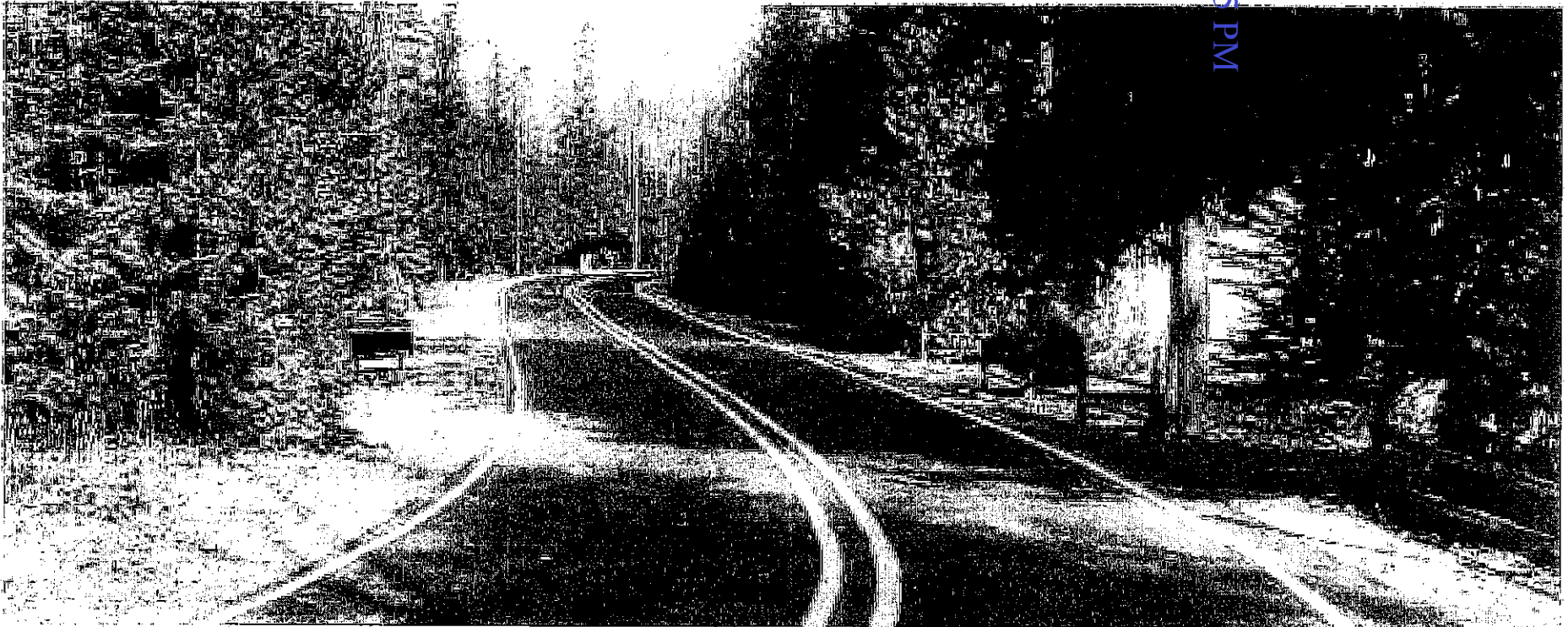
Health Officer Agreement - We received a draft health officer agreement from Allegiance. It was a pretty good draft to start from. Adam and I added in a little language of our own as well as suggestions we received from Health Department Employees that gave us ideas. It is now in our attorney's hands for review. We are trying to make the January meeting to keep the process moving forward.

Riverwalk - It continues to come down. We've had some water damage in Allegiance, but thus far they have been cooperative and understanding. It's difficult to keep the water out while tearing down the attached building.

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4/20/10 4:34:25 PM



Feasibility Study for County Operation of Jackson County Road Commission

To Jackson County Board of Commissioners

August 10, 2012

4/20/10 4:34:25 PM

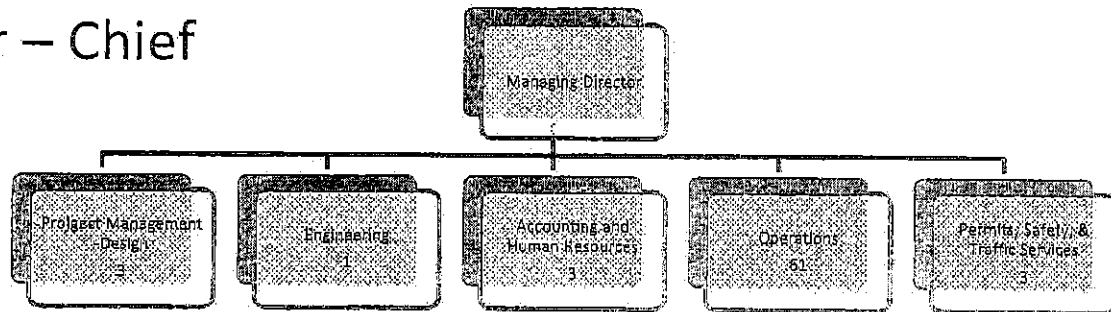
Organizational Profile

Organization

- \$16 Million Budget
- 5 member Board of Road Commissioners
 - Appointed to 6-year staggered terms
- Managing Director – Chief Executive
- 76 employees

Responsibilities

- 544 miles of primary roads
- 1,039 miles of local roads
- 280.5 miles of state trunk line

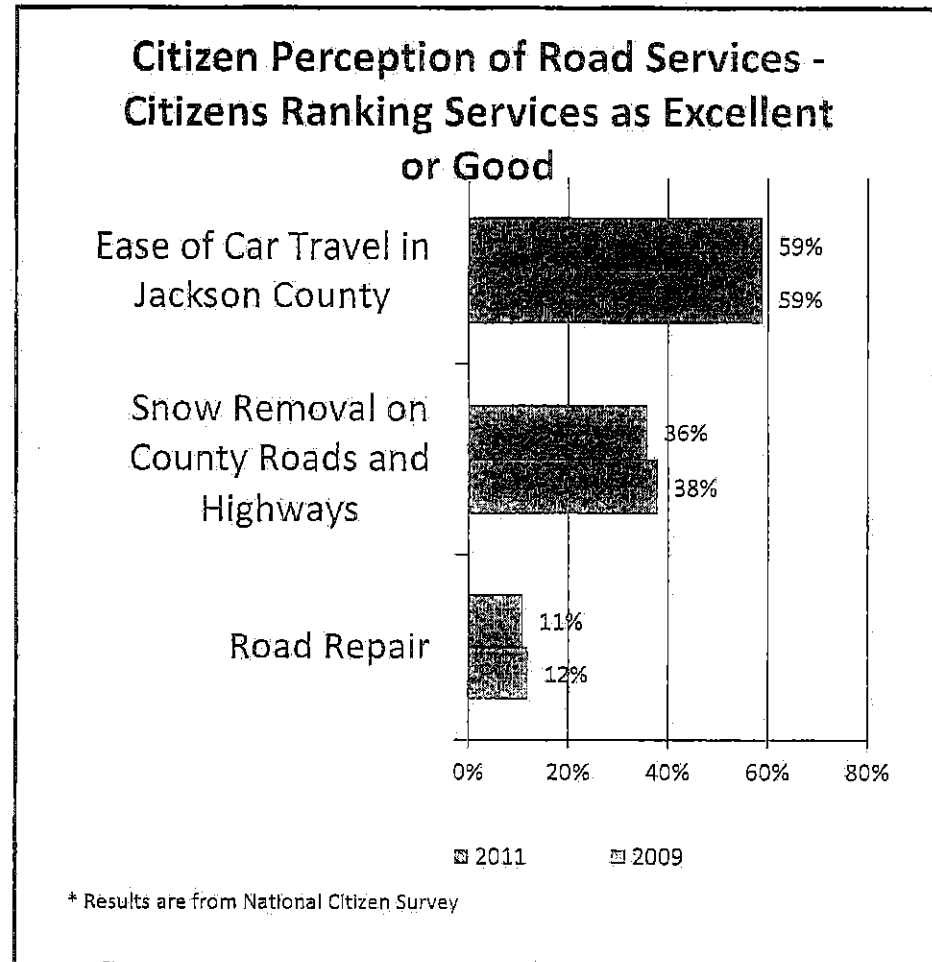


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Citizen Perception

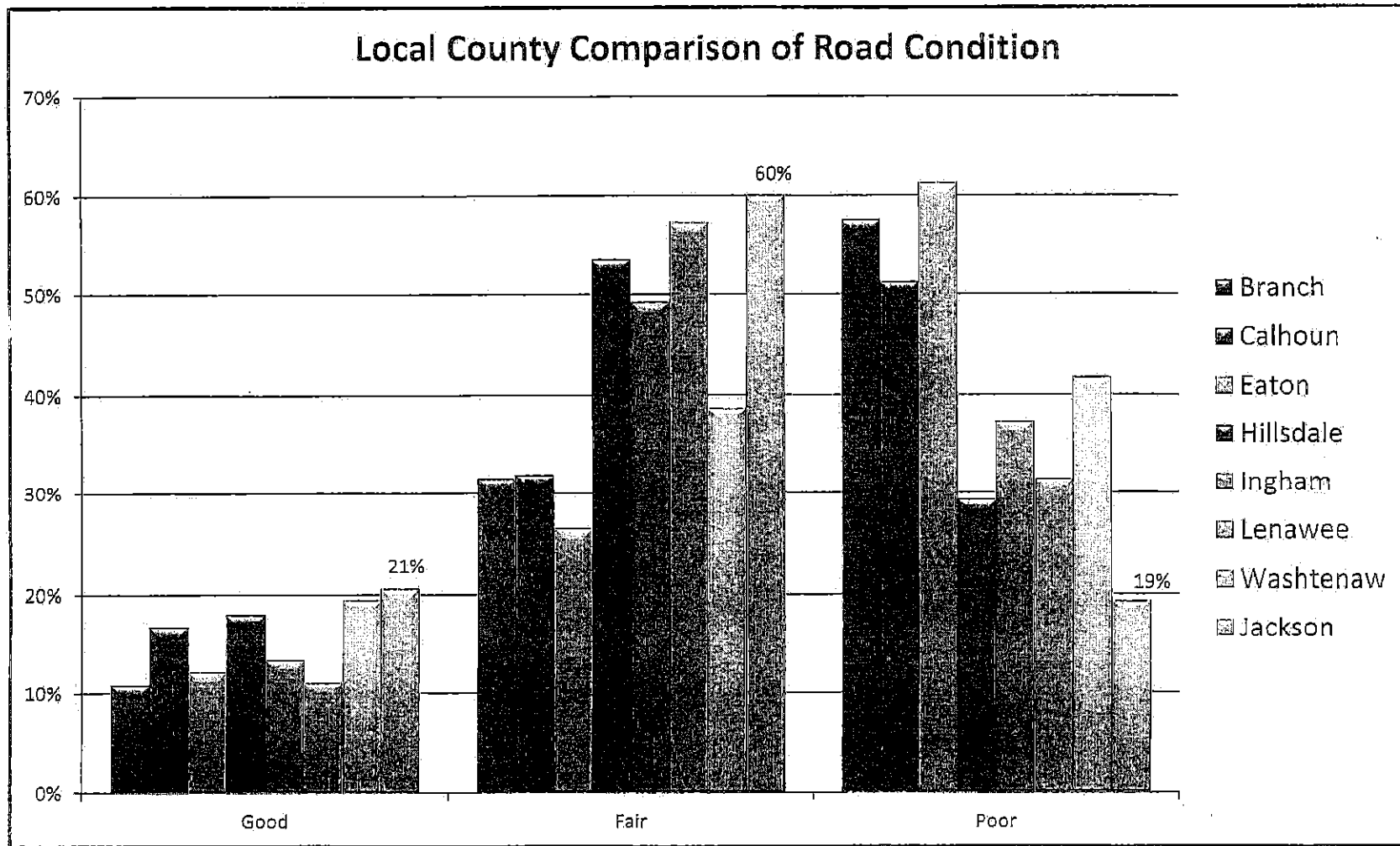
- Ease of Car Travel – similar to national comparison but lower than regional
- Snow Removal & Road Repair – much below national and regional comparison

Regional includes Wisconsin, Iowa, Illinois, Indiana, Ohio, & Michigan.



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Comparison of Road Conditions



4/20/10 4:34:25 PM

Personnel

- The Road Commission Administration is lean, yet there is some savings to be gained.
 - Employee verses Director
- Economies of scale are available and would also add strength and depth to the County's organization too.
 - Accounting position
- Road Commission would benefit from County's professional HR Department.

Financial

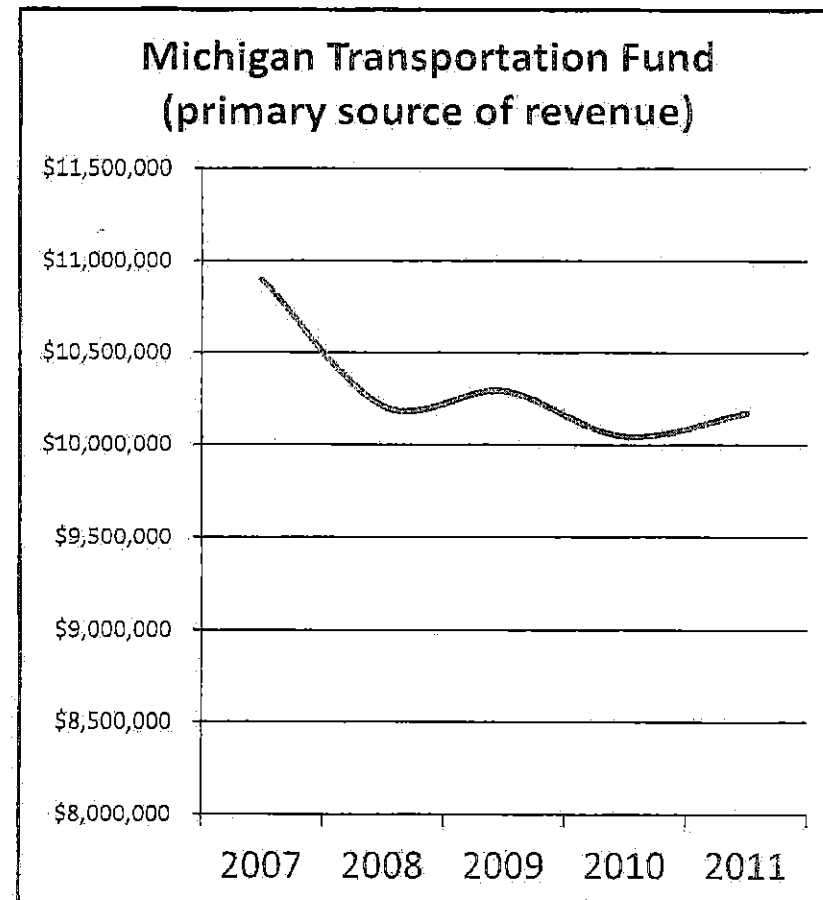
- Road Commission Board savings about \$28,000.
- Administration is already lean, but some savings.
- Incongruent retirement systems, Board would be in the DB pension business again.
- Opportunities exist to collaborate with our vehicle fleets and facilities repair and maintenance.

Technology

- The County already provides IT support for the Road Commission. Savings have been realized.
- The County is considering movement to a new financial system; the potential exists to find one financial system that serves both entities.

Political

- Public expectation for road improvements will increase.
- No additional State revenues will be received, but a reduction in administrative expense is anticipated.
- May create an adversarial relationship among Commissioners.



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Cultural

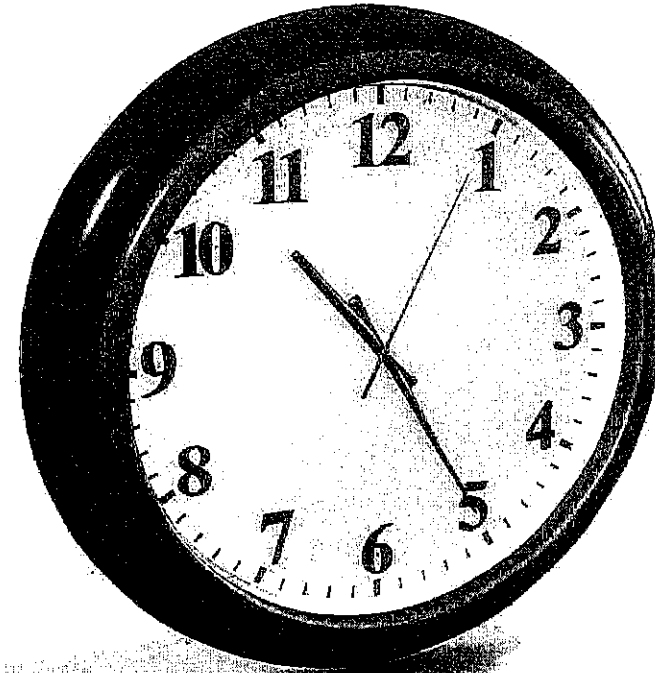
- Cultural adjustments will take time.
- There may be an initial conflict between employees of the two entities due to differences in contracts, work conditions, and history.
- The Jackson Way - HPO

Management

- The Road Commission would exist as another department, amidst a broad range of services under the direction of the Administrator/Controller and the Board of Commissioners.
- The acquisition of the Road Commission promotes the concept of a single point of service. Citizens become frustrated with poor access to government because of the split services.
- The County would improve the Road Commission budget.
- Opportunities exist to improve communication with citizens and employees.

Timing

- The County Board is about to be reduced and reorganized, this adds to the challenge of assuming Road Commission responsibilities.
- Cleanest time to make the change would be at the beginning of a fiscal year.



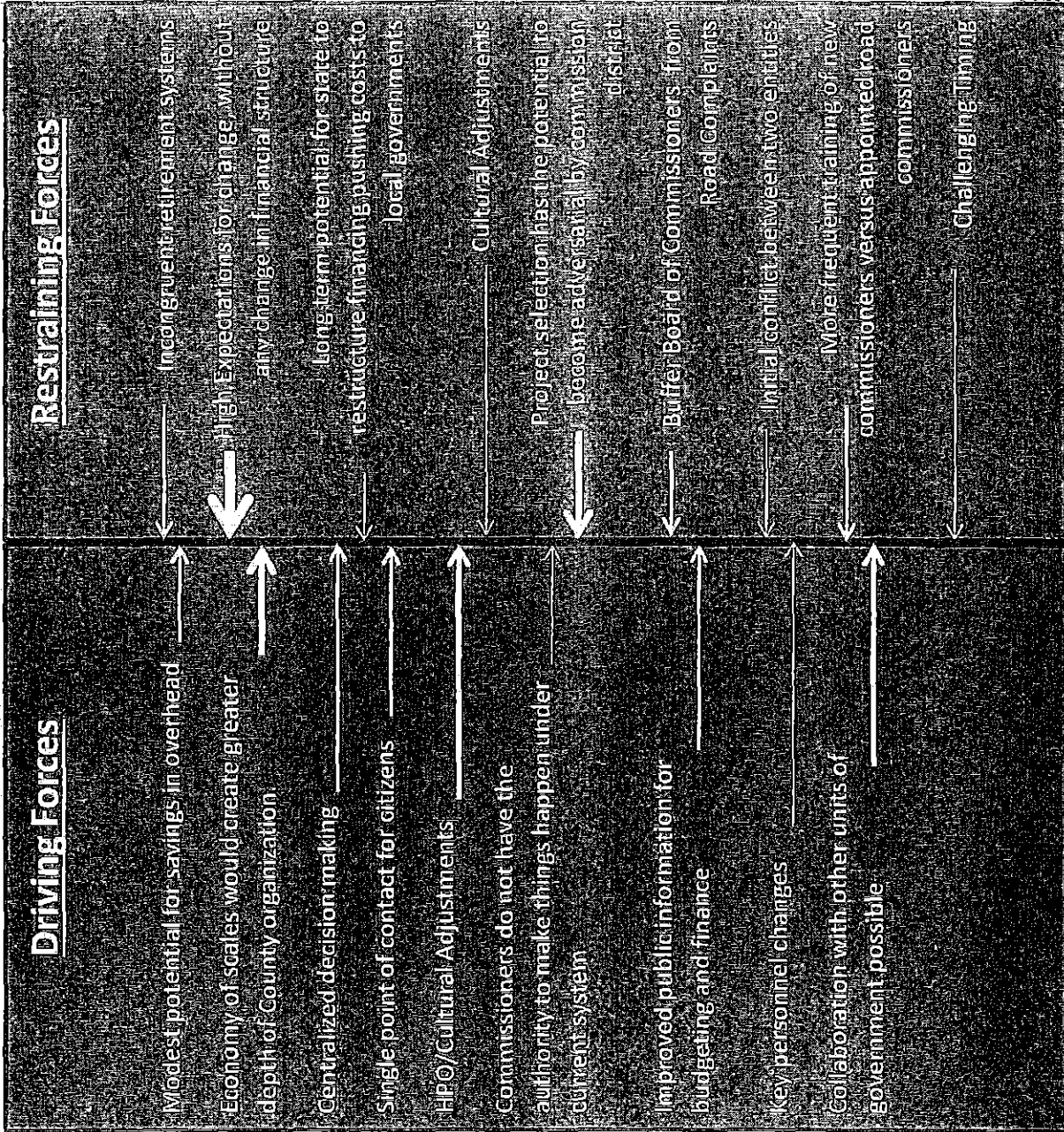
Other Collaboration

- Opportunities exist for regular and preventative maintenance on county vehicles with or without consolidation.
- Current Road Commission has various agreements for services with surrounding Counties.
- If the Board of County Commissioners assume responsibility for Jackson County roads, collaboration with other counties could be further explored as directed by the Board of Commissioners.

Procedural

- County has until January 1, 2015 to make change.
- Must act by resolution after two public hearings.
- If County Commissioners desire to give further consideration to assuming the Road Commission powers, we recommend the appointment of a special ad hoc committee.

Conclusion



APPENDIX 41

CLASSIFIED

www.milve.com/classified

Jackson Citizen Patriot

ANNOUNCEMENTS
Bands/Music
Lost & Found
Personals

MERCHANDISE
Antiques
Appliances
Garage Sales

FINANCIAL
Investments
Stocks
Money to Loan

PETS & FARMS
Farm Equipment
Livestock & Feed

RECREATION
Boats
Camps
Snowmobiles

TRANSPORTATION
Cats
Trucks
Vans

EMPLOYMENT
Jobs
General Help
Services

REAL ESTATE
Homes-for Sale
Apartment
Commercial

BARGAIN CORNER
Business Bargain
Items \$1,000
Wanted to Buy

TO PLACE YOUR CLASSIFIED AD - Visit us online at: milve.com/place

OR CALL US AT: 768-4872 OR 1-877-370-3532

Holiday Deadlines

The Classified Department will be CLOSED December 25, and January 1 to observe the Christmas and New Year's Holidays. Please check the following schedule for early deadlines:

Publication	Deadline
Sundays	Mon., Dec 24 3pm
Tues., Jan. 1	Mon., Dec 31 3pm

OBITUARIES

Publication	Deadline
Tues., Dec. 25	Mon., Dec 24 2pm
Tues., Jan. 1	Mon., Dec 31 2pm

Public Notice: Jackson County, Missouri. The Jackson County Board of Commissioners will hold two public hearings on whether to depose the Road Commission and assume the responsibility of County road maintenance. The first public hearing will be on January 2, 2012 at 7:30 AM and the second on January 31, 2012 at 7:30 AM. Both hearings will be held in the 5th floor of 325 West Main Street, Jackson, MO 64501.

PETS & FARMS

STATE OF MISSOURI COUNTY OF JACKSON
MAYOR MARY PETERS is hereby appointing...

CAVALIER KING CHARLES
Small dog, black and white, 12 weeks old, \$150. Call 768-4872.

RECREATION
2011 Yamaha Ski-Doo snowmobile, \$1,200. Call 768-4872.

EMPLOYMENT

DRIVER/THALES
Wanted Now! Earn \$10/hr per week. No experience needed. Call 768-4872.

EMPLOYMENT
Seeking experienced salesperson for home care services. Call 768-4872.

REAL ESTATE

COMMERCIAL
Investment opportunity in downtown Jackson. Call 768-4872.

RESIDENTIAL
Beautiful home in quiet neighborhood. Call 768-4872.

BARGAIN CORNER

NEW LOW PRICE
Don't find what you're looking for in Bargain Corner? Merchandise ads arranged by classification feature lots more great stuff. Also view searchable classified ads from the newspapers around the state at milve.com.

TRANSPORTATION

TRUCKS
2011 Ford Super Duty pickup truck. Call 768-4872.

VANS
2010 Chevrolet Express van. Call 768-4872.

FINANCIAL

STOCKS
Investment services available. Call 768-4872.

MONEY TO LOAN
Personal loans available. Call 768-4872.

ANNOUNCEMENTS

LEARN TO DRIVE
Professional driving instruction. Call 768-4872.

LOST & FOUND
Lost wallet containing ID and cash. Call 768-4872.

RECREATION

BOATS
2011 Boston Whaler boat. Call 768-4872.

CAMPS
Camping gear and accessories. Call 768-4872.

Holiday Tree And Gift Guide

To be included in this feature call 616.222.5222 or 800.878.1511 Ext 25232

SCANDINAVIAN TREE FARM
1271 W. Main St., Jackson, MO 64501

Full-Time Employment Opportunity

Driver and Warehouse Employees

Must Possess Class A CDL, Clean MVR & 3 Years Commercial Driving Experience Preferred, Excellent Customer Service Skills required. We dispatch local routes out of this facility with limited overnights. Starting rate is \$18.00 per hour. Overtime is paid after 8 hours worked daily.

Warehouse Employees:
This position requires employees to be customer-oriented, self-motivated, able to perform manual lifting and able to tolerate varied temperatures. Looking for qualified individuals that are schedule-flexible and committed to working various hours and shifts each week. Prior forklift experience is also desirable. Starting rate is \$18.00 per hour, with pay increases available annually. Overtime is paid after 40 hours worked weekly.

You MUST apply online at milve.com beginning Monday, January 7th, 2013

Applications will be accepted online through Friday, January 11th, 2013. Please: No Phone Calls.

TRANSPORTATION

TRUCKS
2011 Ford Super Duty pickup truck. Call 768-4872.

VANS
2010 Chevrolet Express van. Call 768-4872.

EMPLOYMENT

DRIVER/THALES
Wanted Now! Earn \$10/hr per week. No experience needed. Call 768-4872.

EMPLOYMENT
Seeking experienced salesperson for home care services. Call 768-4872.

REAL ESTATE

COMMERCIAL
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ANNOUNCEMENTS

LEARN TO DRIVE
Professional driving instruction. Call 768-4872.

LOST & FOUND
Lost wallet containing ID and cash. Call 768-4872.

APPENDIX 42



Jackson County ADMINISTRATOR/CONTROLLER

Michael R. Overton, Administrator/Controller Adam J. Brown, Deputy Administrator

TO: Board of County Commissioners

FROM: Michael R. Overton
Administrator/Controller

SUBJECT: Public Hearing and Action on the Dissolution of the Jackson County Road Commission

DATE: January 8, 2013

Motion Requested

Proceed to ballot on the attached resolution to assume the powers and duties of the Jackson County Road Commission.

I. Background

- A. The Board of County Commissioners requested the Administrator/Controller's Office to study the feasibility of the Jackson County Board of Commissioners assuming the powers and duties of the County Road Commission.
- B. The Administrator/Controller Office issued its report to the Board of Commissioners on August 8, 2012.
- C. The Road Commission Ad Hoc Committee was re-convened to review the report and provide a recommendation to the Board of Commissioners.
- D. The Road Commission Ad Hoc Committee convened for 6 meetings hearing testimony from staff, management, union officials, and Road Commissioners. They concluded on November 26, 2012. Their recommendation was:

Because of the financial savings and synergies in Human Resources, Information Technology, Geographic Information Services (GIS), Finance and the true dollar savings from elimination of the Road Commissioners, the ad hoc committee recommends that the Jackson County Board of Commissioners assume the powers and duties of the Jackson County Road Commission as a county department under the supervision of the County Administrator/Controller with oversight and policy direction from the County Board of Commissioners.

- E. The Administrator/Controller's Office recommended the Board proceed to the public hearing process to gain additional feedback.

January 8, 2013

Public Hearing & Resolution to Dissolve

- F. The Administrator/Controller's Office has the capacity to administer this department in the same way we administer other County departments. Were the County to assume these responsibilities, the Road Department would report to the Agencies and Affairs Committee.
- G. The Board of Commissioners authorized two public hearings, the first on January 4, 2013 at 7:30 AM and the second on January 15, 2013 at 7 PM to receive public feedback on the decision of the Jackson County Board of Commissioners to assume the powers and duties of the Jackson County Road Commission.

II. Current Situation

- A. Two comments were received at the first public hearing on January 4, 2013. The second public hearing is to be conducted at this meeting.
- B. Following the public hearing the Board of Commissioners is requested to act on the attached resolution to dissolve or not to dissolve the Jackson County Road Commission.

III. Analysis

- A. **Strategic** – The duties of the road commission are consistent with the Boards strategic goals of having a safe community and of promoting economic development.
- B. **Financial** – There are some financial gains which have been outlined in the post-ad-hoc committee report to the Jackson County Board of Commissioners.
- C. **Legal** – Section 9 of Public Act 14 of 2012 requires that prior to adopting a resolution transferring the powers of an appointed board of the road commission to the County Board of Commissioners, that two public hearings be held on that issue. The second public hearing at this meeting satisfies this requirement. The Board of Commissioners is required to act by resolution if it wishes to take over these duties.
- D. **Customer/Service Level Impacts** – Transition of managerial authority would begin immediately. The Administrator/Controller's Office would meet with the current Road Commission Administration and employees. From a day to day service level impact, the public will see no change immediately. Operations will continue the same as it does today. Given that the Managing Director is leaving in June, we will immediately work on a transition plan. We will spend time getting to know the operations more intensively so that we can make the correct decisions for transition.
- E. **Timing** – There are no immediate time constraints to this decision. The Board of Commissioners has up to January 1, 2015 to make a decision.

IV. Recommendation

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January 8, 2013

Public Hearing & Resolution to Dissolve

The Administrator/Controller recommends that the Board of Commissioners act on the attached resolution to assume the powers and duties of the Jackson County Road Commission.

Attachments:

Resolution_____

APPENDIX 43



Road Commission Transition Plan

Outline of steps for transition from the appointed Jackson County Road Commission to the Jackson County Transportation Department.

First Week		Responsible	Date Complete
1.	Meeting with Managing Director	Mike & Adam	1/17/2013
2.	Meeting with Managers Introductions – Get to know management staff Establish Expectations – Jackson Way primer	Mike & Adam	1/17/2013
3.	Convert Insurance Carriers	Mike	1/16/2013
4.	Count Petty Cash	Finance	
5.	Administrator/Controller & Deputy Administrator Meet with All Staff Establish Expectations – Jackson Way primer	Mike & Adam	1/18/2013
6.	Proof of insurance for vehicles	Joni Johnson	
First Month			
7.	Ric to meet with Ken to discuss incident procedures for fleet.	Ric Scheele	
8.	Facilities staff meet with Road Commission Facilities Maintenance, Review any standing contracts.	Ric Scheele	
9.	Ric to sit on the Safety Committee – invite to Mike and Adam	Ric Scheele	
10.	Weekly meeting with Managers	Mike & Adam	
11.	Ride with Drivers on a Snow Day	Adam	
12.	Visit all Facilities Spend time with staff at each facility	Mike & Adam	
13.	Administrator/Controller & Deputy Administrator Meet with All Staff – HPO/Jackson Way Primer	Mike & Adam	
14.	Finance, Administrator/Controller's Office, and Road Commission executive staff review capital plan	Mike Overton, Adam Brown, & Jim Latham	
15.	Review Director Applications (Determine if there is a need to re-advertise)	Mike Overton & Adam Brown	
16.	Parks Board Road Commission Seat and JACTS Policy Committee – How do we change the parks seat?	Mike Overton	
17.	Add Road Department website to County main page	Connie Frey	
18.	Work with IT to create email and website aliases so that we can have two active for a time being until we cut it off.	Connie Frey	
19.	Managing Director attend Department Head & Elected Officials Meeting	Ken Straub	
20.	Financial Staff Meet Together from County and Road Commission Review financial policies for consistency	Jim Latham	

21.	Payroll –initiate conversation about feasibility of payroll conversion	Crystal Dixon and Jim Latham	
22.	Human Resources meet with Road Commission Management to discuss HR functions – including payroll, timekeeping, HR systems and feasibility/cost of integration.	Crystal Dixon	
Second Month			
23.	Bi - Monthly Meeting with all Managers	Mike & Adam	
24.	Administrator/Controller & Deputy Administrator Meet with All Staff	Mike & Adam	
25.	Get employees from the Road Commission to participate on the LIFT Team	Leadership Team	
26.	Figure out part-time IT employee. They would like to keep Sean.	Connie Frey	
Third Month			
27.	3-day Retreat with Commonwealth Center for High Performance Organization with 36 staff	Adam Brown	
28.	Monthly Meeting with all Managers	Mike & Adam	
29.	Continue with Director Recruitment Process	Mike & Adam	
30.	Security Card Swipe system – they would like the same as the county	Ric Scheele	
Months Four through Six			
31.	Hire Director	Mike & Adam	
32.	Review combination of audit for 2014	Jim Latham	
33.	Policy Reviews – Integration	Mike & Adam & Ken	
34.	Review Health Care Integration Potential	Crystal Dixon	

APPENDIX 44

Nicole Moles

From: Kenneth Straub <kens@jcrc-roads.org>
Sent: Friday, January 18, 2013 5:53 AM
To: Mike Overton
Cc: Adam Brown
Subject: FW: Jackson CRC Termination
Attachments: Jackson CRC Agreement for Cancellation.pdf; Jackson CRC Agreement in Recognition of Termination.pdf

From: Gayle Pratt [mailto:GPratt@mcrcsip.org]
Sent: Wednesday, January 16, 2013 11:28 AM
To: Kenneth Straub
Cc: Kay Newberry
Subject: FW: Jackson CRC Termination

Ken:

Here they are. Please sign page two of each document and return for our files. If you can email or fax those two signature pages, we would appreciate it. But we also need the original signature back via snail mail, if possible.

We encourage you to share these documents with your County Administrator. It may help to assure there is no gap in insurance coverage.

Please feel free to contact me about any of these issues. And, as always, I wish you and all of Jackson County the very best.

Thank you

Gayle

**Gayle Pratt
Administrator**

Michigan County Road Commission Self-Insurance Pool
417 Seymour Ave., Suite 2, Lansing, MI 48933
☎: 517.482.9166 | 📠: 517.485.4809 | ✉: gpratt@mcrcsip.org | 📠: 800.842.4971

CONFIDENTIALITY NOTICE: This E-mail, including any attachments, may contain confidential information and is intended solely for use by the individual to whom it is addressed. If you received this E-mail in error, please notify the sender, do not disclose its contents to others, and delete it from your system. Any other use of this E-mail and/or attachments is prohibited. Unauthorized interception of this e-mail is a violation of federal criminal law.

AGREEMENT FOR CANCELLATION OF INSURANCE

This Agreement, dated January 16, 2013, is made by and between the Michigan County Road Commission Self-Insurance Pool ("MCRCSIP") and the Board of County Road Commissioners of the County of Jackson ("the Commission"), as follows:

Background

The MCRCSIP is a group self-insurance pool, authorized by MCL 124.1, et seq., that provides risk management and coverage to its Members, including the Commission.

The Commission is a body corporate, authorized by MCL 224.1, et seq., and is a Member of MCRCSIP insured under the Insuring Agreements issued by MCRCSIP which include the following:

- Liability Coverage Agreement, Certificate Number MCRP-3800-AC; and,
- Physical Damage Agreement, Certificate Number PHYS-3800-AC; and
- Employment Practices & Public Officials Errors and Omissions Liability Agreement, Certificate Number MCRPE-3800-AC; and,
- Employee Fidelity and Faithful Performance Coverage Agreement, Certificate Number EF-3800-AC;

Each of which, together with their respective Declaration pages, are attached as Exhibits to this Agreement ("the Insurance coverages").

The Jackson County Board of Commissioners has, by Resolution Dissolving the Board of Road Commissioners and Transferring All of Its Powers, Duties and Functions to the Jackson County Board of Commissioners; Creating a Department of Transportation and Roads, and adopting a 2012 Budget for the Department – Resolution 01-13.8, dated January 15, 2013, dissolved the Commission as of January 16, 2013 and determined that the powers, duties and functions of the Commission will be transferred to Jackson County. As such, the Commission will no longer exist as statutory body corporate after January 16, 2013. Steps will be taken to effectuate the Commission's withdrawal from membership in the MCRCSIP.

Because, as of January 16, 2013, the Commission will no longer be a member of the MCRCSIP or a road commission within the meaning of the applicable By-Laws and the Inter-Local Agreement that govern the membership in the MCRCSIP, the MCRCSIP will not be able to issue insurance coverage to the Commission after it is dissolved. As such, both the Commission and the MCRCSIP agree that, under the circumstances, they should agree to terminate the Insurance Coverages as of 12:01 a.m. on January 16, 2013.

The parties realize that the Insurance Coverages contain cancellation provisions, but those provisions cannot be implemented by either party to take effect before January 16, 2013.

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The purpose of this Agreement, the terms of those cancellation provisions notwithstanding, is to terminate the Insurance Coverages as of that date and time.

The Agreement

The MCRCSIP and the Commission covenant and agree as follows:

1. Waiver of Cancellation Notice Period. Each party, for itself and its directors, officers, successors and assigns, does hereby waive and hold for naught any and all provisions in the Insurance Coverages that concern, relate to, regulate or affect in any way the manner, means or processes by which the parties thereto may cancel the Insurance Coverages, including, but not limited to, those provisions as found within the clause in each of the Insurance Coverages entitled "Cancellation", and, in particular, any provision thereof that requires written notice of cancellation and delays the effective date of cancellation for any particular number of days following the submission by either party of such notice of cancellation.
2. Effective Cancellation Date. By mutual consent, the Insurance Coverages shall be and are hereby cancelled as of 12:01 a.m. on January 16, 2013, without the necessity of any further action by either of the parties to this Agreement.
3. Contribution Adjustment. Any applicable contribution adjustment will be made at the time cancellation is effective or as soon as practicable thereafter, but payment or tender of unearned contribution shall not be a condition precedent to cancellation.
4. Existing Claims. MCRCSIP shall continue servicing any of the Commission's claims pending, those claims made prior in time to January 16, 2013 that are covered by a claims made policy, and those claims which occur or arise from incidents or events occurring prior in time to January 16, 2013 that are covered by occurrence policies, being the time of termination (January 16, 2013), unless the Commission or its successor in function specifically assumes the liability therefor and makes provision to indemnify MCRCSIP from loss by taking over the servicing of any such claim(s). The Commission or its successor in function shall be responsible for all applicable reimbursements as provided in the Inter-Local Agreement, By-Laws and Declaration of Trust in force as of the date of this Agreement.
5. Limited Purpose of this Agreement. The sole purpose of this Agreement is to effectuate the cancellation of the Insurance Coverages as of 12:01 a.m. on January 16, 2013, and not to affect or impact in any way any other of the terms or conditions contained in the Insurance Coverages.

Michigan County Road Commission
Self-Insurance Pool

Board of County Road Commissioners
of Ingham County

By: Gayle A. Pratt
Gayle A. Pratt
Its: Administrator

By: _____
Kenneth R. Straub
Its: Managing Director

Date: Jan 16, 2013

Date: _____



Certificate Number MCRP-3800-AC

**MICHIGAN COUNTY ROAD COMMISSION
SELF-INSURANCE POOL**

LIABILITY COVERAGE AGREEMENT

DECLARATIONS CERTIFICATE

Item 1: MEMBER AND ADDRESS

Jackson County Road Commission
2400 N. Elm Road
Jackson, MI 49204

Item 2: COVERAGE PERIOD

4/1/2012 to 4/1/2013, 12:01 A.M. STANDARD TIME AT THE ADDRESS OF THE
MEMBER AS STATED HEREIN.

Item 3: COVERAGE

ROAD COMMISSION LIABILITY

Item 4: LIMIT OF LIABILITY

\$10,500,000 Each Occurrence

Item 5: MEMBER RETENTION

See Endorsement Number 1, Each
Occurrence Including Legal and
Adjustment Expenses

Item 6: MEMBER CONTRIBUTION

\$372.581

By: Gayle Pratt
Authorized Representative

ENDORSEMENT #1
DEDUCTIBLE LIABILITY COVERAGE

Jackson County Road Commission

<u>Amount and Basis of Deductible</u>		<u>Coverage</u>
\$1,000	per occurrence	Automobile Liability
\$0	per occurrence	Errors and Omissions Liability
\$1,000	per occurrence	All other Bodily Injury, Property Damage, Personal Injury Liability

1. The Pool's obligation to pay damages on behalf of the Member applies only to the amount of damages in excess of any deductible amount(s) stated in the schedule above as applicable to such coverages.
2. The deductible amount applies to all damages as the result of any one occurrence.
3. The terms of the agreement, including those with respect to (a) the Pool's rights and duties with respect to the defense of suits and (b) the Member's duties in the event of an occurrence apply irrespective of the application of the deductible amount.
4. The Pool may pay any part or all of the deductible amount to effect settlement of any claim or suit and, upon notification of the action taken, the Member shall promptly reimburse the Pool for such part of the deductible amount as has been paid by the Pool.
5. The deductible amount shall also include all expenses incurred in the investigation and negotiation in the settlement of any claim.

**ENDORSEMENT #2
STATE TRUNKLINE ENDORSEMENT**

Jackson County Road Commission

In consideration of an additional contribution of \$21,232 included in the total contribution, it is agreed coverage applies to State Trunkline Roads subject to the Michigan Department of Transportation State Highway Maintenance Contract.

It is further agreed that the deductibles do not apply as respects claims arising out of incidents occurring on those roads designated as "State Trunklines" and subject to the Michigan Department of Transportation State Highway Maintenance Contract.

**ENDORSEMENT #3
EMPLOYEE BENEFITS LIABILITY**

We will pay those sums that the Member becomes legally obligated to pay on account of any "claim" made against the Member and caused by any negligent act, error or omission of the Member or any other person for whose acts the Member is legally liable in the "administration" of the Member's "Employee Benefit Programs".

For the purpose of this endorsement:

The term "administration" shall mean:

1. Giving counsel to employees with respect to the "Employee Benefit Programs".
2. Interpreting the "Employee Benefit Programs".
3. Handling of records in connection with the "Employee Benefit Programs".
4. Effecting enrollment, termination or cancellation of employees under the "Employee Benefit Programs".

The term "Employee Benefit Programs" shall mean:

Group Life Insurance, Group Accident or Health Insurance, Pension Plans, Employees Stock Subscription Plans, Workers' Compensation, Unemployment Insurance, Social Security, Disability Benefits and any other similar Employee Benefits.

"Employee Benefit Programs" does not include:

Any formal, informal, written or oral agreement to compensate any past, present or future employee of the Member under any bonus plan, performance, incentive program, golden parachute arrangements or any other similar compensation plans.

This extension of coverage does not apply to:

1. Any dishonest, fraudulent, criminal or malicious act, libel, slander, discrimination, or humiliation; or
2. Bodily injury, "Property damage", "Personal injury" or "Advertising injury", or
3. Any claim for failure of performance of contract by any Member, or
4. Any claim based upon the Member's failure to comply with any law concerning workers' compensation, unemployment insurance, social security or disability benefits; or
5. Any claim based upon failure of stock to perform as represented by a Member, or
6. Any claim based upon advice given by a Member to an employee of the Member to participate or not to participate in stock subscription plans; or
7. Any claim for loss or damage arising out of any duty imposed upon the Member by virtue of the provisions of any Federal, State or Local statutory limits on common law similar to Public Law 93-406, the Employee Retirement Income Security Act 1974, Public Law 93-406 (commonly referred to as the Pension Reform Act of 1974).



Certificate Number PHYS-3800-AC

**MICHIGAN COUNTY ROAD COMMISSION
SELF-INSURANCE POOL**

PROPERTY DAMAGE AGREEMENT

**COVERAGE FOR BUILDINGS, CONTENTS,
EQUIPMENT AND LICENSED VEHICLES**

DECLARATIONS CERTIFICATE

Named Member and Address:

Jackson County Road Commission
2400 N. Elm Road
Jackson, MI 49204

Coverage Period: 4/1/2012 to 4/1/2013

12:01 AM STANDARD TIME AT THE ADDRESS OF THE MEMBER AS STATED HEREIN

Member Deductible	\$500 per occurrence
Member Contribution	\$94,908
Coverage Limit	
Building, Contents, Equipment and Licensed Vehicles	Per Schedule on file with the Pool

Sublimits at Named Locations:

Business Interruption & Extra Expense	\$500,000 per occurrence
Ordinance or Law	\$1,000,000 per occurrence
Debris Removal	\$1,000,000 per occurrence or 25% of loss whichever is less
Property in Transit	\$50,000 per occurrence
Valuable Papers	\$50,000 per occurrence
Accounts Receivable	\$50,000 per occurrence

**MICHIGAN COUNTY ROAD COMMISSION SELF-INSURANCE POOL
PROPERTY DAMAGE COVERAGE AGREEMENT**

**PHYS ENDORSEMENT #1
PROPERTY BUILDING AND CONTENTS COVERAGE PART
EQUIPMENT BREAKDOWN COVERAGE SCHEDULE**

Equipment Breakdown is subject to the Limits of Coverage shown in the Declarations except as specifically shown below.

These coverages apply to all locations covered on the Property Damage Coverage Agreement, unless otherwise specified.

Coverages - Comprehensive Equipment Breakdown

Limits

Equipment Breakdown Limit	\$ Per Building & Contents Schedule on file with the Pool
Property Damage	Included
Business Interruption	Included
Extra Expense	Combined with Business Interruption
Service Interruption	Combined with Business Interruption
Off Premises Property Damage	\$ 100,000 Sublimit
Computers	Included
Data Restoration	\$ 100,000 Sublimit
Expediting Expenses	\$ 100,000 Sublimit
Perishable Goods	\$ 100,000 Sublimit
Hazardous Substances	\$ 250,000 Sublimit
Ordinance or Law	\$1,000,000 Sublimit
Demolition	Combined with Ordinance or Law
Newly Acquired Locations	\$1,000,000; 90 days

Deductibles

Direct Coverages	\$1,000 except \$2,500 on all Sewage Treatment Plants or Water Pumping Stations
Business Interruption & Extra Expense	24 Hours

Other Conditions

Service Interruption Waiting Period - 24 Hours
Fire and Extended Coverage Perils are Excluded

MICHIGAN COUNTY ROAD COMMISSION SELF-INSURANCE POOL
PROPERTY DAMAGE COVERAGE AGREEMENT

PHYS ENDORSEMENT #2
FLOOD EXTENSION

This endorsement modifies the coverage provided under the Physical Damage Agreement form MCRCSIP-PDA2010.

A. Subject to provisions B. through D. below, the Perils Covered under this Agreement are extended to include:

1. Flood (meaning a general and temporary condition of partial or complete inundation of normally dry land areas affecting two or more acres and two or more properties at least one of which is your property), surface water, underground water, waves, tides, tidal waves, tsunamis, overflow of any body of water, or their spray, all whether driven by wind or not;
2. Mudslide or mudflow;
3. Release of water impounded by a dam;

all whether naturally occurring or due to man made or other artificial causes.

The term "Flood" as used in the remainder of this endorsement shall include all of the causes of loss described in A.1. through A.3. above.

B. All Flood loss that occurs:

1. During a period of continued rising or overflow of any river(s), stream(s) or any body(ies) of water and subsidence of same within the banks of such river(s), streams(s) or body(ies) of water; or
2. Due to any tidal waves or tsunamis that occur within any 168 hour period; will constitute a single Flood occurrence.

If Flood loss commences prior to the expiration date of this Agreement and the Flood occurrence, as defined above, extends beyond the expiration date of this Agreement, the expiration of the Agreement will not reduce the Flood occurrence period.

MICHIGAN COUNTY ROAD COMMISSION SELF-INSURANCE POOL
PROPERTY DAMAGE COVERAGE AGREEMENT

PHYS ENDORSEMENT #2
FLOOD EXTENSION
PAGE 2

- C. The following additional exclusions apply to this extension:
1. The Pool will not pay for loss or damage caused by or resulting from any Flood occurrence that begins before the inception of this Agreement.
 2. This extension for Flood does not apply to, or modify the coverage otherwise provided under this Agreement for loss or damage by fire, explosion or leakage from fire protective equipment that results from Flood.
 3. This extension for Flood does not apply to the cost of restoring, recovering or dewatering land or to loss resulting from the time required to restore, recover or de-water land.
 4. Unless otherwise specified in the Agreement, this extension for Flood does not apply to loss or damage to, or loss that is a consequence of loss or damage to:
 - a. Any building or structure, or any property in the open if, at the time of loss, the building or structure or property in the open is, in whole or in part, within Flood Zone A, Flood Zones prefixed A, Flood Zone V or Flood Zones prefixed V, Zone B, Zone X (shaded) or Zone X-500, as classified under the National Flood Insurance program; or
 - b. Any property in or on any building or structure, if, at the time of loss, the building or structure in or on which such property is located is, in whole or part, within Flood Zone A, Flood Zones prefixed A, Flood Zone V or Flood Zones prefixed V, Zone B, Zone X (shaded) or Zone X-500, as classified under the National Flood Insurance program.
- D. The most the Pool will pay for the total of all loss or damage caused by Flood, in any one Agreement year is \$1,500,000, unless the building, structure or property is subject to C 4a or 4b above, and then, the most the Pool will pay for the total of all loss or damage caused by Flood in any one Agreement year is \$1,000,000.

**MICHIGAN COUNTY ROAD COMMISSION SELF-INSURANCE POOL
PROPERTY DAMAGE COVERAGE AGREEMENT**

**PHYS ENDORSEMENT #3
EARTHQUAKE EXTENSION**

This endorsement modifies the coverage provided under the Physical Damage Agreement form MCRCSIP-PDA2010.

A. Subject to provisions B. through D. below the Perils Covered under this Agreement are extended to include:

1. Earthquake, meaning a shaking or trembling of the earth's crust, caused by underground volcanic or tectonic forces or by breaking or shifting of rock beneath the surface of the ground from natural causes, including any earth sinking, rising or shifting related to such event; and
2. Volcanic Eruption, meaning the eruption, explosion or effusion of a volcano.

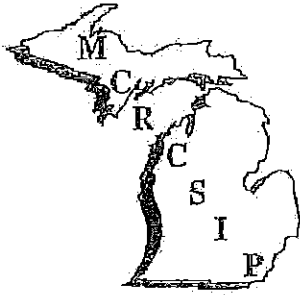
All Earthquake shocks or Volcanic Eruptions that occur within any 168 hour period will constitute a single Earthquake or Volcanic Eruption. The expiration of this Agreement will not reduce the 168 hour period.

B. This extension shall not apply to any loss caused by Earth Movement except loss caused by or resulting from Earthquake or Volcanic Eruption as set forth in A. above. Nor shall this extension apply to any loss or damage caused by or resulting from Flood even if attributable to Earthquake or Volcanic Eruption. Any pollution exclusion does not apply to any release, discharge, dispersal, seepage, migration or escape of pollutants that is proximately and predominately caused by Earthquake and Volcanic Eruption to which this extension applies.

C. The following additional exclusions apply to this extension:

1. The Pool will not pay for loss or damage caused directly or indirectly by tidal wave or tsunami, even if attributable to an Earthquake or Volcanic Eruption.
2. This extension for Earthquake and Volcanic Eruption does not apply to, or modify the coverage otherwise provided under this Agreement for loss or damage by fire or explosion that results from an Earthquake and for loss or damage by fire or "volcanic action" that results from a Volcanic Eruption.
3. The Pool will not pay for loss or damage caused by or resulting from any Earthquake or Volcanic Eruption that begins before the inception of this Agreement.
4. This extension does not apply to the cost of restoring or remediating land or to loss resulting from the time required to restore or remediate land.

D. The most the Pool will pay for the total of all loss or damage caused by Earthquake and Volcanic Eruption in any one Agreement year is \$1,500,000.



Certificate Number MCRPE-3800-AC

**MICHIGAN COUNTY ROAD COMMISSION SELF-INSURANCE POOL
(HEREINAFTER, THE POOL)**

**DECLARATIONS - EMPLOYMENT PRACTICES & PUBLIC OFFICIALS
ERRORS AND OMISSIONS LIABILITY AGREEMENT**

CLAIMS MADE AND REPORTED COVERAGE; THE COVERAGE AFFORDED BY THIS AGREEMENT IS LIMITED TO LIABILITY FOR ONLY THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE MEMBER AND/OR COVERED PERSON DURING THE COVERAGE PERIOD OR THE EXTENDED REPORTING PERIOD, IF PURCHASED, AND REPORTED TO THE POOL DURING THE COVERAGE PERIOD OR THE EXTENDED REPORTING PERIOD, IF PURCHASED, OR WITHIN SIXTY (60) DAYS AFTER THE EXPIRATION OF THE COVERAGE PERIOD OR THE EXTENDED REPORTING PERIOD, IF PURCHASED.

- 1. MEMBER: Jackson County Road Commission
- ADDRESS: 2400 N. Elm Road
Jackson, MI 49204

COVERAGE PERIOD: From 12:01 AM Standard Time 4/1/2012 to 4/1/2013
at the address of the Member stated above.

2. LIMITS OF LIABILITY:

The liability of the Pool for each claim including claim expenses under this Agreement shall not exceed \$10,000,000 and, subject to that limit for each claim, the total limit of the Pool's liability for all claims including claim expenses under this Agreement shall not exceed in the aggregate \$10,000,000.

- 3. MEMBER CONTRIBUTION: \$57,194
- 4. RETROACTIVE DATE: 4/1/1991
- 5. PREMIUM FOR EXTENDED DISCOVERY PERIOD:

100% of Annual Premium

6. ENDORSEMENT ATTACHED AT AGREEMENT INCEPTION:

ALL CLAIMS TO BE REPORTED DIRECTLY TO: Michigan County Road Commission Self-Insurance Pool, c/o Specialty Claims Services, Inc., 42450 Garfield, Suite E, P.O. Box 381136, Clinton Township, MI 48038

PLEASE REVIEW THIS AGREEMENT CAREFULLY.



Certificate Number EF-3800-AC

**MICHIGAN COUNTY ROAD COMMISSION
SELF-INSURANCE POOL**

**EMPLOYEE FIDELITY
AND
FAITHFUL PERFORMANCE COVERAGE AGREEMENT**

DECLARATIONS CERTIFICATE

Named Member and Address:

Jackson County Road Commission
2400 N. Elm Road
Jackson, MI 49204

Coverage Period: 4/1/2012 to 4/1/2013
12:01 A.M. STANDARD TIME AT THE ADDRESS OF THE NAMED MEMBER AS STATED HEREIN.

Member Deductible	\$1,000
Member Contribution	\$250

Coverage Agreements	Coverage Limit
A.1 Blanket Employee Fidelity and Faithful Performance	\$50,000
A.2 Forgery or Alteration	Included
A.3 Computer and Funds Transfer Fraud	Included

**AGREEMENT IN RECOGNITION OF TERMINATION FROM
MICHIGAN COUNTY ROAD COMMISSION SELF-INSURANCE POOL**

This Agreement, dated January 16, 2013, is made by and between the Michigan County Road Commission Self-Insurance Pool ("MCRCSIP") and the Board of County Road Commissioners of the County of Jackson ("the Commission"), as follows:

Background

The MCRCSIP is a group self-insurance pool, authorized by MCL 124.1, *et seq.*, that provides risk management and coverage to its Members, including the Commission.

The Commission is a body corporate, authorized by MCL 224.1, *et seq.*, and is a Member of MCRCSIP as a signatory to both the MCRCSIP Inter-Local Agreement and the Declaration of Trust.

The Jackson County Board of Commissioners has, pursuant to and in accordance with MCL 224.6(7), by Resolution 01-13.8 Dissolving the Board of the Jackson County Road Commissioner and Transferring All of Its Powers, Duties, and Functions to the Jackson County Board of Commissioners; (Resolution dated January 15, 2013), dissolved the Commission as of January 16, 2013, and determined that the powers, duties, and functions of the Commission will be transferred to and undertaken by Jackson County. Consequently, as of January 16, 2013, the Commission is dissolved and by operation of law cannot and is not eligible to be a Member of the MCRCSIP as provided in the applicable By-Laws and the Inter-Local Agreement that govern membership in the MCRCSIP. As such, both the Commission and the MCRCSIP agree that under the circumstances the Commission is not eligible to participate as a member of the MCRCSIP as of 12:01 a.m. on January 16, 2013.

Consequently, steps will be taken to effectuate the cancellation of insuring agreements issued by MCRCSIP to the Commission effective as of 12:01 a.m. on January 16, 2013.

The parties recognize that the Declaration of Trust, Inter-Local Agreement, and By-Laws contain provisions governing the withdrawal of a member county road commission from the MCRCSIP, but given the abrupt and impending dissolution of the Commission, those provisions cannot be implemented by either party to take effect before January 16, 2013.

The purpose of this Agreement, the terms of those withdrawal provisions notwithstanding, is to effectuate the termination of the Commission's membership in MCRCSIP as of January 16, 2013.

The Agreement

The MCRCSIP and the Commission covenant and agree as follows:

1. **Waiver of Withdrawal Notice Period.** Each party, for itself and its directors, officers, successors and assigns, does hereby waive and hold for naught any and all provisions in

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the Declaration of Trust, By-Laws, and Inter-Local Agreement that concern, relate to regulate, or affect in any way the requirement for written notice of withdrawal at least sixty days prior to the effective date of withdrawal.

- 2. Effective Withdrawal Date. By operation of the action taken by the Jackson County Board of Commissioners (January 15, 2013) the Commission's membership in MCRC SIP shall be and is hereby terminated concurrent with the termination of the Jackson County Road Commission as of 12:01 a.m. on January 16, 2013, without the necessity of any further action by either of the parties to this Agreement.
- 3. Contribution Adjustment. Any applicable contribution adjustment shall be made at the time cancellation is effective or as soon as practical thereafter, but payment or tender of unearned contribution shall not be a condition precedent to cancellation.
- 4. Existing Claims. MCRC SIP shall continue servicing any of the Commission's claims pending, those claims made prior in time to January 16, 2013 that are covered by a claims made policy, and those claims which occur or arise from incidents or events occurring prior in time to January 16, 2013 that are covered by occurrence policies, being the time of termination (January 16, 2013), unless the Commission or its successor in function specifically assumes the liability therefor and makes provision to indemnify MCRC SIP from loss by taking over the servicing of any such claim(s). The Commission or its successor in function shall be responsible for all applicable reimbursements as provided in the Inter-Local Agreement, By-Laws and Declaration of Trust in force as of the date of this Agreement.
- 5. Limited Purpose of this Agreement. The sole purpose of this Agreement is to effectuate the termination of the Commission's membership from the MCRC SIP as of 12:01 a.m. on January 16, 2013, and not to affect or impact in any way any other terms or conditions contained in the Declaration of Trust - Inter-Local Agreement, or By-Laws.

Michigan County Road Commission
Self-Insurance Pool

Jackson County Board of
County Road Commissioners

By: Gayle A. Pratt
Gayle A. Pratt
Its: Administrator

By: _____
Kenneth R. Straub
Its: Managing Director

Date: Jan 16, 2013

Date: _____

IN THE SUPREME COURT

On Appeal from the Michigan Court of Appeals
O'Brien, PJ, and Gleicher and Stephens, JJ

THE COUNTIES OF INGHAM, JACKSON, and
CALHOUN, Municipal corporations and bodies politic
and corporate,

Plaintiffs-Appellees,

v

THE MICHIGAN COUNTY ROAD COMMISSION
SELF-INSURANCE POOL, an unincorporated
voluntary association,

Defendant-Appellant.

Supreme Court Docket No. 160186

Court of Appeals Docket No. 334077

Ingham County Circuit Court
Case No. 15-432-NZ

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Mattis D. Nordfjord (P69780)
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D. Adam Tountas (P68579)
Jonathan B. Koch (P80408)
SMITH HAUGHEY RICE & ROEGGE
Attorneys for Defendant-Appellant Michigan
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DEFENDANT-APPELLANT'S APPENDIX TO SUPPLEMENTAL BRIEF

VOLUME C
(APPENDICES 45 – 49)

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	48	Calhoun CRC Transition Plan Draft 1	0568a – 0577a
	49	The Counties' Summary Disposition Motion	0578a – 0616a

Dated: November 4, 2020

/s/ Jonathan B. Koch
 Jon D. Vander Ploeg (P24727)
 D. Adam Tountas (P68579)
 Jonathan B. Koch (P80408)
 Smith Haughey Rice & Roegge
 100 Monroe Center NW
 Grand Rapids, MI 49503-2802
 (616) 774-8000

APPENDIX 45

Nicole Moles

From: Mike Overton
Sent: Monday, December 17, 2012 8:18 AM
To: craigm@ibexagency.com
Subject: FW: Insurance Policy
Attachments: Employee Fidelity and Faithful Performance Coverage Agreement.pdf; EPL Public Off DO Coverage Agreement.pdf; Liability Coverage Agreement.pdf; Physical Damage Coverage Agreement.pdf; Loss Run for Jackson 4-1-2002 through 9-30-2012.pdf

Hello Craig,

I ask the Road Commission for their complete policy and this is what they provided.

Michael R. Overton
 Administrator/Controller
 Jackson County Tower Bld.
 120 W. Michigan Ave.
 Jackson, MI 49201
 517-788-4335



From: Kenneth Straub [<mailto:kens@jcrc-roads.org>]
Sent: Thursday, December 13, 2012 3:19 PM
To: Mike Overton
Subject: RE: Insurance Policy

Mike,
 Hope this is what your looking for.
 Ken

From: Mike Overton [<mailto:moverton@co.jackson.mi.us>]
Sent: Thursday, December 13, 2012 9:35 AM
To: Kenneth Straub
Subject: Insurance Policy

Hello Ken,

I do not have a complete copy of your insurance policy, I seem to be missing parts. Would you please email me a complete policy? I want to make sure MMRMA is really covering everything adequately.

Also, please send me a listing of all your claims experience over the last few years. I do not need the details, just description, and settlement amount, etc.

Thanks,

Michael R. Overton
 Administrator/Controller
 Jackson County Tower Bld.

120 W. Michigan Ave.
Jackson, MI 49201
517-788-4335



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Certificate Number<Policy Number>

**MICHIGAN COUNTY ROAD COMMISSION
 SELF-INSURANCE POOL**

**EMPLOYEE FIDELITY AND
 FAITHFUL PREFORMANCE COVERAGE AGREEMENT**

DECLARATIONS CERTIFICATE

Item 1: Named Member and Address:

<Member>
 <Street Address>
 <City, State, Zip>

Item 2: Coverage Period: 04/01/2012 to 04/01/2013
 12:01 a.m. standard time at the address of the Named Member
 as stated herein.

Item 3: Member Deductible \$1,000 per occurrence

Item 4: Member Contribution \$<Contrib. Amt.>

Item 5: Coverage Agreement(s) Coverage Limit

A. Blanket Employee Fidelity and Faithful Performance \$<Coverage Limit>

B. Forgery or Alteration Included

C. Computer & Funds Transfer Fraud Included

Michigan County Road Commission Self-Insurance Pool
 Employee Fidelity and Faithful Performance Coverage



0379a

**MICHIGAN COUNTY ROAD COMMISSION
SELF-INSURANCE POOL
(Hereinafter Called the Pool)**

**EMPLOYEE FIDELITY and
FAITHFUL PERFORMANCE COVERAGE AGREEMENT**

Various provisions in this Agreement restrict coverage. Read this entire Agreement carefully to determine rights, duties and what is and what is not covered.

Throughout this Agreement, the words "you" and "your" refer to the Named "Member" shown in the Declarations. The words "we", "us" and "our" refer to the Pool.

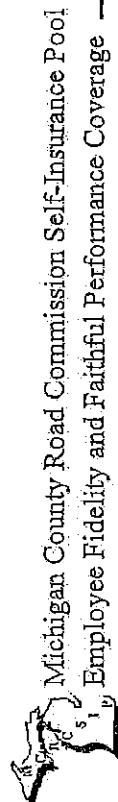
Other words and phrases that appear in quotation marks have special meaning. Refer to Section F Definitions.

A. COVERAGE AGREEMENT

Blanket Employee Fidelity and Faithful Performance

We will pay for direct loss of or damage to Business Personal Property and "money" and "securities" resulting from dishonest acts (including "forgery" or alteration and computer fraud or "funds" transfer fraud) committed by any of your "employees" acting alone or in collusion with other persons (except you or your partner) with the manifest intent to:

- a) Cause you to sustain loss or damage; and also
- b) Obtain financial benefit (other than salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions or other "employee" benefits earned in the normal course of employment) for:



- i. Any "employee"; or
- ii. Any other person or organization.

B. LIMITS OF COVERAGE

1. The Pool will pay for a loss the "Member" incurs only when a Limit of Coverage for Blanket Employee Fidelity is stated in the Employee Fidelity and Faithful Performance Declarations page. The Limit of Coverage applies on an "occurrence" basis, regardless of the period of time involved in the "occurrence". The loss of "money", "securities", or "other property" owned by the "Member", or for which the "Member" is legally liable, or held by the "Member" in any capacity whether or not the "Member" is legally liable must occur within the Coverage Period of the "Member".
2. This Agreement covers property within the United States of America (including its territories and possessions), Puerto Rico and Canada.

C. DEDUCTIBLE

We will not pay for loss resulting directly from an "occurrence" unless the amount of loss exceeds the Deductible Amount shown in the Declarations Certificate. We will then pay the amount of loss in excess of the Deductible Amount, up to the Coverage Limit.

D. EXCLUSIONS

Coverage is not provided for any loss:

1. Caused by Accounting or Arithmetical Errors or Omissions.
2. Caused by any "employee" required by law to be individually bonded.
3. Caused by any "employee" if any of the "Member's" officials or officers, but not those in collusion with the "employee", had knowledge of any fraudulent or dishonest act ever committed by the "employee";
4. Resulting from any acts or omissions of any "employee" who caused any fidelity or crime coverage the "Member" had to be cancelled by specific written notice before this coverage went into effect, unless that "employee" was reinstated under the "Member's" earlier fidelity or crime coverage.



- 5. Due to shortage disclosed on taking inventory or unexplained or mysterious disappearance. This does not apply to loss of "money", "securities" or "other property" if the "Member" can prove, through evidence wholly apart from the inventory, that the loss was caused by any fraudulent or dishonest act committed by an "employee".
- 6. Due to the unauthorized disclosure of confidential information.
 - a) Including, but not limited to, patents, trade secrets, processing methods or customer lists owned by the "Member"; or
 - b) Owned by another person or entity which is held by you including, but not limited to, financial information, personal information, credit card information or similar non-public information.
- 7. For which you are legally liable as a result of:
 - a) The deprivation or violation of the civil rights of any person by an "employee"; or
 - b) The tortious conduct of an "employee"; except conversion of property of other parties held by you in any capacity.
- 8. Resulting from the giving or surrendering of property in any exchange or purchase.
- 9. Resulting from damage to the "premises" resulting from fire however caused.
- 10. That is an indirect result of an "occurrence" covered by this Agreement including, but not limited to, loss resulting from:
 - a) Your inability to realize income that you would have realized had there been no loss of or damage to "money", "securities" or "other property".
 - b) Payment of damages of any type for which you are legally liable. But, we will pay compensatory damages arising directly from a loss covered under this Agreement.

Michigan County Road Commission Self-Insurance Pool
Employee Fidelity and Faithful Performance Coverage



- c) Payment of costs, fees or other expenses you incur in establishing either the existence or the amount of loss under this Agreement.
11. For payment of fees, costs and expenses incurred by you which are related to any legal action, except when covered under Coverage Agreement A.2.
 12. For damage to "motor vehicles, trailers or equipment and accessories" attached to them.
 13. Resulting from nuclear reaction, nuclear radiation, or radioactive contamination, or any related act or incident.
 14. Resulting directly or indirectly from trading, whether in your name or in a genuine or fictitious account.
 15. Caused by a treasurer or tax collector by whatever name known.
 16. From damages to the "premises" or to the exterior of any safe, vault, cash box, cash drawer or cash register by vandalism or mischief.
 17. Resulting from your, or anyone acting on your express or implied authority, being induced by any dishonest act to voluntary part with title to or possession or any property.
 18. Resulting from war, whether or not declared, warlike action, insurrection, rebellion, or revolution, or any related act or incident.

E. CONDITIONS

1. If, while this Coverage Agreement is in force, you hire additional "employees", other than through consolidation or merger with, or purchase or acquisition of assets or liabilities of, another entity, such "employees" shall automatically be covered under the Coverage Agreement. Notice to us of an increase need not be given and no additional contribution need be paid for the remainder of the Coverage Period shown in the Declarations.
2. This Coverage Agreement's terms can be amended or waived only by endorsement issued by the Pool and made a part of this Coverage Agreement.

3. The first Named "Member" shown in the Declarations:
 - a) Is responsible for the payment of all contributions; and
 - b) Will be the payee for any return contributions the Pool pays.
4. The Pool will pay only for covered loss "discovered" no later than one year from the end of the coverage period.
5. After the "Member" "discovers" a loss or a situation which may result in a loss of or damage to, "money", "securities" or "other property", you must:
 - a) Notify us as soon as possible but no later than 90 days after "discovery".
 - b) Submit to examination under oath at our request and give us a signed statement of your answers.
 - c) Give us a detailed, sworn proof of loss within (90) days after "discovery".
 - d) Cooperate with us in the investigation and settlement of any claim.
 - e) Notify the police if you have reason to believe that your loss involves a violation of the law.
6. The Pool may examine and audit the "Member's" books and records as they relate to this Agreement at any time during the Agreement period and up to three years after the final termination of this Agreement.
7. We will indemnify any of your officials who are required by law to give bonds for the faithful performance of their duties against loss through the failure of any "employee" under the supervision of that official to faithfully perform his or her duties as prescribed by law, when such failure has as its direct and immediate result a loss of your "money", "securities" and "other property" subject to the Limit of Coverage.
8. The Pool shall be permitted, but not obligated, to make inspections and surveys at any time. We may give you reports on the conditions we find and recommend changes.

Michigan County Road Commission Self-Insurance Pool
Employee Fidelity and Faithful Performance Coverage



We are not obligated to make any inspections, surveys, reports or recommendations, and any such actions we do undertake relate only to coverage and the contributions to be charged. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. We do not warrant that conditions:

- a) Are safe or healthful; or
- b) Comply with laws, regulations, codes or standards

We do not provide any inspections, surveys, reports or recommendations relative to certification under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

9. You may not bring any legal action against the Pool involving loss:
 - a) Unless you have complied with all of the terms of this Coverage Agreement; and
 - b) Until 120 days after you have filed proof of loss with the Pool; and
 - c) Unless such action is brought within 2 years from the date that you "discover" such loss.
10. If two or more Coverage Agreements apply to the same loss, we will pay the lesser of:
 - a) The actual amount of the loss; or
 - b) The sum of the Coverage Limits shown on the Declarations.
11. If loss is sustained partly during this coverage period and partly during prior coverage period.
 - a) And you "discover" the loss during the Coverage Period shown in the Declarations, and the loss results directly from an "occurrence" taking place:
 - i. Partly during the Coverage Period shown in the Declarations; and



- ii. Partly during the Coverage Period(s) of any prior cancelled coverage that we issued to you or any predecessor in interest; and
 - iii. This Agreement became effective at the time of cancellation of the prior coverage we will first settle the amount of loss that you sustained during this Coverage Period. We will then settle the remaining amount of loss that you sustained during Coverage Period(s) or the prior Coverage Agreement.
- b) If you "discover" loss during the Coverage Period shown in the Declarations, resulting directly from an "occurrence" taking place entirely during the Coverage Period(s) of any prior cancelled coverage that we or any affiliate issued to you or any predecessor in interest, we will pay for the loss, provided:
- i. This Coverage Agreement became effective at the time of cancellation of the prior Coverage Agreement; and
 - ii. The loss would have been covered under this Coverage Agreement had it been in effect at the time of the "occurrence".

We will first settle the amount of loss that you sustained during the most recent prior coverage agreement. We will then settle any remaining amount of loss that you sustained during the Coverage Period(s) of any other prior Coverage Agreement.

- c) The most we will pay for the entire loss is the highest single Limit of Coverage applicable during the period of loss, whether such limit was written under this Coverage Agreement or was written under the prior coverage issued by us.
12. Regardless of the number of years this Coverage Agreement remains in force or the number of contributions paid, no Limit of Coverage accumulates from year to year or Coverage Period to Coverage Period.
13. This Coverage Agreement does not apply to loss recoverable or recovered under other insurance or indemnity. However, if the limit of the other insurance or indemnity is insufficient to cover the entire amount of the loss, the Coverage Agreement will apply to that part of the loss, other than

that falling within any deductible amount, not recoverable or recovered under the other insurance or indemnity. However, this Coverage Agreement will not apply to the amount of loss that is more than the applicable Limit of Coverage shown in the Declarations.

14. The property covered under this Coverage Agreement is limited to property:
- a) That you own or lease; or
 - b) That you hold for others whether or not you are legally liable for the loss of such property.

However, this Coverage Agreement is for your benefit only. It provides no rights or benefits to any other person or organization. Any claim for loss that is covered under this Coverage Agreement must be presented to you.

15. Subject to the Loss Sustained During Prior Coverage Agreement condition, we will pay only for loss that you sustain through acts committed or events occurring during the Coverage Period as shown in the Declarations Certificate.
16. You must keep records of all covered property for three years so the Pool can verify the amount of any loss.
17. Any recoveries, whether effected before or after any payment under this Agreement, whether made by us or you, shall be applied net of the expense of such recovery:
- a) First, to you in satisfaction of your covered loss in excess of the amount paid under this Agreement;
 - b) Second, to us in satisfaction of amounts paid in settlement of your claim;
 - c) Third, to you in satisfaction of any Deductible Amount; and
 - d) Fourth, to you in satisfaction of any loss not covered under this Agreement.

18. Recoveries do not include any recovery:

- a) From insurance, suretyship, reinsurance, security or indemnity taken for our benefit; or
- b) Of original "securities" after duplicates of them have been issued.

19. You must transfer to the Pool your rights of recovery against any person or organization for any loss you sustained and for which the Pool pays or settles. You must also do everything necessary to secure those rights and do nothing after loss to impair them.

20. The value of any loss for purposes of coverage under this Coverage Agreement shall be determined as follows:

- a) Loss of "money" but only up to and including its face value. The Pool may pay for loss of "money" issued by any country other than the United States of America:
 - i. At face value in the "money" issued by that country; or
 - ii. In the United States of America dollar equivalent determined by the rate of exchange published in *The Wall Street Journal* on the day the loss was "discovered".
- b) Loss of "securities" but only up to and including their value at the close of business on the day the loss was "discovered". The Pool may, at our option:
 - i. Pay the market value of such "securities" or replace them in kind, in which event you must assign to the Pool all your rights, title and interest in and to those "securities"; or
 - ii. Pay the cost of any Lost Securities Bond required in connection with issuing duplicates of the "securities". However, the Pool will be liable only for the payment of so much of the cost of the bond as would be charged for a bond having a penalty not exceeding the lesser of the:

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Employee Fidelity and Faithful Performance Coverage



- I. Market value of the "securities" at the close of business on the day the loss was "discovered"; or
 - II. The Limit of Coverage applicable to the "securities".
- c) Loss of or damage to "property other than "money" and "securities"" for the replacement cost of the property without deduction for depreciation. However, we will not pay more than the least of the following:
- i. The cost to replace the lost or damaged property with property of comparable material and quality and used for the same purpose;
 - ii. The amount you actually spend that is necessary to repair or replace the lost or damaged property; or
 - iii. The Limit of Insurance applicable to the lost or damaged property.

With regard to Paragraphs 20.c.i. through 20.c.iii. above, the Pool will not pay on a replacement cost basis for any loss or damage:

- i. Until the lost or damaged property is actually repaired or replaced; and
- ii. Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.

If the lost or damaged property is not repaired or replaced, we will pay on an actual cash value basis.

F. DEFINITIONS

1. "Banking premises" means the interior of that portion of any building occupied by a banking institution or similar safe depository.
2. "Discover" or "discovered" means the time when you first become aware of facts which would cause a reasonable person to anticipate that a loss of a type covered by this Agreement may have been or may



be incurred, regardless of when the act or acts causing or contributing to such loss occurred, even though the exact amount or details of loss may not then be known.

“Discover” or “discovered” also means the time when you first receive notice of an actual or potential claim in which it is alleged that you are liable to a third party under circumstances which, if true, would constitute a loss under this Agreement.

3. “Employee”

a) “Employee” means:

i. Any natural person:

- I. While in your service and for the first 30 days immediately after termination of service, unless such termination is due to “theft” or any other dishonest act committed by the “employee”;
- II. Who you compensate directly by salary, wages or commissions; and
- III. Who you have the right to direct and control while performing services for you;

ii. Any natural person who is furnished temporarily to you:

- I. To substitute for a permanent “employee” as defined in Paragraph a).(i), who is on leave; or
- II. To meet seasonal or short-term work load conditions; while that person is subject to your direction and control and performing services for you, excluding, however, any such person while having care and custody of property outside the “premises”;

iii. Any natural person who is leased to you under a written agreement between you and a labor leasing firm, to perform

duties related to the conduct of your business, but does not mean a temporary "employee" as defined in Paragraph a.(2);

- iv. Any natural person who is:
 - I. A trustee, commissioner, officer, "employee", administrator or "manager", except an administrator or "manager" who is an independent contractor, of any "employee benefit plan"; and
 - II. A director or commissioner or trustee of yours while that person is engaged in handling "funds" or "other property" of any "employee benefit plan";
- v. Any natural person who is a former "employee", partner, "member", "manager", director, commissioner or trustee retained as a consultant while performing services for you;
- vi. Any natural person who is a guest student or intern pursuing studies or duties, excluding, however, any such person while having care and custody of property outside the "premises"; or
- vii. A natural person acting as a Volunteer who works under the direction of the "Member"; or
- viii. Any "employee" of an entity merged or consolidated with you prior to the effective date of this agreement; or
- ix. Any of your "managers", directors, commissioners or trustees while:
 - I. Performing acts within the scope of the usual duties of an "employee"; or
 - II. Acting as a member of any committee duly elected or appointed by resolution of your board of directors or board of trustees to perform specific, as distinguished from general, directorial acts on your behalf.



- b). "Employee" does not mean any agent, broker, factor, commission merchant, consignee, independent contractor or representative of the same general character not specified in Paragraph 2.a above.
4. "Employee benefit plan" means any welfare or pension benefit plan shown in the Declarations that you sponsor and which is subject to the Employee Retirement Income Security Act of 1974 (ERISA) and any amendments thereto.
5. "Forgery" means the signing of the name of another person or organization with intent to deceive; it does not mean a signature which consists in whole or in part of one's own name signed with or without authority, in any capacity, for any purpose.
6. "Funds" means "money" and "securities".
7. "Manager" means a person serving in a directorial capacity for an organization.
8. "Member" mean a participating member of the Michigan County Road Commission Self-Insurance Pool also known as MCRC SIP or the "Pool".
9. "Messenger" means you or any "employee" while having care and custody of property outside the "premises".
10. "Motor Vehicles, Trailers or Equipment and Accessories" means a land motor vehicle, trailer or semi-trailer designed for land travel on public roads (including any machinery or apparatus attached thereto), but does not include mobile equipment.
11. "Money" means:
- a) Currency, coins and bank notes in current use and having a face value; and
 - b) Travelers checks, register checks and money orders held for sale to the public.





12. "Occurrence" means:

- a) An individual act;
- b) The combined total of all separate acts whether or not related; or
- c) A series of acts whether or not related;

committed by an "employee" acting alone or in collusion with other persons, during the Coverage Period shown in the Declarations, except as provided under Condition E.12. a), or E.12. b).

13. "Other property" means any tangible property other than "money" and "securities" that has intrinsic value. "Other property" does not include computer programs, electronic data or any property specifically excluded under this Agreement.

14. "Premises" means the interior of that portion of any building you occupy in conducting your operation.

15. "Securities" means negotiable and nonnegotiable instruments or contracts representing either "money" or property and includes:

- a) Tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and
- b) Evidences of debt issued in connection with credit or charge cards, which cards are not issued by you;

but does not include "money".

16. "Theft" means the unlawful taking of property to the deprivation of the Insured.

G. CANCELLATION

This Agreement may be cancelled by the "Member" by giving at least sixty (60) days written notice to the Pool. This Agreement may be cancelled by the Pool by mailing to the "Member" at the address last known to the Pool, or it authorized agent, written notice stating when, not less than sixty (60) calendar days thereafter such cancellation shall be effective. The mailing of the notice,

as aforesaid, shall be sufficient notice, and the effective date of cancellation stated therein shall become the expiration date of the Coverage Period. Delivery of such written notice either by the "Member" or the Pool shall be equivalent to mailing.

This Agreement may be cancelled by the Pool for non-payment of contribution by mailing to the "Member", at the last mailing address known by the Pool, written notice stating when, not less than ten (10) days thereafter, such cancellation shall be effective.

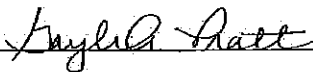
Contribution adjustment may be made either at the time cancellation is effective or as soon as practicable thereafter, but payment or tender of unearned contribution is not a condition precedent to cancellation.

The Pool shall continue servicing any of the "Member's" pending Claims, unless the "Member" specifically assumes the liability and makes provisions to indemnify the Pool from loss by taking over the servicing of any such Claim(s). The "Member" shall reimburse the Pool for all claims expenses incurred after the cancellation.

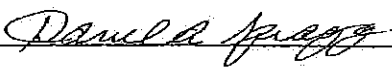
H. FALSE OR FRAUDULENT CLAIMS

If the "Member" shall make any claim knowing the same to be false or fraudulent, as regards amount or otherwise, this Agreement shall become void, and all claims shall be forfeited.

This Agreement shall not be valid unless signed by authorized representatives of the Pool.



Gayle A. Pratt, Administrator



Darrel A. Spragg, Chairman

Michigan County Road Commission Self-Insurance Pool
Employee Fidelity and Faithful Performance Coverage



**MICHIGAN COUNTY ROAD COMMISSION
SELF-INSURANCE POOL**

(Hereinafter called the Pool)

**EMPLOYMENT PRACTICES & PUBLIC OFFICIALS
ERRORS AND OMISSIONS LIABILITY
COVERAGE AGREEMENT**

CLAIMS MADE AND REPORTED

In consideration of the payment of contribution and reliance upon all information furnished by the Member to the Pool, and subject to the terms, conditions, definitions, exclusions and limitations hereinafter provided, the Pool agrees:

To pay on behalf of the Member and/or Covered Person all sums which the Member or Covered Person shall become legally obligated to pay as **Damages or Claim Expenses**; provided, however, such **Damages and Claim Expenses** must have resulted from a **Covered Event**, and which is first made against the Member or Covered Person during the **Coverage Period** or the **Extended Reporting Period**, if purchased, and reported to the Pool during the **Coverage Period** or the **Extended Reporting Period**, if purchased, or within sixty (60) days after the expiration of the **Coverage Period** or **Extended Reporting Period**, if purchased.

Provided always that no portion of any Covered Event as described below took place prior to the Retroactive Date stated in Item 5. of the Declarations, or after termination or expiration of the Agreement:

EMPLOYMENT PRACTICES LIABILITY

Covered Event means any actual or alleged:

1. Wrongful dismissal, discharge or termination (either actual or constructive) of employment, including both breach of an expressed or implied employment contract, other than an employment contract or agreement which stipulates financial consideration if such is due as the result of a

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EPL/E&O Coverage Agreement



breach of the contract or agreement, and violation of applicable law or public policy;

2. Employment related harassment (including but not limited to sexual harassment);
3. Employment related discrimination (including but not limited to discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy or disability);
4. Employment related retaliation, including retaliatory action against an employee because the employee has:
 - A. Declined to perform an illegal or unethical act;
 - B. Filed a complaint with a governmental authority or a "suit" against the Member or any other Covered Person in which damages are claimed;
 - C. Testified against the Member or any other Covered Person at a legal proceeding; or
 - D. Notified a proper authority of any aspect of the Member's business operation which is illegal.
5. Employment related misrepresentation to an Employee or applicant for employment with the Member;
6. Employment related libel, slander, humiliation, defamation and/or invasion of privacy;
7. Wrongful failure to employ or promote;
8. Wrongful deprivation of career opportunity, wrongful demotion or negligent Employee evaluation, including the giving of defamatory statements in connection with an Employee reference;
9. Employment related wrongful discipline;



- 10. Failure to grant tenure or practice privileges;
- 11. Failure to provide or enforce adequate or consistent organization policies or procedures relating to employment performance;
- 12. Violations of the following Federal Laws (and any amendments) including all regulations promulgated thereunder:
 - A. Family and Medical Leave Act of 1993;
 - B. Americans with Disabilities Act of 1992 (ADA);
 - C. Civil Rights Act of 1991;
 - D. Age Discrimination in Employment Act of 1967 (ADEA), including the Older Workers Benefit Protection Act of 1990; or
 - E. Title VII of the Civil Rights Law of 1964 (as amended) and 42 U.S.C. Section 1983, as well as the Pregnancy Discrimination Act of 1978;
- 13. Violation of a Covered Person's Civil Rights relating to any of the above; or
- 14. Negligent hiring, retention, training or supervision, infliction of emotional distress, or violation of an individual's Civil Rights, when alleged in conjunction with any of the foregoing items 1 through 13.

PUBLIC OFFICIALS LIABILITY

Covered Event means:

Any actual or alleged act, error, omission, misstatement, misleading statement, neglect, or breach of duty by the Member or Covered Person while acting solely in his or her capacity as such and on behalf of the Member.

DEFENSE, INVESTIGATION AND SETTLEMENT OF CLAIMS

The Pool shall investigate and defend any claims to which coverage under this Agreement applies pursuant to the following provisions:

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1. Claim expenses incurred in investigating and defending such claims shall be included within the per claim Agreement Limit of Liability set forth in the Declarations and shall not be in addition thereto. Such claim expenses shall reduce the available Limit of Liability. THE POOL SHALL NOT BE OBLIGATED TO PAY ANY DAMAGES OR TO DEFEND OR TO CONTINUE TO DEFEND ANY CLAIM OR TO PAY CLAIM EXPENSES AFTER THE LIMIT OF THE POOL'S LIABILITY HAS BEEN TENDERED TO THE MEMBER OR COVERED PERSON OR INTO THE COURT OR EXHAUSTED BY PAYMENT(S) OF DAMAGES AND/OR CLAIM EXPENSES.
2. The Pool shall make selection of the defense counsel.
3. The Member and/or Covered Person shall cooperate with the Pool in defense, investigation and settlement of any claim. The Member and/or Covered Person, will assist the Pool in effecting any rights of indemnity, contribution or apportionment available to the Member and/or Covered Person or the Pool.
4. Upon the Pool's request, the Member and/or Covered Person, without charge to the Pool, shall (i) submit to examination and interview by a representative of the Pool, under oath, if required; (ii) attend hearings, depositions and trials; (iii) assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses in the conduct of the suits; (iv) give a written statement or statements to the Pool's representatives and (v) meet with representative(s) for the purpose of determining coverage and investigating and/or defending any claim.
5. The Member and/or Covered Person shall not, with respect to any claim covered under this Agreement, except at Member and/or Covered Person's personal cost, make any payment, admit liability, settle claims, assume any obligation, agree to arbitration or any similar means of resolution to any dispute, waive any rights or incur claim expenses, without prior written Pool approval. Any costs and expenses incurred by the Member and/or Covered Person prior to the Member and/or Covered Person giving written notice of the claim to the Pool, shall be borne by the Member and/or Covered Person.



6. The Pool and such servicing contractors to whom the Pool has delegated claims settling authority shall have final authority over the disposition of any claim and shall have full settlement authority with respect thereto. The Member, however, shall have the right to appeal any claim decision to the Pool Board and the decision of the Pool Board shall be final.

EXTENDED REPORTING PERIOD

If the Pool cancels or nonrenews this Agreement, for reason other than nonpayment of contribution, or noncompliance with the terms and conditions of the Agreement, the Member, for an additional contribution charge, shall have the right to extend the period during which claims must be first made and reported to apply to CLAIMS FIRST MADE AGAINST THE MEMBER DURING THE TWENTY FOUR (24) CALENDAR MONTHS immediately following the effective date of such cancellation or nonrenewal and REPORTED IN ACCORDANCE WITH THIS AGREEMENT, provided that:

The Extended Reporting Period applies only to Covered Events that occurred or were committed prior to the effective date of cancellation or nonrenewal of this Agreement and that are otherwise covered by this Agreement; and

The quotation of different contributions, limit(s) of liability and/or renewal terms for the Agreement does not constitute a cancellation or refusal to renew for the purposes of this provision; and

The full contribution for this Agreement and any amounts owed by the Member that are due have been paid by the Member; and

Written notice of intent to exercise this option and the contribution required for the Extended Reporting Period is received by the Pool from the Member within ten (10) calendar days of the effective date of cancellation or nonrenewal. This contribution shall be calculated at the percentage stated in Item 6. of the Declarations of the full annual contribution of the Agreement, and upon the purchase(s) of the Extended Reporting Period, the entire contribution therefore shall be deemed fully earned at its commencement, and in the event the Extended Reporting Period is terminated before its term for any reason, the Pool shall not be liable for the return of any portion of the contribution paid therefore; and



This Agreement may be extended by virtue of the Extended Reporting Period and shall not in any way increase the applicable Limits of Liability set forth in the Declaration and described in the section Limits of Liability; and

The Extended Reporting Period shall only apply to **claims** first made against the Member and/or Covered Person during such Extended Reporting Period.

LIMITS OF LIABILITY

1. **Limit of Liability - Each Claim:** the Pool shall be liable to pay **Claim Expenses and Damages**, up to Each **Claim Limit** as stated in Item 3. of the Declarations for each **claim** first made during the **Coverage Period** or the **Extended Reporting Period**, if purchased, and reported to the Pool during the **Coverage Period** or the **Extended Reporting Period**, if purchased, or within sixty (60) days after the expiration of the **Coverage Period** or **Extended Reporting Period**, if purchased.
2. **Limit of Liability - Aggregate:** Subject to Item 1. hereinabove, **Limit of Liability - Each Claim**, the total liability of the Pool for **Claim Expenses and Damages** shall not exceed the **Agreement Aggregate Limits** as stated in Item 3. of the Declarations as a result of all **claims** first made during the **Coverage Period** and the **Extended Reporting Period**, if purchased, and reported to the Pool during the **Coverage Period** or the **Extended Reporting Period**, if purchased, or within sixty (60) days after the expiration of the **Coverage Period** or the **Extended Reporting Period**, if purchased.
3. **Multiple Covered Persons, Claims and Claimants:** The inclusion of more than one **Covered Person** or the inclusion of **Covered Person(s)** in addition to the **Member** in any **claim** or the making of **claims** by more than one person or organization shall not operate to increase the limits of liability. Two or more **claims** arising out of a single **Covered Event** or a series of related **Covered Events** shall be treated as a single **claim**.
4. All such **claims**, whenever made, shall be considered first made on the date on which the earliest **claim** arising out of such **Covered Event** was first made and all such **claims** are subject to the same limit of liability.



COVERED PERSONS

This Agreement provides coverage to the Member identified in Item 1. of the Declarations. The Pool also agrees to provide coverage to the following persons under this Agreement to the extent set forth below:

1. All persons who were, now are, or shall be lawfully elected or appointed officials or employees while acting solely in his or her capacity as such or on behalf of the Member;
2. Commissions, boards, or other units, and members and employees thereof, operated by and under the jurisdiction of such Member;
3. Volunteers acting solely in his or her capacity as such or on behalf of, at the request of and under the direction of the Member;
4. Officials and Employees of the Member appointed at the request of the Member to serve with an outside governmental entity.

DEFINITIONS

1. **Claim means:**

- A. A written demand for monetary or non-monetary relief;
- B. A civil, criminal, administrative, regulatory or arbitration proceeding for monetary or non-monetary relief which is commenced by:
 - a. Receipt or service of a complaint or similar pleading;
 - b. Return of an indictment (in the case of a criminal proceeding);
or
 - c. Receipt of a notice of charges;
- C. An administrative or regulatory investigation when conducted by the Equal Employment Opportunity Commission ("EEOC") or equivalent state, local, or foreign agency, which is commenced by

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the filing of a notice of charges, service of a complaint or similar document of which notice has been given to the Member.

- D. When you first become aware of any acts or circumstances which may reasonably be expected to give rise to a **claim**.

The Definition of **Claim** shall not include an internal or external labor or grievance proceeding which is pursuant to a collective bargaining agreement.

2. **Claim Expenses** means:

- A. Reasonable amounts paid by the Pool in the defense of a Member or Covered Person for that portion of any **claim** for which coverage is afforded under the Agreement, including lawyer(s) fees, cost of investigation, court costs, costs of attachment and similar bonds and cost(s) of appeals, provided always that **claim expenses** do not include:

(i) salary, wages, overhead or benefit expenses associated with employees or officials of the Member or (ii) salary, wages, administration overhead or benefit expenses, or charges of any kind or character whatsoever attributable to any third party **claims** administrator or in-house counsel of the Pool; or

- B. Fees charged by any lawyer designated by the Pool; all other fees and expenses resulting from the investigation, adjustment, defense and appeal of a **claim** and incurred by the Pool; and premiums on appeal bonds and premiums on bonds to release attachment in any **claim(s)** for an amount not in excess of the applicable Limit of Liability of this Agreement. However, the Pool shall have no obligation to apply for or furnish any such bonds, provided always that **claim expenses** shall not include salary charges of regular employees or officials of the Pool.

3. **Coverage Period** means the period from the inception date of this Agreement to the Agreement expiration date as stated in Item 2. of the Declarations, or its earlier cancellation or termination date, if any.

4. **Damages** means settlements and judgments.



Damages shall not include:

- A. Any amount for which the Covered Persons are not financially liable or for which there is no legal recourse to the Covered Persons;
- B. Amounts owed under any employment contract, partnership, stock or other ownership agreement, or any other type of contract;
- C. Disability, social security, workers' compensation, medical insurance, retirement or pension benefit payments, or settlement amounts representing employment related benefit payments.
- D. The cost of creating or reinstating employment;
- E. Any amounts owed to any Employee as wages or compensation previously incurred or vested without regard to any claim;
- F. Civil or criminal fines or penalties;
- G. Taxes, whether owed to or by any Covered Persons;
- H. Amounts, including claim expenses arising out of, based upon or attributable to actual or alleged liability or costs incurred by any Covered Person to modify any building or property in order to make such building or property more accessible or accommodating to any disabled person, or any actual or alleged liability or costs incurred in connection with any educational, sensitivity or other program, policy or seminar relating to an Employment Practices Claim;
- I. Matters that may be uninsurable under the law pursuant to which this Agreement shall be construed.

EXCLUSIONS

This Agreement does not apply to any claim:

- 1. Based upon, arising out of or attributable to the gaining by any Member and/or Covered Persons of any profit or advantage to which such Member and/or Covered Persons were not legally entitled; provided, this Exclusion shall not apply unless a judgment or other final adjudication adverse to such

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Member and/or Covered Persons establishes that the Member and/or Covered Persons gained such profit or advantage;

2. Based upon, arising out of, or directly or indirectly resulting from or in consequence of, or in any way involving any criminal or fraudulent act; provided, this Exclusion shall not apply unless a judgment or other final adjudication adverse to any Member and/or Covered Persons in the claim shall establish that such Member and/or Covered Persons committed such criminal or fraudulent act:

Exclusions 1. and 2. shall not apply to the strictly vicarious liability of any Member and/or Covered Persons for the conduct of another Member and/or Covered Persons.

3. For actual or alleged bodily injury, sickness, disease or death of any person, mental anguish or emotional distress; damage to or destruction of any tangible property, including the loss of use thereof, whether or not such property is physically injured; provided, this Exclusion shall not apply to allegations of mental anguish or emotional distress made solely in connection with an Employment Practices Claim;
4. Alleging, arising out of, based upon or attributable to, in whole or in part, any liability under or pursuant to any contract or agreement, whether oral, written, express or implied, including the liability of others assumed by a Member and/or Covered Persons, unless such Member and/or Covered Persons would have been liable in absence of such contract or agreement; provided, this Exclusion shall not apply to claim expenses in connection with an Employment Practices Claim;
5. For violation of any of the responsibilities, obligations or duties imposed by: The Fair Labor Standards Act (except the Equal Pay Act) or any state or local statutory or common law; regulation or ordinance that governs payment or administration of wages, hours worked, or employee entitlements; the Employment Retirement Income Security Act of 1974; the National Labor Relations Act; the Worker Adjustment and Retraining Notification Act; The Consolidated Omnibus Budget Reconciliation Act; the Occupational Safety and Health Act; any rules or regulations or any of the foregoing promulgated thereunder and amendments thereto; or any similar provisions of any federal, state or local statutory or common law that govern the same subject matter governed by the laws referenced in this



section even if particular laws have some additional or different provisions; provided, this Exclusion shall not apply to a claim for employment related retaliation;

6. Alleging, arising out of, based upon or attributable to any obligation pursuant to any workers' compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law; provided, this Exclusion shall not apply to a claim for employment related retaliation;
7. Alleging, arising out of, based upon or attributable to inverse condemnation, temporary or permanent taking, adverse possession or dedication by adverse use;
8. Alleging, arising out of, based upon or attributable to, in whole or in part, the performance or rendering of or failure to perform professional services to anyone other than the Member by any lawyer, architect, engineer, accountant or member of the medical profession;
9. For any actual or alleged libel, slander or defamation in any form; provided this Exclusion shall not apply to allegations of libel, slander, or defamation in any form made solely in connection with an Employment Practices Claim.
10. Alleging, arising out of, based upon or attributable to the issuance of bonds or the improper collection of taxes;
11. Alleging, arising out of, based upon or attributable to trespass, nuisance, wrongful entry, eviction or violation of rights of occupancy;
12. Alleging, arising out of, based upon or attributable to strikes, riots or civil commotion;
13. For the actual, alleged or threatened discharge, dispersal, release or escape of pollutants or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants.

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Pollution includes (but is not limited to) any solid, liquid, gaseous or thermal irritant or contaminant, whether live or inanimate, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes (but is not limited to) materials to be recycled, reconditioned or reclaimed;

14. Arising out of the destruction, theft, conversion, or disappearance of money, securities or the loss of use thereof;
15. Brought by or on behalf of a Covered Person(s) against another Covered Person(s), however, with respect to any allegations of an Employment Practices Claim, this Exclusion shall only apply to cross-claims or counter-claims brought by a Covered Person(s) against other Covered Person(s).

CONDITIONS

1. Action Against the Pool

No action shall lie against the Pool unless, as a condition precedent thereto, the Member and/or Covered Persons shall fully have complied with all terms of this Agreement, nor until the amount of the Member and/or Covered Person's obligation to pay shall have been fully and finally determined either by judgment against the Member and/or Covered Persons after actual trial or by written agreement of the Member and/or Covered Persons, the claimant and the Pool.

Any person or entity or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Agreement to the extent of the coverage afforded by this Agreement.

Nothing contained in this Agreement shall give any person or entity any right to join the Pool as a co-defendant in any claim against the Member to determine the Member's liability. Bankruptcy or insolvency of the Member shall not relieve the Pool of any of its obligations hereunder.

2. Allocation

If both damages covered under this Agreement and damages not covered under this Agreement are jointly incurred either because a claim includes both covered and non-covered matters or covered and non-covered causes of action or because a claim is made against both a Covered Person and any



other parties not covered by this Agreement, then the Member and the Pool shall use their best efforts to fairly and reasonably allocate payment and **claims expenses** under this Agreement between covered **damages** and non-covered **damages** based on the relative legal exposures of the parties with respect to covered and non-covered matters or covered and non-covered causes of action.

If the Pool and the Member agree on an allocation of **claim expenses**, based on covered and non-covered matters or persons, the Pool shall advance **claim expenses** allocated to a covered **claim**. If there is no agreement on an allocation of **claim expenses**, the Pool shall advance **claim expenses** that the Pool believes to be covered under this Agreement until a different allocation is negotiated, arbitrated or judicially determined.

Any negotiated, arbitrated or judicially determined allocation of **claim expenses** on account of a **claim** shall be applied retroactively to all **claim expenses** on account of such **claim**, notwithstanding any prior advancement to the contrary. Any advancement or allocation of **claim expenses** on account of a **claim** shall not apply to create any presumption with respect to the allocation of other **damages** on account of such **claim**.

3. Assignment of Interest

Assignment of interest under this Agreement shall not bind the Pool without its prior written consent.

4. Authorization and Notices

The Covered Persons agree that the Member acts on their behalf with respect to giving and receiving all notices and return of contribution from the Pool.

5. Cancellation

This Agreement may be cancelled by the Member by mailing to the Pool sixty (60) calendar days written notice stating when thereafter the cancellation shall be effective. This Agreement may be cancelled by the Pool by mailing to the Member at the address last known to the Pool, or its authorized agent, written notice stating when, not less than sixty (60) calendar days thereafter such cancellation shall be effective. The mailing of the notice, as aforesaid, shall be sufficient notice, and the effective date of

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cancellation stated therein shall become the expiration date of the Coverage Period. Delivery of such written notice either by the Member or the Pool, shall be equivalent to mailing.

This Agreement may be cancelled by the Pool for non-payment of contribution by mailing to the Member, at the last mailing address known by the Pool, written notice stating when, not less than ten (10) days thereafter, such cancellation shall be effective.

Contribution adjustment may be made either at the time the cancellation is effective or as soon as practicable thereafter, but payment or tender of unearned contribution is not a condition precedent to cancellation.

The Pool shall continue servicing any of the Member's pending claim(s), unless the Member specifically assumes the liability and makes provisions to indemnify the Pool from loss by taking over the servicing of any such claim(s). The Member shall reimburse the Pool for all claim(s) expenses incurred after the cancellation.

6. Changes

Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the Pool shall not affect a waiver or change in any part of this Agreement nor estop the Pool from asserting any right under the terms of the Agreement. The terms of this Agreement shall not be waived, nor changed, except by written endorsement issued to form a part of this Agreement, and this Agreement embodies all agreements existing between the Member and the Pool or any of its agents relating to this coverage.

7. False or Fraudulent Claims

If the Member and/or Covered Persons shall commit fraud in proffering any claim, this coverage shall become void to such Member and/or Covered Persons from the date such fraudulent claim is proffered.

8. Governing Law Clause

This Agreement shall, to the extent permitted by applicable law, be construed in accordance with the laws of the State of Michigan.



9. Notice of Claim or Circumstance

1. If, during the Coverage Period or the Extended Reporting Period (if applicable), any claim is first made against the Member and/or Covered Persons, then the Member and/or Covered Persons shall immediately forward to the Pool every demand, notice, summons or other process received by the Member and/or Covered Persons, or by their representatives, but in no event shall such notice be given later than sixty (60) days after either the expiration date or any earlier cancellation date of the Coverage Agreement.
2. If, during the Coverage Period or the Extended Reporting Period (if applicable), any Member and/or Covered Persons first becomes aware of any facts or circumstances which may reasonably be expected to give rise to a claim against any Member and/or Covered Persons and, as soon as practicable thereafter, but before the expiration date or any earlier cancellation date of the Coverage Agreement, gives to the Pool written notice of such facts or circumstances along with the full particulars described below, then any claim subsequently made against the Member and/or Covered Persons arising out of such facts or circumstances will be deemed first made during the Coverage Period. The written notice shall include, at a minimum:
 - a. The names or identity of the potential claimants and a detailed description of the specific alleged Covered Event; and
 - b. The circumstances by which the Member and/or Covered Persons first became aware of the specific alleged Covered Event.

All notices to be given to the Pool as required by this Agreement shall be directed to the Michigan County Road Commission Self-Insurance Pool, 417 Seymour Avenue, Suite #2, Lansing, Michigan 48933.

10. Other Coverage

This coverage shall be in excess of any other coverage available to the Member and/or Covered Persons whether the other coverage is stated to be primary, pro rata, contributory, excess, contingent or otherwise, unless the other coverage is written only as specific excess coverage over the Limits of Liability provided by this Agreement.

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11. Subrogation

In the event of any payment under this Agreement, the Pool shall be subrogated to the extent of such payment to all of the Members and/or Covered Person's right of recovery therefore against any person or entity. The Member and/or Covered Persons shall execute and deliver instruments and papers and take all necessary steps to secure such right. The Member and/or Covered Persons shall do nothing to prejudice such rights.

Any amount so recovered, whether effected by the Pool or by the Member and/or Covered Person shall be applied net of the expense of such recovery as follows:

- (a) First, to the satisfaction of the Member and/or Covered Person's payments for damages and claim expenses which are in excess of the amount of the Limit of Liability under this Agreement and which is in excess of any amount paid by any Pool under any other Agreement;
- (b) Second, to the Pool as reimbursement of amounts paid under this Agreement; and
- (c) Third, to any insurer under any other Agreement as reimbursement of amounts paid under any such Agreement.

12. Territory

The coverage afforded by this Agreement applies to Claims Made and Member Events taking place within the United States, its territories and possessions and Puerto Rico.

This Agreement shall not be valid unless signed by authorized representatives of the Pool.

Gayle A. Pratt

Gayle A. Pratt, Administrator

Darrel A. Spragg

Darrel A. Spragg, Chairman

Michigan County Road Commission Self-Insurance Pool
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**MICHIGAN COUNTY ROAD COMMISSION
SELF-INSURANCE POOL**
(Hereinafter called the Pool)

LIABILITY COVERAGE AGREEMENT

Coverage A - General Liability & Personal Injury Liability

Coverage B - Employee Benefits Errors & Omissions Liability

Coverage C - Auto Liability

In consideration of the contribution paid and with reliance upon all information furnished by the Member to the Pool and subject to the terms, conditions, definitions, exclusions and limitations hereinafter provided, the Pool agrees:

To pay on behalf of the Members all sums which the Members shall become legally obligated to pay by reason of liability imposed by law, or liability assumed under contract, insofar as the Members may legally do so, for damages because of:

- 1) "Bodily Injury", "Property Damage" or "Personal Injury" caused by an "occurrence" during the "Coverage Period" within the "Coverage Territory".
- 2) "Wrongful Act" in the Administration of Employee Benefits for "claims" that are first made against the Member during the "Coverage Period" within the "Coverage Territory".

DEFENSE, INVESTIGATION AND SETTLEMENT OF CLAIMS

The Pool shall investigate and defend any "occurrence" to which coverage under this Agreement applies pursuant to the following provisions:

- 1) "Claim" Expenses incurred in investigating and defending such "occurrences" shall be in addition to the Limit of Liability stated in the Declarations.

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- 2) The Pool shall make selection of the defense counsel.
- 3) The Member shall cooperate with the Pool in defense, investigation and settlement of any "claim". The Member will assist the Pool in effecting any rights of indemnity, contribution or apportionment available to the Member or the Pool. Upon the Pool's request, the Member, without charge to the Pool, shall (i) submit to examination and interview by a representative of the Pool, under oath, if required; (ii) attend hearings, depositions and trials; (iii) assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses in the conduct of the "suits"; and (iv) give a written statement or statements to the Pool's representatives and meet with representative(s) for the purpose of determining coverage and investigating and/or defending any "claim".
- 4) The Member shall not, with respect to any "claim" covered under this Agreement, except at his own cost, make any payment, admit liability, settle "claims", assume any obligation, agree to arbitration or any similar means of resolution to any dispute, waive any rights or incur "claim" Expenses, without prior written Pool approval. Any costs and expenses incurred by the Member prior to the Member giving written notice of the "claim" to the Pool shall be borne by the Member.
- 5) The Pool and such servicing contractors to whom the Pool has delegated "claims" settling authority shall have final authority over the disposition of any "claim" and shall have full settlement authority with respect thereto. The Member, however, shall have the right to appeal any "claim" decision to the Pool Board and the decision of the Pool Board shall be final.

POOL'S LIMIT OF LIABILITY

Regardless of the number of (1) Members under this Agreement, (2) person or organizations who sustain injury or damage, or (3) "claims" made or "suits" brought on account of "Bodily Injury", "Property Damage", "Personal Injury", or "Wrongful Act" in the Administration of Employee Benefits, the Pool's liability is limited for an amount not to exceed the amount specified in Item 4. of the Declarations Certificate as a result of any one "occurrence".

For the purpose of determining the limit of the Pool's liability, all damages arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one "occurrence".

From the total amount of the Pool's obligations to pay damages on behalf of the Member (including any expenses incurred under the Defense, Investigation and Settlement of "claims" provisions), there shall be subtracted the retention amount specified in Item 5. of the Declarations Certificate.

MEMBERS COVERED

Each of the following is a Member under this Agreement to the extent set forth below:

- a) The Public Entity named in the Declarations Certificate;
- b) All Members of the Boards or Commissions covered hereunder;
- c) All employees of the Public Entity while acting on behalf of the Public Entity.

DEFINITIONS

ACCIDENT means something that occurs unexpectedly or unintentionally. "Accident" includes continuous or repeated exposure to the same conditions resulting in "bodily injury" or "property damage".

AUTO means a land motor vehicle, trailer or semi-trailer designed for land travel on public roads (including any machinery or apparatus attached thereto), but does not include "mobile equipment".

BODILY INJURY means "bodily injury", sickness or disease sustained by a person, including death resulting from any of these at any time.

CLAIM means any demand upon a Member for monetary compensation, whether formal or informal, written or oral, including, without limitation, the service of "suit" papers or arbitration proceedings against the Member for monetary compensation alleging liability of the Member as a result of an "occurrence"

which may or may not be covered by the Agreement. The term "claim" does not include reports of "accidents", or "occurrences", or any acts, errors, offenses or omissions which may give rise to a "claim" under this Agreement.

COVERAGE PERIOD means the time between the effective date and expiration date of the Coverage Agreement as shown under Item 2. of the Declarations.

COVERAGE TERRITORY means the United States of America (including its territories and possessions), Puerto Rico and Canada.

EMPLOYEE includes a "leased worker" or "temporary worker".

FUNGI means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by "fungi".

INSURED CONTRACT means:

1. A contract for a lease of premises;
2. A sidetrack agreement;
3. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
4. An elevator maintenance agreement;
5. That part of any other contract or agreement pertaining to your operations under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

LEASED WORKER means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your operations.

LOSS means the harm or damage suffered as a result of an "occurrence" as defined herein. "Loss" includes direct and accidental "loss" or damage.

MOBILE EQUIPMENT means any of the following types of land vehicles, including any attached machinery or equipment:

1. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
2. Vehicles maintained for use solely on or next to premises you own or rent;
3. Vehicles that travel on crawler treads;
4. Vehicles, whether self-propelled or not maintained primarily to provide mobility to permanently mounted:
 - a. Power cranes, shovels, loaders, diggers or drills; or
 - b. Road construction or resurfacing equipment such as graders, scrapers or rollers;
5. Vehicles not described in 1., 2., 3. or 4. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - a. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - b. Cherry pickers and similar devices used to raise or lower workers;
6. Vehicles not described in 1., 2., 3. or 4. above maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
 - a. Equipment designed primarily for:
 - (1) Snow removal;
 - (2) Road maintenance, but not construction or resurfacing; or
 - (3) Street cleaning;
 - b. Cherry pickers and similar devices mounted on "auto" or truck chassis and used to raise or lower workers; and



- c. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

OCCURRENCE as respects General Liability and Auto Liability, "occurrence" means an "accident", including continuous or repeated exposure to substantially the same general harmful conditions.

As respects "Personal Injury" Liability, "occurrence" means an offense or series of related offenses as defined under "Personal Injury" sustained during the "Coverage Period" by any person or organization and arising out of "personal injury" as defined herein.

As respects Employee Benefits Errors and Omission Liability, "occurrence" means any "claim" made against the Member and caused by any negligent act, error or omission by the Member or any other person for whose acts the Member is legally liable in the "Administration" of the Members "Employee Benefit Programs."

PERSONAL INJURY means (1) False arrest, detention or imprisonment; (2) Malicious prosecution; (3) Wrongful entry or eviction or invasion of the right of private occupancy; (4) Oral or written publication or utterance of a libel or slander or of other defamatory or derogatory material or material that violates a person's right of privacy.

POLLUTANTS means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

PROPERTY DAMAGE means (1) Physical injury or destruction of tangible property which occurs during the "Coverage Period", including the "loss" of use thereof at any time resulting therefrom; or (2) "Loss" of use of tangible property which has not been physically injured or destroyed provided such "loss" of use is caused by an "occurrence" during the "Coverage Period".

SUIT means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal injury" to which this insurance applies are alleged. "Suit" includes:



- A. An arbitration proceeding in which such damages are claimed and to which the Member must submit or does submit with our consent; or
- B. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the Member submits with our consent; or
- C. An appeal of a civil proceeding.

TEMPORARY WORKER means a person who is furnished to you to substitute for a permanent "employee" on leave, or to meet seasonal or short-term workload conditions.

WRONGFUL ACT means any actual or alleged negligent act, error or omission in the "Administration" of the "Employee Benefit Programs."

EXCLUSIONS

This coverage does not apply to:

A. Expected or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the Member. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

B. Contractual Liability

"Bodily injury" or "property damage" for which the Member is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the Member would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement.

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C. Workers' Compensation and Similar Laws

Any obligation of the Member under any workers' compensation, disability benefits or unemployment compensation law or any similar law.

D. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the Member arising out of and in the course of:
 - (a) Employment by the Member; or
 - (b) Performing duties related to the conduct of the Member's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of paragraph (1) above.

This exclusion applies:

- (1) Whether the Member may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

E. Pollution

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged, or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
 - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to any Member. However, this subparagraph does not apply to:
 - (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot from equipment used to heat that building.

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- (ii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire;"
- (b) At or from any premises, site or location which is or was at any time used by or for any Member or others for the handling, storage, disposal, processing or treatment of waste;
- (c) Which are, or were at any time, transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any Member; or
 - (ii) Any person or organization for whom you may be legally responsible; or
- (d) At or from any premises, site or location on which any Member or any contractors or subcontractors working directly or indirectly on any Member's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such Member, contractor or subcontractor. However, this subparagraph does not apply to:
 - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such Member, contractor or subcontractor;

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- (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".
 - (e) At or from any premises, site or location on which any Member or any contractors or subcontractors working directly or indirectly on any Member's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effect of the "pollutants".
- (2) Any "loss", cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any Member or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (b) "Claim" or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants". However, this paragraph does not apply to liability for damages because of "property damage" that the Member would have in the absence of such request, demand, order or statutory or regulatory requirement, or such "claim" or "suit" by or on behalf of a governmental authority.

F. Racing

"Bodily injury" or "property damage" arising out of the ownership, maintenance, operation, use, loading or unloading of any "mobile equipment" or "auto" while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity including the operation or use of any snowmobile or trailer designed for use therewith.

G. Aircraft

Liability arising out of the ownership, maintenance, loading or unloading, use or operation of any such aircraft, airfields, runways, hangers, buildings or other properties in connection with aviation activities, but this exclusion does not apply to ordinary road maintenance performed at airports by Members.

H. Care, Custody, Control

Injury to or destruction of (1) property owned by the Member, or (2) property rented to or leased to the Member where the Member has assumed liability for damage to or destruction of such property unless the Member would have been liable in the absence of such assumption of liability, or (3) aircraft or watercraft in the care, custody or control of any Member.

I. Eminent Domain

Any liability arising out of, or in any way connected with, the operation of the principles of eminent domain, condemnation proceedings, or inverse condemnation, by whatever name called, whether such liability accrues directly against the Member or by virtue of any agreement entered into by or on behalf of the Member.

J. Failure to Supply Water

Liability arising out of the failure to supply water, unless accidental.

K. Failure to Supply Electric or Fuel

Liability arising out of the failure to supply electricity or fuel.

L. ERISA

Any "claim" or "claims" based upon the provisions of the Employment Retirement Income Security Act of 1974 (ERISA); Public Law 93-406, commonly referred to as the Pension Reform Act of 1974; or to any "claim" or "claims" based upon the provisions of the Securities Act of 1933 or the Securities Exchange Act of 1934; and any amendments thereto, or the provisions of any similar Federal, State or Local statute or common law.

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M. Public Acts

Any damages based upon or arising out of any Member's activities which would not be covered under customary and usual policies of insurance which cover "bodily injury", "property damage" and "personal injury" liability, it is the intent of this exception to specifically restrict coverage provided to the Members to those coverages which may lawfully be provided pursuant to Act #35 of the Public Acts of 1951, as amended by Act #138 of the Public Acts of 1982.

N. Silica, Dust and Particulate Matter

Any injury, damage, expense, cost, "loss", liability or legal obligation arising out of, resulting from, or in any way related to, in whole or in part, the respiration, inspiration, inhalation or breathing in of dust or particulate matter. Dust or particulate matter may include, but is not limited to: dust, particulate matter, inspirable dust, respirable dust, smoke, mist, dirt, fibers, grit, soot, salt, acids, bases, metals, aerosols, crystals, minerals, sand silicates or silica.

O. Lead Contamination

"Bodily injury", "property damage" or "personal injury" arising out of lead in any form.

P. Asbestos

"Bodily injury", "property damage" or "personal injury" arising out of the actual or alleged presence of asbestos, asbestos fibers or products containing asbestos, provided that the injury or damage is caused or contributed to by the hazardous properties of asbestos. This includes:

- (1) Any supervision, instructions, recommendations, warnings or advice given or, which should have been given, in connection with the above; and
- (2) Any obligation to share damages with, or repay someone else who must pay damages because of such injury or damage.



Q. Fungi or Bacteria

- (1) "Bodily injury" or "property damage" which would have not occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.
- (2) Any "loss", cost or expense arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effect of, "fungi" or bacteria, by any Member or by any other person or entity.

R. Discrimination

"Bodily injury" or "personal injury" resulting from, or as a consequence of, discrimination, whether intentional or unintentional, based upon a person's sex, sexual preference, marital status, race, creed, religion, national origin, age, physical capabilities, characteristics or condition, or mental capabilities or condition.

S. Unsolicited Communications

"Bodily injury", "property damage", or "personal injury" arising out of unsolicited communications by or on behalf of any Member. Unsolicited communications means any form of communication, including, but not limited to, facsimile, electronic mail, posted mail or telephone, in which the recipient has not specifically requested the communication. Unsolicited communications also include, but are not limited to, communications which are made or allegedly made in violation of the Telephone Consumer Protection Act and the CAN-SPAM Act of 2003 and any amendments thereto, or similar Acts and/or local or state statutes that bar, prohibit or penalize such communications.

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T. Employment Related Practices

"Bodily injury" or "personal injury" to:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "personal injury" to that person at whom any of the employment-related practices described above in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies whether the injury causing event described in Paragraphs (a), (b) or (c) above occurs before employment, during employment or after employment of that person.

This exclusion applies whether the Member may be liable as an employer or in any other capacity, and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

U. Terrorism

"Loss", damage, injury, expense, cost or legal obligations directly or indirectly resulting from or arising out of, or in any way related to any acts of "terrorism":

- (1) "Terrorism" means activities against persons, organizations or property of any nature.



(a) That involves the following, or preparation for, the following:

- (i) Use or threat of force or violence; or
- (ii) Commission or threat of a dangerous act; or
- (iii) Commission or threat of an act that interferes with or disrupts an electronic, communication, information or mechanical system; and

(b) When one or both of the following applies:

- (i) The effect of such activities is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
- (ii) It appears that the intent of such activities is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.

CONDITIONS

CONTRIBUTIONS

All contributions for this Agreement shall be computed in accordance with the Pool's rules, rates, rating plans, contributions and minimum contributions applicable to the coverage afforded herein.

INSPECTION AND AUDIT

The Pool shall be permitted to inspect the Member's property and operations at any time. Neither the Pool's right to make inspections, nor the making thereof, nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the Members or others, to determine or warrant that such property or operations are safe or healthful, or are in compliance with any law, rule or regulations.

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FINANCIAL RESPONSIBILITY LAWS

When this Agreement is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, such coverage as is afforded by this Agreement for "bodily injury" liability or for "property damage" liability shall comply with the provisions of such law to the extent of the coverage and limits of liability required by such law. The Member agrees to reimburse the Pool for any payment made by the Pool which it would not have been obligated to make under the terms of this Agreement except for the terms contained in this paragraph.

MEMBER'S DUTIES IN THE EVENT OF OCCURRENCE, CLAIM OR SUIT

1. In the event of an "occurrence", written notice containing particulars sufficient to identify the Member and all reasonably obtainable information with respect to the time, place or circumstance thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the Member to the Pool or any of its authorized agents as soon as practicable.
2. If "claim" is made or "suit" is brought against the Member, the Member shall immediately forward to the Pool every demand, notice, summons or other process received by him or his representative.
3. The Member shall cooperate with the Pool and, upon the Pool's request, assist in making settlements, in the conduct of "suit" and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the Member because of injury or damage with respect to which coverage is afforded under this Agreement; and the Member shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The Member shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of the "accident".

ACTION AGAINST POOL

No action shall lie against the Pool unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Agreement, nor until the amount of the Member's obligation to pay shall have been fully determined either by judgment against the Member after actual trial or written agreement of the Member, the claimant and the Pool.

Any person or organization, or the legal representative thereof, who has secured such judgment or written agreement shall thereafter be entitled to recover under this Agreement to the extent of the coverage afforded by this Agreement. No person or organization shall have any right under this Agreement to join the Pool as a party to any action against the Member to determine the Member's liability, nor shall the Pool be impleaded by the Member or his legal representative. Bankruptcy or insolvency of the Member shall not relieve the Pool of any of its obligations hereunder.

OTHER COVERAGE

The coverage afforded by this Agreement is primary coverage, except when stated to apply in excess of or contingent upon the absence of other coverage. When this coverage is primary and the Member has other coverage which is stated to be applicable to the "loss" on an excess or contingent basis, the amount of the Pool's liability under this Agreement shall not be reduced by the existence of such other coverage.

When both this coverage and other coverage apply to the "loss" on the same basis, whether primary, excess or contingent, the Pool shall not be liable under this Agreement for a greater proportion of the "loss" than that stated in the applicable contribution provision below:

1. Contribution by Equal Shares. If all such valid collectible coverage provides for contribution by equal shares, the Pool shall not be liable for a greater proportion of such loss than would be payable if such Member contributes an equal share until the share of each provider equals the lowest applicable limit of liability under any one agreement or the full amount of the "loss" is paid and with respect to any amount of "loss" not so paid, the remaining providers then continue to contribute equal shares of the remaining amount of the "loss" until each such provider has paid its limit in full or the full amount of the "loss" is paid.



2. Contribution by Limits. If any such coverage does not provide for contribution by equal shares, the Pool shall not be liable for a greater proportion of such "loss" than the applicable limit of liability under this Agreement for such "loss" to the total applicable limit of liability of all valid and collectible coverage against such "loss".

SUBROGATION

In the event of any payment under this Agreement, the Pool shall be subrogated to all Member's rights of recovery therefore against any person or organization and the Member shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Member shall do nothing after loss to prejudice such rights.

CHANGES

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Agreement or stop the Pool from asserting any right under the terms of this Agreement, nor shall the terms of this Agreement be waived or changed, except by endorsement issued to form a part of this Agreement.

CANCELLATION

This Agreement may be cancelled by the Member by giving at least sixty (60) - days written notice to the Pool. This Agreement may be cancelled by the Pool by mailing to the Member at the address last known to the Pool, or its authorized agent, written notice stating when, not less than sixty (60) calendar days thereafter such cancellation shall be effective. The mailing of the notice, as aforesaid, shall be sufficient notice, and the effective date of cancellation stated therein shall become the expiration date of the "Coverage Period". Delivery of such written notice either by the Member or the Pool, shall be equivalent to mailing.

This Agreement may be cancelled by the Pool for non-payment of contribution by mailing to the Member, at the last mailing address known by the Pool, written notice stating when, not less than ten (10) days thereafter, such cancellation shall be effective.



Contribution adjustment may be made either at the time cancellation is effective or as soon as practicable thereafter, but payment or tender of unearned contribution is not a condition precedent to cancellation.

The Pool shall continue servicing any of the Member's pending "claims", unless the Member specifically assumes the liability and makes provisions to indemnify the Pool from "loss" by taking over the servicing of any such "claim(s)". The Member shall reimburse the Pool for all "claims" expenses incurred after the cancellation.

This Agreement shall not be valid unless signed by authorized representatives of the Pool.

Gayle A. Pratt

Gayle A. Pratt, Administrator

Darrel A. Spragg

Darrel A. Spragg, Chairman

Michigan County Road Commission Self-Insurance Pool
Liability Coverage Agreement



ENDORSEMENT #1

LIABILITY INSURANCE DEDUCTIBLE

<u>Amount and Basis of Deductible</u>		<u>Coverage</u>
\$1,000	per occurrence	Automobile Liability
\$1,000	per occurrence	All other Bodily Injury, Property Damage, Personal Injury Liability

1. The Pool's obligation to pay damages on behalf of the Member applies only to the amount of damages in excess of any deductible amount(s) stated in the schedule above as applicable to such coverages.
2. The deductible amount applies to all damages as the result of any one occurrence.
3. The terms of the Agreement, including those with respect to (a) the Pool's rights and duties with respect to the defense of suits and (b) the Member's duties in the event of an occurrence apply irrespective of the application of the deductible amount.
4. The Pool may pay any part, or all, of the deductible amount to effect settlement of any claim or suit and, upon notification of the action taken, the Member shall promptly reimburse the Pool for such part of the deductible amount as has been paid by the Pool.
5. The deductible amount shall also include all expenses incurred in the investigation and negotiation in the settlement of any claim.

Michigan County Road Commission Self-Insurance Pool
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ENDORSEMENT #2

STATE TRUNKLINE ENDORSEMENT

<County Name> County Road Commission

In consideration of an additional contribution of \$<Contribution Amt.> included in the total contribution, it is agreed coverage applies to State Trunkline Roads subject to the Michigan Department of Transportation State Highway Maintenance Contract.

It is further agreed that the deductibles do not apply as respects claims arising out of incidents occurring on those roads designated as "State Trunklines" and subject to the Michigan Department of Transportation State Highway Maintenance Contract.

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ENDORSEMENT #3

**COVERAGE B – EMPLOYEE BENEFITS ERRORS
AND OMISSIONS COVERAGE**

The Pool will pay those sums which the Member shall become legally obligated to pay as damages because of a Wrongful Act in the “administration” of “Employee Benefit Programs”. Coverage afforded by this endorsement is limited to only those claims that are first made against the Member during the Coverage Period.

For the purpose of this endorsement:

The term “administration” shall mean:

1. Giving counsel to employees with respect to the “employee benefit programs”;
2. Interpreting the “employee benefit programs”;
3. Handling of records in connection with the “employee benefit programs”;
4. Effecting enrollment, termination or cancellation of employees under the “employee benefit programs”.

The term “employee benefit programs” shall mean:

Group Life Insurance, Group Accident or Health Insurance, Pension Plans, Employees Stock Subscription Plans, Workers’ Compensation, Unemployment Insurance, Social Security, Disability Benefits and any other similar employee benefits.

“Employee benefit programs” do not include:

Any formal, informal, written or oral agreement to compensate any past, present or future employee of the Member under any bonus plan, performance, incentive program, golden parachute arrangements or any other similar compensation plans.

The extension of coverage does not apply to:

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1. Damages arising out of a negligent act, error or omission of a Member which occurred prior to the coverage period; and the Member knew or should have known might result in a claim or suit; or
2. Any dishonest, fraudulent, criminal or malicious act, libel, slander, discrimination, emotional distress, harassment, or humiliation, or termination of employment; or
3. Bodily injury, property damage or personal injury; or
4. Failure of performance of any insurance contract issued to the Member by an insurer, including failure of any "employee benefits program" to provide benefits; or
5. Any claim for failure of performance of contract by any Member; or
6. Any claim based upon the Member's failure to comply with any law concerning workers' compensation, unemployment insurance, social security or disability benefits, or similar laws; or
7. Any claim based upon failure of stock to perform as represented by a Member; or
8. Any claim based upon advice given by a Member to an employee of the Member to participate or not to participate in stock subscription plans; or
9. Any claim or suit based upon the investment or non-investment of funds; or
10. Any claim for loss or damage arising out of any duty imposed upon the Member by virtue of the provisions of the Employee Retirement Income Security Act of 1974, or amendments thereto; or
11. Any fines, penalties, punitive or exemplary damages.

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Liability Coverage Agreement



ENDORSEMENT #4

BLANKET ADDITIONAL INSURED'S

GENERAL LIABILITY

Owners, Managers or Lessors of Premises

Any person or organization that is a premises owner, manager or lessor is an insured, but only with respect to liability arising out of the ownership, maintenance or use of that part of any premises leased or loaned to you.

This coverage provided to such premises owner, manager or lessor does not apply to:

1. Any bodily injury or property damage caused by an occurrence that takes place, or personal injury caused by an offense that is committed, after you cease to be a tenant in or to borrow that premises; or
2. Structural alterations, new construction or demolition operations performed by or on behalf of such premises owner, manager or lessor.

Lessors of Leased Equipment

Any person or organization that is an equipment lessor is an insured, but only with respect to liability for bodily injury, property damage or personal injury caused, in whole or in part, by your acts or omissions in the maintenance, operation or use by you of equipment leased to you by such equipment lessor.

The insurance provided to such equipment lessor does not apply to any bodily injury or property damage caused by an occurrence that takes place, or personal injury caused by an offense that is committed, after the equipment lease expires.

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Persons or Organizations for Your Ongoing Operations as Required by Written Contract or Agreement

Any person or organization that is not otherwise an insured under this Coverage Part and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured but only with respect to liability for bodily injury, property damage or personal injury that:

1. Is bodily injury or property damage caused by an occurrence that takes place, or is personal injury caused by an offense that is committed, after you have signed and executed that contract or agreement; and
2. Is caused, in whole or in part, by your acts or omissions in the performance of your ongoing operations to which that contract or agreement applies or the acts or omissions of any person or organization performing such operations on your behalf.

The limits of insurance provided to such insured will be the limits which you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.

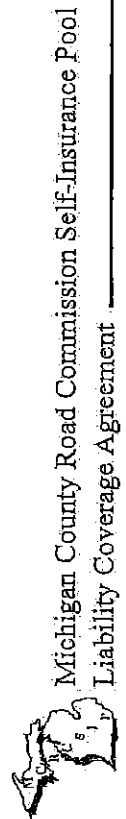


ENDORSEMENT #5
LIMITED COVERAGE ENDORSEMENT

SILICA, DUST AND PARTICULATE MATTER
AND FUNGI OR BACTERIA

Exclusions N. and Q. are deleted, but only for the following limit of liability for damages:

\$100,000 Each Occurrence / Aggregate



ENDORSEMENT #6

"This Endorsement Changes the Agreement. Please Read it Carefully."

NUCLEAR ENERGY LIABILITY EXCLUSION

1. The insurance does not apply:

A. Under any Liability Coverage, to bodily injury or property damage.

- 1) With respect to which a Member insured under the Agreement is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
- 2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the insured is, or had this Agreement not been issued would be entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

B. Under any Medical Payments coverage, to expenses incurred with respect to bodily injury resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.

C. Under any Liability Coverage, to bodily injury or property damage resulting from "hazardous properties" of "nuclear material", if:

- 1) The "nuclear material" (a) is at any "nuclear facility" owned by, or operated by or on behalf of, an insured or (b) has been discharged or dispersed therefrom:

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- 2) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an insured; or
- 3) The bodily injury or property damage arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to property damage to such "nuclear facility" and any property thereat.

2. As used in this endorsement:

"Hazardous properties" includes radioactive, toxic or explosive properties.

"Nuclear material" means "source material", "special nuclear material" or "by-product material".

"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

"Waste" means any waste material (a) containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and (b) resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

- a. Any "nuclear reactor",
- b. Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing "spent fuel", or (3) handling, processing or packaging "waste".



- c. Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- d. Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste".

The site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations are included.

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

Property damage includes all forms of radioactive contamination of property.

ENDORSEMENT #7

"This Endorsement Changes the Agreement. Please Read it Carefully."

MICHIGAN PROPERTY PROTECTION COVERAGE

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

A. Coverage

We will pay for "property damage" caused by an accident and resulting from the ownership, maintenance or use of a covered "auto" as an "auto". A covered "auto" under this coverage includes an "auto" operated by, but not owned by, you or any "family member" to which the Liability Coverage of the policy applies. This coverage is subject to Chapter 31 of the Michigan Insurance Code and applies only to an accident which happens in Michigan.

B. Exclusions

This insurance does not apply to:

1. "Property damage" to property owned by you or any "family member" if you or any "family member" was the owner, operator or registrant of an "auto" involved in the accident which caused the "property damage".
2. "Property damage" to any covered "auto" or its contents.
3. "Property damage" to any "auto" which is not a covered "auto" or to its contents. However, this exclusion does not apply to the "auto" or its contents if the "auto" was parked in such a way as not to cause unreasonable risk of the "property damage".
4. "Property damage" to the property of anyone while using a covered "auto" with "your" consent, unless that person reasonably believed he or she was entitled to use the "auto".
5. "Property damage" caused intentionally by any claimant.

Michigan County Road Commission Self-Insurance Pool
Liability Coverage Agreement



6. "Property damage" to any property while a covered "auto" is located for use as a residence or premises.
7. "Property damage" to property as a result of an accident involving an "auto" not owned by you or any "family member". This exclusion applies only to the extent that the security required by the Michigan no-fault law has been provided by or for the owner.
8. "Property damage" to any property you accept for transportation as a 'motor carrier' as that term is defined in Chapter 475 of the Michigan Compiled Laws. However, this exclusion applies only to the extent that the property is covered, or would be covered except for a deductible, by a certificate of insurance or other security you have on file with any regulatory authority.
9. "Property damage" to property that occurs within the course of the business of repairing, servicing, or otherwise maintaining motor vehicles.
10. "Property damage" arising directly or indirectly out of:
 - a. War, including undeclared or civil war;
 - b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
 - c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

C. Limit of Insurance

1. Regardless of the number of covered "autos", contribution paid, claims made, vehicles involved in the accident or insurers providing property protection insurance, the most we will pay for all "property damage" resulting from any one accident is \$1,000,000. However, the amount we pay will be limited to the lesser of reasonable repair costs or replacement costs minus depreciation and the value of any loss of use.



2. Any amount we would otherwise pay for "property damage" will be reduced by any deductible shown in the Declarations prior to the application of our Limit of Insurance. To settle any claim, we will pay all or any part of the deductible shown. If this happens, you must reimburse us for the deductible or the part of the deductible we have paid.

D. Changes in Conditions

The Conditions are changed for Property Protection Coverage as follows:

1. The Transfer of Rights of Recovery Against Others To Us does not apply.
2. Legal Action Against Us is amended by the addition of the following:
No action to recover property protection insurance may be brought against us more than a year after the accident.
3. The following Conditions are added:

Reimbursement and Trust

If we make any payment to a claimant who recovers from a party legally responsible for "property damage", the claimant shall hold the proceeds in trust for us and pay us back the amount we have paid. This requirement is subject to any applicable limitations of Michigan law.

Non-Duplication

We will not pay duplicate benefits for the same expenses or loss.

Claimants Notice to Us

A claimant must promptly notify us of an accident and must tell us how, when and where the accident happened.

Michigan County Road Commission Self-Insurance Pool
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E. Additional Definitions

As used in this endorsement:

1. "Auto" means a motor vehicle or trailer operated or designed for use on public roads but does not include a vehicle operated by muscular power, a vehicle with fewer than three wheels, a motorcycle, or a farm tractor or other implement of husbandry which is not subject to the registration requirements of the Michigan Vehicle Code.
2. "Family member" means a person related to you by blood, marriage or adoption who is a resident of your household, including a ward or foster child.
3. "Occupying" means, in upon, getting in, on, out or off.
4. "Property damage" means damage to tangible property including the loss of use of such tangible property.



ENDORSEMENT #8

"This Endorsement Changes the Agreement. Please Read it Carefully."

MICHIGAN PERSONAL INJURY PROTECTION

With respect to coverage provided by this endorsement, the provisions of the coverage form apply unless modified by the endorsement.

SCHEDULE

Coverage	Limit of Insurance
Medical Expenses	No specific dollar amount
Funeral Expenses	Up to \$1,750 per person
Work Loss	Up to \$4,929* for any 30-day period
Replacement Services	\$20 per day maximum
Survivors Loss Benefits Consisting of Income Loss	Up to \$4,929* for any 30-day period subject to a \$20 per day maximum for replacement services
Benefits and Replacement Services	
*Or whatever maximum amount is established by the Michigan Insurance Commissioner for accidents occurring on or after the date of the change in maximum.	

A. Coverage

We will pay personal injury protection benefits to or for an "insured" who sustains "bodily injury" caused by an "accident" and resulting from the ownership, maintenance or use of an "auto" as an "auto". These benefits are subject to the provisions of Chapter 31 of the Michigan Insurance Code. Personal Injury Protection benefits consist of the following benefits:

1. Medical Expenses

Reasonable and necessary medical expenses for an "insured's" care, recovery or rehabilitation. Charges for a hospital room are limited to those customary for a semiprivate room, unless special or intensive care is required.

2. Funeral Expenses

Reasonable funeral and burial expenses.

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Liability Coverage Agreement



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3. Work Loss

Up to 85% of an "insured's" actual loss of income from work. We will pay a higher percentage if the "insured" gives us reasonable proof that net income is more than 85% of gross income. The most we will pay in any 30-day period for this benefit is the amount shown in the Schedule or Declarations unless another amount is established by law. Any income an "insured" earns during the 30-day period is included in determining the income benefit we will pay. This benefit is payable for loss sustained during the three years after the accident. It does not apply after an "insured" dies. We will prorate this benefit for any period less than 30 days.

4. Replacement Services

Reasonable expenses for obtaining services to replace those an "insured" would normally have performed without pay for himself or herself or dependents. This benefit is payable for loss sustained during the three years after the accident. It does not apply after an "insured" dies.

5. Survivors loss benefits consisting of:**a. Income Loss**

The contributions a deceased "insured's" spouse and dependents would have received, as dependents, if the "insured" had not died as a result of the "accident".

b. Replacement Services

Reasonable expenses for obtaining services to replace those a deceased "insured" would have performed without pay for his or her spouse and dependents.

The most we will pay in any 30-day period for the total of survivors loss benefits is the amount shown in the Schedule unless another amount is established by law. Any income an "insured" earns during the 30-day period is included in determining the income benefits we will pay. These benefits are payable during the three years after the "accident" but do not apply to any loss or expense incurred after an



"insured" dies. We will prorate these benefits for any period of less than 30 days.

Survivors loss benefits are payable during the three years after the "accident". A deceased "insured's" spouse must have either resided with or been dependent on the "insured" at the time of death. The benefits cease for a spouse at remarriage or death. Any other dependent qualifies for benefits if, at the time of the "insured's" death, the person is under age 18, physically or mentally unable to earn a living or a full-time student.

B. Who Is Insured

1. You or any "family member".
2. Anyone else who sustains "bodily injury".
 - a. While "occupying" a covered "auto";
 - b. As the result of an "accident" involving any other "auto" operated by you or a "family member" if that "auto" is a covered "auto" under the policy's Liability Coverage; or
 - c. While not "occupying" any "auto;" as a result of an "accident" involving a covered "auto".

C. Exclusions

We will not pay personal injury protection benefits for "bodily injury";

1. To anyone causing intentional "bodily injury" to himself, herself or anyone else.
2. To anyone using an "auto" he or she has taken unlawfully, unless that person reasonably believed he or she was entitled to use the "auto".
3. To anyone not "occupying" an "auto", if the "accident" takes place outside Michigan. This exclusion does not apply to you or any "family member".

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4. To you while "occupying" or struck by any "auto" owned or registered by you which is not a covered "auto".
5. To the owner or registrant of an "auto" for which the coverage required by the Michigan no-fault law is not in effect.
6. To anyone entitled to Michigan no-fault benefits as a Named Insured under another policy. This exclusion does not apply to you or anyone "occupying" a motorcycle.
7. To anyone entitled to Michigan no-fault benefits as a "family member" under another policy. This exclusion does not apply to you or any "family member" or anyone "occupying" a motorcycle.
8. To anyone while "occupying" or struck by an "auto" (other than a covered "auto") operated by you or a "family member" if the owner or registrant has the required Michigan no-fault coverage. This exclusion does not apply to you or any "family member".
9. To anyone while "occupying" an "auto" located for use as a residence or premises.
10. To anyone while "occupying" a public "auto" (other than a covered "auto") for which the required Michigan no-fault coverage is in effect. This exclusion does not apply to "bodily injury" to you or a "family member" while a passenger in a:
 - a. School bus;
 - b. Certified common carrier;
 - c. Bus operated under a government sponsored transportation program;
 - d. Bus operated by or servicing a non-profit organization;
 - e. Bus operated by a watercraft, bicycle or horse livery used only to transport passengers to or from a destination point; or
 - f. Taxicab



- 11. To you or any "family member" while "occupying" an "auto" which is owned or registered by you or any "family member's" employer and for which the required Michigan no-fault coverage is in effect.
- 12. To anyone while "occupying" an "auto" for which the owner or registrant is not required to provide Michigan no-fault benefits and which is operated by you or a "family member" outside Michigan. This exclusion does not apply to you or a "family member", nor does it apply under medical or funeral expense benefits.
- 13. To any person resulting from the ownership, operation, maintenance or use of a parked "auto". This exclusion does not apply if:
 - a. The "auto" was parked in such a way as to cause unreasonable risk of the "bodily injury"; or
 - b. The "bodily injury" results from physical contact with:
 - (1) Equipment permanently mounted on the "auto" while the equipment is being used; or
 - (2) Property being lifted onto or lowered from the "auto";
 - c. The "bodily injury" is sustained while "occupying" the "auto".

However, Exceptions b. and c. to this exclusion do not apply to any "employee who has Michigan workers' disability compensation benefits available and who sustains "bodily injury" in the course of employment while loading, unloading or doing mechanical work on an "auto", unless the injury arises from the use or operation of another vehicle.

- 14. To you or any "family member" while "occupying" a motorcycle if the owner, registrant or operator of the "auto" involved in the "accident" has the required Michigan no-fault coverage.
- 15. Arising directly or indirectly out of:
 - a. War, including undeclared or civil war;

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- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

D. Limit of Insurance

1. Regardless of the number of covered "autos", "insureds", contribution paid, claims made, vehicles involved in the "accident" or insurers providing no-fault benefits, the most we will pay for "bodily injury" for each "insured" injured in any one "accident" are the amounts shown in the Schedule.
2. Any amount payable under this insurance shall be reduced by any benefits paid, payable or required to be provided by state or federal law except any benefits paid, payable or required to be provided by Medicare, provided:
 - a. The benefits serve the same purpose as personal injury protection benefits; and
 - b. The benefits are provided or required to be provided as the result of the same "accident" for which this insurance is payable. However, this insurance shall not be reduced if any amount of workers' compensation benefits that are required to be provided are not available to the "insured".
3. Any amount payable under this insurance shall be reduced by any deductible you elect. However, the deductible applies only to you and any "family member".

E. Changes in Conditions

The Conditions are changed for Personal Injury Protection as follows:

1. **Transfer of Rights of Recovery Against Others to Us** Condition is replaced by the following:



If any person or organization to or for whom we make payment under this coverage form has rights to recover damages from another, and that other person is an uninsured motorist, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them.

2. Duties in the Event of Accident, Claim, Suit or Loss is amended by the addition of the following:

If requested by us, the "insured" shall furnish a sworn statement of earnings since the "accident" and for a reasonable time prior to the "accident".

3. Legal Action Against Us is amended by the addition of the following:

No claimant may bring a legal action for personal injury protection benefits against us more than a year after the "accident". There are two exceptions. The action may be brought if we have been given notice within a year after the "accident" or have made a payment of benefits. In these cases, a claimant may bring the action within a year after the most recent allowable expense, work loss or survivor's loss has been incurred. However, the claimant may not recover benefits for any part of a loss incurred more than a year before the action was brought.

4. The following conditions are added:

Reimbursement and Trust

If we make any payment and the "insured" recovers from another party, the "insured" shall hold the proceeds in trust for us and pay us back the amount we have paid. This requirement is subject to any applicable limitations of Michigan law.

Coordination and Non-duplication

- a. If an "insured" is entitled to personal injury protection benefits under more than one policy, the maximum recovery under all policies shall not exceed the amount payable under the Agreement providing the highest dollar limit.
- b. No person may recover duplicate benefits for the same expenses or loss.

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Contribution Recomputation

Chapter 31 of the Michigan Insurance Code places certain limitations on a person's right to sue for damages. The contribution for the Agreement reflects these limitations. If a court from which there is no appeal declares any of these limitations unenforceable, we will have the right to recompute the contribution. The rates we use to recompute the contribution will be subject to review by the Commissioner of Insurance. If you choose to delete any coverage as the result of the court's decision, we will compute any refund of contribution on a pro rata basis.

F. Additional Definitions

As used in this endorsement:

1. "Auto" means a motor vehicle or trailer operated or designed for use on public roads but does not include a vehicle operated by muscular power, a vehicle with fewer than three wheels, a motorcycle, or a farm tractor or other implement of husbandry which is not subject to the registration requirements of the Michigan Vehicle Code. This definition replaces the definition in the Agreement.
2. "Family member" means a person related to you by blood, marriage, or adoption who is a resident of your household, including a ward or foster child.
3. "Occupying" means in, upon, getting in, on, out or off.

Certificate Number<Policy Number>

MICHIGAN COUNTY ROAD COMMISSION SELF-INSURANCE POOL

PHYSICAL DAMAGE AGREEMENT

DECLARATION CERTIFICATE

- Item 1: Named Member and Address: <Member>
<Address>
<City, State Zip>
- Item 2: Coverage Period: 04/01/2012 to 04/01/2013
12:01 a.m. standard time at the address of the Named Member
as stated herein.
- Item 3: Member Deductible \$ 500 per occurrence
- Item 4: Member Contribution \$ <Contribution Amt.>
- Item 5: Coverage Limit Per schedule on file with the Pool

Buildings, Contents, Equipment
and Licensed Vehicles
- Item 6: Sublimits at Named Locations:
- | | | |
|--|----|---|
| Business Interruption
& Extra Expense | \$ | 500,000 per occurrence |
| Ordinance or Law | \$ | 1,000,000 per occurrence |
| Debris Removal | \$ | 1,000,000 per occurrence or
25% of loss, whichever is less |
| Property in Transit | \$ | 50,000 per occurrence |
| Valuable Papers | \$ | 50,000 per occurrence |
| Accounts Receivable | \$ | 50,000 per occurrence |

Michigan County Road Commission Self-Insurance Pool
Physical Damage Coverage Agreement



**MICHIGAN COUNTY ROAD COMMISSION
SELF-INSURANCE POOL**

PHYSICAL DAMAGE ENDORSEMENT #1

SUPPLEMENTAL DECLARATION CERTIFICATE

**PROPERTY BUILDING AND CONTENTS COVERAGE
EQUIPMENT BREAKDOWN COVERAGE SCHEDULE**

Equipment Breakdown is subject to the Limits of Coverage shown in the Declarations except as specifically shown below.

These coverages apply to all locations covered on the Physical Damage Coverage Agreement, unless otherwise specified.

<u>Coverages – Comprehensive Equipment Breakdown</u>	<u>Limits</u>
Equipment Breakdown Limit	\$ Per Building & Contents Schedule on file with the Pool
Property Damage	Included
Business Interruption	Included
Extra Expense	Combined with Business Interruption
Service Interruption	Combined with Business Interruption
Off Premises Property Damage	\$ 100,000 Sublimit
Computers	Included
Data Restoration	\$ 100,000 Sublimit
Expediting Expenses	\$ 100,000 Sublimit
Perishable Goods	\$ 100,000 Sublimit
Hazardous Substances	\$ 250,000 Sublimit
Ordinance or Law	\$1,000,000 Sublimit
Demolition	Combined with Ordinance or Law
Newly Acquired Locations	\$1,000,000; 90 days

Deductibles

Direct Coverages	\$1,000 except \$2,500 on all Sewage Treatment Plants or Water Pumping Stations
Business Interruption & Extra Expense	24 Hours

Other Conditions

Service Interruption Waiting Period – 24 Hours
Fire and Extended Coverage Perils are Excluded

**MICHIGAN COUNTY ROAD COMMISSION
SELF-INSURANCE POOL**
(Hereinafter Called the Pool)

PHYSICAL DAMAGE COVERAGE AGREEMENT

Various provisions in this Agreement restrict coverage. Read this entire Agreement carefully to determine your rights, duties and what is and what is not covered.

Throughout this Agreement, the words "you" and "your" refer to the Named Member shown in the Declarations. The words "we", "us", and "our" refer to the Pool.

Subject to the terms, conditions and exclusions, this Agreement covers all buildings and contents (including improvements and betterments) of the Member or property held by the Member in trust or in commission or on consignment for which the Member may be held legally liable including various "equipment", "vehicles", including accessories, spare parts, materials, and tools used in the operations of the Member against ALL RISKS OF LOSS except those specifically excluded occurring during the period of this Agreement.

This Agreement provides coverage only to the buildings, contents, "vehicles", "equipment", EDP "equipment" and EDP media shown as covered on the schedule on file with the Pool.

NEWLY ACQUIRED OR CONSTRUCTED PROPERTY, "VEHICLES" OR "EQUIPMENT", INCLUDING LEASED OR RENTED: Coverage is extended for 30 days after you acquire such Property, "Vehicles" or "Equipment". For coverage to continue after 30 days, you must list the values on the schedule on file with the Pool.

The contribution for this Agreement is based on the exposures listed when this Coverage Agreement began. The Pool may examine the Member's records at any time during the Agreement period and for a period of three years afterward.

PROPERTY COVERED

Buildings

Buildings shall include all such property which is owned by the Member, in which the Member has an insurable interest or which the Member is under legal obligation to cover by virtue of an enforceable written agreement entered into prior to loss, and shall also include supplies, tools and fixtures, machinery and "equipment" constituting a permanent part of, and pertaining to the service of, such property while situated on the premises listed on the schedule on file with the Pool.

Contents

Contents shall include all such property owned by the Member and usual to the Member's occupancy while contained in any building on premises listed on the schedule on file with the Pool, and within 1,000 feet of the building. This coverage shall include the Member's interest in improvements and betterments.

Vehicles

"Vehicle" means a land motor "vehicle", trailer or semi-trailer designed for travel on public roads listed on the schedule on file with the Pool.

Equipment

"Equipment" means machinery, including accessories, spare parts, tools, and "equipment" used in the operations of the Member, property of the Member or the property of others leased or rented to the Member, and for which the Member shall be liable, and listed on the schedule on file with the Pool.

THE FOLLOWING ADDITIONAL COVERAGES ARE SUBJECT TO THE SUBLIMITS SHOWN ON THE DECLARATIONS CERTIFICATE:

Business Interruption & Extra Expense

Business Interruption and Extra Expense covers an actual loss that is sustained due to the necessary suspension of the Member's operations during a "period of restoration". The suspension must be caused by or result from a Covered Cause of



Loss to covered property at a location shown on the schedule on file with the Pool.

“Period of Restoration” means the period of time that:

1. Begins with the date of direct physical loss caused by or resulting from any Covered Cause of Loss at the premises; and
2. Ends on the date when the property at the premises should be repaired, rebuilt or replaced with reasonable speed and similar quality.

“Period of restoration” does not include any increased period due to the enforcement of any ordinance or law that:

- a) Regulates the construction, use of, repair of, or requires the tearing down of any property; or
- b) Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of pollutants.

The expiration date of this Agreement will not cut short the “period of restoration”.

Valuable Papers and Records

“Valuable papers and records” means inscribed, printed or written documents, manuscripts or records, including abstracts, books, deeds, drawings, films, maps or mortgages, but does not include money or securities, converted data, programs or instructions used in your data processing operations, including the materials on which the data is recorded while contained in any building on premises listed on the schedule on file with the Pool

Accounts Receivable

Accounts receivable includes all sums due the Member from customers, provided the Member is unable to effect collection, as the direct result of loss or damage to records while contained in any building on premises listed on the schedule on file with the Pool interest charges on any loan to offset impaired collection pending

repayment of such sums made uncollectible by such loss or damage, collection expenses in excess of normal and made necessary by such loss or damage and any other expenses, when reasonably incurred by the Member in re-establishing records of accounts receivable following such loss or damage.

EDP Equipment and Media

Electronic Data Processing systems shall include "equipment" and component parts owned by the Member, or leased, rented or under control of the Member, and active data processing media while contained in any building on premises listed on the schedule on file with the Pool

Ordinance or Law Coverage

Coverage for Loss to the Undamaged Portion of the Building

If a covered cause of loss occurs to any building on premises listed on the schedule on file with the Pool, we will pay for the loss in value of the undamaged portion of the building as a consequence of enforcement of any ordinance or law that:

- 1. Requires the demolition of parts of the same property not damaged by a covered cause of loss;
- 2. Regulates the construction or repair of buildings or establishes zoning or land use requirements at the described premises; and
- 3. Is in force at the time of loss.

Demolition Cost Coverage

If a covered cause of loss occurs to a covered building, we will pay the cost to demolish and clear the site of undamaged parts of the property caused by enforcement of building, zoning or land use ordinance or law.

Increased Cost of Construction Coverage

If a covered cause of loss occurs to a covered building, we will pay for the increased cost to:



1. Repair or reconstruct damaged portions of that property;

and/or

2. Reconstruct or remodel undamaged portions of that property, whether or not demolition is required;

when the increased cost is a consequence of enforcement of building, zoning or land use ordinance or law.

Transit

Transit covers your property or the property of others which you are picking up or delivering. This extension applies to property while it is in transit more than 1,000 feet from the described premises and while between points in the coverage territory while in a "vehicle" owned, leased or operated by the Member.

COVERED CAUSE OF LOSS

This Agreement covers All Risk of loss to the property listed on the schedule on file with the Pool during the coverage period unless excluded elsewhere in this Agreement.

EXCLUSIONS

THIS AGREEMENT DOES NOT COVER:

1. Loss or damage caused by or resulting from moth, vermin, termites or other insects, inherent vice, latent defect, wear, tear or gradual deterioration, contamination, rust, wet or dry rot, fungus or bacteria, mold, dampness of atmosphere, smog or extremes of temperature; or loss or damage by normal setting, shrinkage or expansion in building, foundation or "equipment".
2. Loss or damage caused by the presence of condensation, humidity, moisture or vapor that occurs over a period of 14 days or more.
3. Loss or damage caused by water that backs up or overflows from a sewer, drain or sump or water under the ground surface pressing on, or flowing or seeping through: (a) Foundations, walls, floors or paved surfaces; (b) Basements, whether paved or not; or (c) Doors, windows

or other openings. But if Water results in fire, explosion or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion or sprinkler leakage.

4. Breakdown or derangement of machinery and/or boiler explosion unless fire ensues and then only for the actual loss or damage caused by such ensuing fire.
5. Infidelity or any dishonest act on the part of the Member or any of its employees or others to whom the property may be delivered or entrusted; inventory shortage or unexplained disappearance.
6. Loss or damage to electrical appliances, devices, fixtures or wiring caused by artificially generated electrical current, unless fire or explosion ensues and then only for the actual loss or damage caused by such ensuing fire or explosion, mechanical breakdown, electrical breakdown or failure from gradual deterioration or depreciation.
7. Loss or damage arising directly or indirectly from nuclear reaction, nuclear radiation or radioactive contamination, however, such nuclear reaction, nuclear radiation or radioactive contamination may have been caused. If a fire arises directly or indirectly from nuclear reaction, nuclear radiation or radioactive contamination, any loss or damage arising directly from that fire shall (subject to the provision of this Agreement) be covered excluding, all loss or damage caused by nuclear reaction, nuclear radiation or radioactive contamination arising directly or indirectly from that fire.
8. Loss of or damage occasioned directly or indirectly by war, invasions, hostilities, acts of foreign enemies, civil war, rebellion, insurrection, military or usurped power or martial law or confiscation by order to any Government of Public Authority.
9. Loss or damage caused by processing, renovation, repairing or faulty workmanship, unless fire and/or explosion ensues and then only for the direct loss or damage caused by such ensuing fire or explosion.
10. Loss or damage resulting from: shrinkage, evaporation, loss of weight, leakage, breakage of glass or other fragile articles, marring, scratching, exposure to light or change in color, texture or flavor, unless such loss



or damage is caused directly by fire or the combating thereof, lightning, windstorm, hail, explosion, strike, riot or civil commotion, aircraft, "vehicles", breakage of pipes or apparatus, sprinkler leakage, vandalism and malicious mischief, theft or attempted theft.

11. Loss or damage caused by or resulting from release, discharge or dispersal of contaminants or pollutants.
12. Loss or damage caused by exceeding the manufacturers' rated capacity of "equipment".
13. Tools owned or supplied by employees, unless included in the schedule on file with the Pool.
14. Blowouts, punctures or other road damage to tires.
15. Lost or misplaced "equipment".
16. Loss, damage, injury, expense, cost or legal obligations directly or indirectly resulting from or arising out of or in any way related to any:
 - a. "Acts of Terrorism"; or
 - b. Actions taken by or on behalf of any government or any branch or division (including without limitation, the uniformed armed forces, militia, police, state security and anti-terrorism agencies) in responding to, preventing, combating, defending or retaliating against any "Act of Terrorism".

This exclusion applies regardless of any other cause or event that in any way contributes concurrently or in sequence to the loss, injury, damage, expense, cost, or legal obligation.

This exclusion applies whether or not the "Act of Terrorism" was committed in concert with or on behalf of any organization or government.

Michigan County Road Commission Self-Insurance Pool
Physical Damage Coverage Agreement



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“Act of Terrorism” means an activity that:

- 1) Involves any violent act or any act dangerous to human life, tangible or intangible property, and that causes damage to property or injury to persons or causes a threat thereof; and
- 2) Appears to be intended, in whole or in part to:
 - a) Intimidate or coerce a civilian population; or
 - b) Disrupt any segment of a nation’s economy; or
 - c) Influence the policy of a government by intimidation or coercion; or
 - d) Affect the conduct of a government by mass destruction, assassination, kidnapping or hostage taking; or
 - e) Respond to governmental action or policy.

“Act of Terrorism” shall also include any incident determined to be such by an official, department or agency that has been specifically authorized by federal statute to make such a determination.

17. As respects “Valuable Papers and Records” only:

- a. Dishonest or criminal acts committed by:
 - 1) You, your employees, directors, trustees or authorized representatives; or
 - 2) Anyone else with an interest in the property or their employees or representatives; or
 - 3) Anyone to whom the property is entrusted for any purpose.

This exclusion applies whether or not such persons are acting alone or in collusion with other persons, or such acts occur during the hours of employment.

This exclusion does not apply to Covered Property that is entrusted to others who are carriers for hire or to acts of destruction by your employees. Theft by employees is not covered.

- b. Errors or omissions in processing or copying, but, we will pay for loss or damage caused by resulting fire or explosion if these causes of loss would be covered by this coverage form.
- c. Electrical or magnetic injury, disturbances or erasure of electronic recordings, but we will pay for direct loss or damage caused by lightning.
- d. Voluntary parting with any property by you or anyone entrusted with the property if induced to do so by any fraudulent scheme, trick device or false pretense.
- e. Unauthorized instructions to transfer property to any person or place.
- f. Neglect of a Member to use all reasonable means to save and preserve property from further damage at and after the time of a loss.
- g. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.
- h. Faulty, inadequate or defective:
 - 1) Planning, zoning, development surveying, siting; or
 - 2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading or compacting; or
 - 3) Materials, used in repair, construction, renovation or remodeling; or

Michigan County Road Commission Self-Insurance Pool
Physical Damage Coverage Agreement



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4) Maintenance of part or all of any property wherever located.

18. As respects Accounts Receivable only:

- a. Loss due to bookkeeping, accounting or billing errors or omissions.
- b. Loss, the proof of which as to factual existence, is dependent upon an audit of records or an inventory or computation, but this shall not preclude the use of such procedures in support of claim for the loss which the Member can prove, through evidence, is due solely to a risk of loss to records of accounts receivable not otherwise excluded.
- c. Loss due to alteration, falsification, concealment, destruction or disposal of records or accounts receivable committed to conceal the wrongful giving, taking, obtaining or withholding of money, securities or other property, but only to the extent of such wrongful giving, taking, obtaining or withholding.

19. As respects Transit only:

- a. Loss or damage caused by breakdown or derangement of refrigerating units.

20. As respects Electronic Data only:

- a. Loss or damage caused by a "computer virus".

"Computer Virus" means instructions, code, applications or any software program that has the ability or is suspected to have the ability to damage, destroy, erase, corrupt, alter or prevent access to electronic data, electronic media or computes or to disrupt or interfere with the operations of computers.

DEDUCTIBLE

It is agreed that each claim for loss or damage (separately occurring) shall be adjusted separately, and from each such adjusted claim the deductible amount shown on the declarations shall be paid by the Member.

In the event of any recovery and/or salvage on a loss which has been, or is being, or is about to be paid, except for Michigan mini-tort recovery which shall inure to the Member, such recovery and/or salvage shall accrue entirely to the benefit of the Pool under this Agreement until the sum paid by it has been recovered.

COVERAGE TERRITORY

This Agreement covers property within the United States of America (including its territories and possessions), Puerto Rico, and Canada.

PROPERTY EXCLUDED**THIS AGREEMENT DOES NOT COVER:**

1. a. Aircraft, jewelry, precious stones, furs or garments trimmed with fur, standing timber, growing crops and animals.
- b. Watercraft, unless under 26 feet in length and under 51 horsepower and scheduled on file with the Pool.
- c. Bills, currency, money, notes, securities, deeds, and evidence of debt, unless scheduled on file with the Pool.
2. Property sold by, or under encumbrance to the Member after it leaves the custody of the Member or an employee of the Member.
3. Power transmission lines and feeder lines not on the Member's premises.
4. Land, including water, except water which is normally contained within any type of tank, piping system or other process "equipment"; or any other substance in land, water on land, standing timber, growing crops or animals.

(This does not exclude tanks, piping systems or other process "equipment" that is included in the schedule of values and for which a contribution is paid.)

- 5. Underground mines, any property within and mining property located below the surface of the ground.
- 6. Dams and dikes.
- 7. Streets, roads, highways, bridges, and tunnels.
- 8. Traffic signals and signs not on the Member's premises.

CONDITIONS

1. VALUATION

In case of loss or damage to property covered hereunder, the basis of adjustment shall be as follows:

- a. **BUILDING AND CONTENTS:** For Buildings and Contents covered under this Agreement in case of loss or damage the basis of adjustment is Replacement Cost Value (without deduction for depreciation). At the Pool's option, it may pay for repair or replacement of damaged or stolen property.

The Pool will not pay on a replacement cost basis for any loss or damage:

- 1) Until the lost or damaged property is actually repaired or replaced; and
- 2) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.

The Pool will not pay more for loss or damage on a replacement cost basis than the least of 3), 4), or 5), subject to 6) below:

- 3) The Scheduled Value on File with the Pool applicable to the lost or damaged property;

- 4) The cost to replace, on the same premises, the lost or damaged property;
 - a) Of comparable size, material and quality; and
 - b) Used for the same purpose; or

If a building is rebuilt at a new premises, the cost described in 4) above is limited to the cost which would have been incurred if the building had been rebuilt at the original premises.

- 5) That amount actually spent that is necessary to repair or replace the lost or damaged property.
 - 6) The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property unless a Coverage Limit is specified for Ordinance or Law in the Declarations Certificate, and then only to the extent provided under that coverage.
- b. PRIVATE PASSENGER "VEHICLES" AND STANDARD PICKUP TRUCKS designed and used primarily for transportation, including their permanently installed accessories, including but not limited to, safety lights and light bars, radios and GPS systems, small tool and tote boxes and other similar "equipment":
- 1) The valuation of each individual item shall be limited to the depreciated scheduled value on file with the Pool immediately prior to the loss.
- c. "SPECIAL EQUIPMENT" means machinery, "equipment", and tools of a mobile nature that you use in your operations. "Special Equipment" also means but is not limited to:
- 1) "Equipment", whether self-propelled or not, maintained primarily to provide mobility to permanently-mounted:

Michigan County Road Commission Self-Insurance Pool
Physical Damage Coverage Agreement



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- a) Road maintenance, construction or resurfacing "equipment" such as graders, scrapers, rollers, plow trucks, snow removal and related "equipment"; or
 - b) Power cranes, shovels, loaders, diggers, or drills; or
 - c) Lifts and similar devices to raise or lower workers; or
 - d) Air compressors, pumps and generators, compactors, spraying "equipment" and portable lighting and signing equipment;
- 2) Trailers, licensed or unlicensed.

The valuation of each individual item shall be limited to the scheduled amount on file with the Pool not to exceed 125% of actual cash value.

The above valuations shall also be used for the purpose of the contribution computation of this Agreement.

2. DUTIES AFTER LOSS

- a. The Member must notify the Pool of any loss or damage within ninety (90) days from the date of such loss or damage. The Member must tell how, when and where the loss or damage happened and assist in obtaining the names and addresses of any witnesses.
- b. Additionally, the Member must:
 - 1) Cooperate with the Pool in the investigation, settlement or the conduct of any suit. The Member shall not, except at its own costs, voluntarily make any payment, assume any obligation or incur any expense.
 - 2) Maintain a detailed schedule to substantiate their Contents Values for each building and premises covered under this Agreement.
 - 3) Permit the Pool to inspect and appraise the damaged property before its repair or disposition.
 - 4) Do what is reasonably necessary after loss, at the Pool's expense, to protect the covered "equipment" from further loss.



- 5) Promptly notify the police if the covered "equipment" or any of its accessories are stolen.

Failure by a Member to comply with all Duties After Loss shall invalidate any claim under this Agreement for such loss.

3. PROOF OF LOSS

The Member shall render a signed and sworn Proof of Loss within ninety (90) days after the occurrence of a loss (unless such period be extended by the written agreement of the Pool) stating the time, place and cause of loss, the interest of the Member and of all others in the property and the amount of loss or damage.

FAILURE BY THE MEMBER TO TIMELY REPORT THE SAID LOSS OR DAMAGE AND TO FILE SUCH SWORN PROOF OF LOSS AS PROVIDED ABOVE SHALL INVALIDATE ANY CLAIM UNDER THIS AGREEMENT FOR SUCH LOSS.

4. SUBROGATION

If the Pool becomes liable for any payment under this Agreement in respect of loss or damage, the Pool shall be subrogated, to the extent of such payment, to all the rights and remedies of the Member against any third party that may bear responsibility for such loss or damage and shall be entitled at their own expense to sue in the name of the Member. The Member shall give the Pool all such assistance in their power as the Pool may require to secure their rights and remedies and at the Pool's request, shall execute all documents necessary to enable the Pool to effectively bring suit in the name of the Member including the execution and delivery of the customary form of loss receipt.

5. CANCELLATION

This Agreement may be cancelled by the Member by giving at least sixty (60) days written notice to the Pool. This Agreement may be cancelled by the Pool by mailing to the Member at the address last known to the Pool or its authorized agent, written notice stating when not less than sixty (60) calendar days thereafter such cancellation shall be effective. The mailing of the notice, as aforesaid, shall be sufficient notice and the effective date of cancellation stated therein shall become the expiration date of the Coverage Period. Delivery of such written notice either by the Member or the Pool, shall be equivalent to mailing.

Michigan County Road Commission Self-Insurance Pool
Physical Damage Coverage Agreement



This Agreement may be cancelled by the Pool for non-payment of contribution by mailing to the Member, at the last mailing address known by the Pool, written notice stating when, not less than ten (10) days thereafter, such cancellation shall be effective.

Contribution adjustment may be made either at the time the cancellation is effective or as soon as practicable thereafter but payment or tender of unearned contribution is not a condition precedent to cancellation.

The Pool shall continue servicing any of the Member's pending claims, unless the Member specifically assumes the liability and makes provisions to indemnify the Pool from loss by taking over the servicing of any such claim(s). The Member shall reimburse the Pool for all claims expenses incurred after the cancellation.

6. CIVIL AUTHORITY

Property which is covered under this Agreement is also covered against the risk of damage or destruction by civil authority during a conflagration and for the purpose of retarding the same; provided that neither such conflagration nor such damage or destruction is caused or contributed to by war, invasion, revolution, rebellion, insurrection or other hostilities or warlike operations.

7. ABANDONMENT

There shall be no abandonment of any property to the Pool.

8. ASSIGNMENT

Assignment or transfer of this Agreement shall not be valid except with the written consent of the Pool.

9. DEBRIS REMOVAL

This Agreement covers expenses incurred in the removal of the debris of the property covered per schedule on file with the Pool which may be destroyed or damaged.

The sub limit for debris removal is 25% of the Total Physical Damage Loss or \$1,000,000 whichever is less.

Debris removal does not apply to costs to:

- a) Extract pollutants from land or water; or
- b) Remove, restore or replace polluted land or water.

10. OTHER COVERAGE

This Agreement does not cover loss or damage which at the time of the occurrence of such loss or damage is covered by any other insurance policy or policies as either primary or excess.

If two or more Pool coverages or Agreements apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.

11. INSPECTION AND SURVEYS

The Pool shall be permitted but not obligated to make inspections and surveys at any time. We may give you reports on the conditions we find and recommend changes.

We are not obligated to make any inspections, surveys, reports or recommendations, and any such actions we do undertake relate only to coverage and the contributions to be charged. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. We do not warrant that conditions:

- a. Are safe or healthful; or
- b. Comply with laws, regulations, codes or standards

We do not provide any inspections, surveys, reports or recommendations relative to certification under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

12. EXAMINATION OF YOUR BOOKS AND RECORDS

The Pool may examine and audit the Member's books and records as they relate to this Agreement at any time during the Agreement period and up to three years after the final termination of this Agreement.

13. SALVAGE AND RECOVERIES

All salvage, recoveries and payments recovered or received subsequent to a loss settlement under this Agreement shall be applied as if recovered or received prior to the settlement and all necessary adjustments shall be made by the parties.

14. FALSE OR FRAUDULENT CLAIMS

If the Member shall make any claim knowing the same to be false or fraudulent, as regards amount or otherwise, this Agreement shall become void, and all claims shall be forfeited.

This Agreement shall not be valid unless signed by authorized representatives of the Pool.

Gayle A. Pratt

Gayle A. Pratt, Administrator

Darrel A. Spragg

Darrel A. Spragg, Chairman

Michigan County Road Commission Self-Insurance Pool
Physical Damage Coverage Agreement



**MICHIGAN COUNTY ROAD COMMISSION
SELF-INSURANCE POOL**

PHYSICAL DAMAGE COVERAGE AGREEMENT

**ENDORSEMENT # 1
EQUIPMENT BREAKDOWN COVERAGE**

**THIS ENDORSEMENT MODIFIES THE PHYSICAL DAMAGE
COVERAGE AGREEMENT.**

PLEASE READ IT CAREFULLY.

A. THE FOLLOWING IS ADDED TO THE PHYSICAL DAMAGE COVERAGE AGREEMENT:

Equipment Breakdown Coverage

1. The Pool will pay for direct physical damage to the property covered that is the direct result of an "accident."

As used in this Equipment Breakdown coverage, "accident" means a fortuitous event that causes direct physical damage to "covered equipment." The event must be one of the following:

- a. mechanical breakdown, including rupture or bursting caused by centrifugal force;
- b. artificially generated electrical current, including electric arcing, that disturbs electrical devices, appliances or wires;
- c. explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by the Member, or operated under the Member's control;
- d. loss or damage to steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment; or
- e. loss or damage to hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment.

"Covered equipment" means the property covered:

- a. that generates, transmits or utilizes energy, including electronic communications and "data" processing equipment; or
- b. which, during normal usage, operates under vacuum or pressure, other than the weight of its contents.

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None of the following is "covered equipment":

- a. structure, foundation, cabinet, compartment or air supported structure or building;
- b. insulating or refractory material;
- c. sewer piping, buried vessels or piping, or piping forming a part of a sprinkler or fire suppression system;
- d. water piping other than boiler feedwater piping, boiler condensate return piping or water piping forming a part of a refrigerating or air conditioning system;
- e. "vehicle" or any equipment mounted on a "vehicle";
"vehicle" means, as respects this endorsement only, any machine or apparatus that is used for transportation or moves under its own power. "Vehicle" includes, but is not limited to, car, truck, bus, trailer, train, aircraft, watercraft, forklift, bulldozer, tractor or harvester. However, any property that is stationary, permanently installed at a covered location and that receives electrical power from an external power source will not be considered a "vehicle."
- f. satellite, spacecraft or any equipment mounted on a satellite or spacecraft; or
- g. dragline, excavation or construction equipment.

2. The following coverages also apply to the direct result of an "accident." These coverages do not provide additional amounts of coverage.

a. Expediting Expenses

With respect to the Member's damaged property covered, the Pool will pay the reasonable extra cost to:

- 1) make temporary repairs; and
- 2) expedite permanent repairs or permanent replacement.

The most the Pool will pay for loss or expense under this coverage is \$100,000.

b. "Hazardous Substances"

The Pool will pay for the additional cost to repair or replace the property covered because of contamination by a "hazardous substance." This includes the additional expenses to clean up or dispose of such property. This does not include contamination of "perishable goods" by refrigerant, including but not limited to ammonia, which is addressed in 2.c.1) b) below. As used in this coverage, additional costs mean those beyond what would have been payable under this Equipment Breakdown Coverage had no "hazardous substance" been involved.

"Hazardous substance" means any substance that is hazardous to health or has been declared to be hazardous to health by a governmental agency.

The most the Pool will pay for loss, damage or expense under this coverage, including Business Interruption and Extra Expense, if shown as covered, is \$250,000.

c. "Perishable Goods"

1) The Pool will pay:

- a) for physical damage to "perishable goods" due to spoilage;
- b) for physical damage to "perishable goods" due to contamination from the release of refrigerant, including but not limited to ammonia;
- c) any necessary expenses the Member incurs to reduce the amount of loss under this coverage to the extent that they do not exceed the amount of loss that otherwise would have been payable under this coverage.

2) If the Member is unable to replace the "perishable goods" before its anticipated sale, the amount of the Pool's payment will be determined on the basis of the sales price of the "perishable goods" at the time of the "accident," less discounts and expenses the Member otherwise would have had. Otherwise the Pool's payment will be determined in accordance with the Valuation condition.

"Perishable goods" means personal property maintained under controlled conditions for its preservation, and susceptible to loss or damage if the controlled conditions change.

The most the Pool will pay for loss, damage or expense under this coverage is \$100,000.

d. "Data" Restoration

The Pool will pay for the Member's reasonable and necessary cost to research, replace and restore lost "data."

"Data" means information or instructions stored in digital code capable of being processed by machinery.

The most the Pool will pay for loss, damage or expense under this coverage, including Business Interruption and Extra Expense, if shown as covered, is \$100,000.

Michigan County Road Commission Self-Insurance Pool
Physical Damage Coverage Agreement



e. Service Interruption

- 1) Any coverage provided for Business Interruption, Extra Expense or "Perishable Goods" is extended to apply to the Member's loss, damage or expense caused by the interruption of utility services. The interruption must result from an "accident" to equipment, including overhead transmission lines, that is owned by a utility, landlord, a landlord's utility or other supplier who provides the Member with any of the following services: electrical power, waste disposal, air conditioning, refrigeration, heating, natural gas, compressed air, water, steam, internet access, telecommunications services, wide area networks or "data" transmission. The equipment must meet the definition of "covered equipment" except that it is not property covered.
- 2) The Pool will not pay for Business Interruption the Member sustains that results from the interruption of utility services during the first 24 hours following the "accident."
- 3) The most the Pool will pay in any "one accident" for loss, damage or expense under this coverage is the limit that applies to Business Interruption, Extra Expense or "Perishable Goods".

f. Off Premises Physical Damage

If the Member has transportable "covered equipment" that, at the time of the "accident," is not at a location owned or leased by the Member, the Pool will pay for physical damage to such "covered equipment."

The most the Pool will pay for loss or damage under this coverage is \$100,000.

g. Business Interruption & Extra Expense

Any coverage provided under this Physical Damage Coverage Agreement for Business Interruption & Extra Expense is extended to the coverage provided by this endorsement.

h. Ordinance or Law

Any coverage provided under this Physical Damage Coverage Agreement for Ordinance or Law is extended to the coverage provided by this endorsement.

The most the Pool will pay for Ordinance or Law expenses the Member incurs is \$1,000,000.

- i. Newly Acquired Locations
 - 1) All coverages applicable to the property covered under this Equipment Breakdown coverage are extended to a newly acquired location that the Member has purchased or leased during the coverage period.
 - 2) This coverage begins at the time the Member acquires the property. As respects newly constructed properties, the Pool will only consider them to be acquired by the Member when the Member has fully accepted the completed project.
 - 3) This coverage ends when any of the following first occurs:
 - a) this coverage period ends;
 - b) 90 days after the Member acquires the location;
 - c) the location is incorporated into the regular coverage of the Physical Coverage Damage Agreement.
 - 4) The most the Pool will pay for loss, damage or expense arising from any "one accident" is \$1,000,000.

B. EXCLUSIONS

All PERILS EXCLUDED and PROPERTY EXCLUDED in the Physical Damage Coverage Agreement apply except as modified below and to the extent that coverage is specifically provided by this Equipment Breakdown Coverage.

1. The exclusions are modified as follows:

As respects this endorsement only, the following is added to PERILS EXCLUDED 1:

Unless an "accident" ensues and then only for the actual loss or damage caused by such ensuing "accident."

2. The Pool will not pay under this endorsement for loss, damage or expense caused by or resulting from:
 - a. the Member's failure to use all reasonable means to protect the property covered from damage following an "accident";
 - b. any defect, programming error, programming limitation, computer virus, malicious code, loss of "data," loss of access, loss of use, loss of functionality or other condition within or involving "data" or "media" of any kind. But if an "accident" ensues, the Pool will pay for the resulting loss or damage caused by such ensuing "accident"; "Media" means material on which "data" is recorded, such as magnetic tapes, hard disks, optical disks or floppy disks.
 - c. any of the following tests: a hydrostatic, pneumatic or gas pressure test of any boiler or pressure vessel, or an electrical insulation breakdown test of any type of electrical equipment; or
 - d. misalignment, miscalibration, tripping off-line, or any condition which can be corrected by resetting, tightening, adjusting or cleaning, or by the performance of maintenance. But if an "accident" ensues, the Pool will pay for the resulting loss or damage or expense caused by such ensuing "accident."

3. With respect to Service Interruption coverage, the Pool will also not pay for an "accident" caused by or resulting from: fire; lightning; windstorm or hail; explosion (except as specifically provided in A.I.c. above); smoke; aircraft or "vehicles"; riot or civil commotion; vandalism; sprinkler leakage; falling objects; weight of snow, ice or sleet; freezing; collapse; flood or earth movement.
4. With respect to Business Interruption & Extra Expense and Service Interruption coverages, the Pool will also not pay for:
 - a. loss caused by the Member's failure to use due diligence and dispatch and all reasonable means to resume business; or
 - b. any increase in loss resulting from an agreement between the Member and the Member's customer or supplier.
5. The Pool will not pay for loss, damage or expense caused directly or indirectly by the following, whether or not caused by or resulting from an "accident": Any mold, fungus, mildew or yeast, including any spores or toxins produced by or emanating from such mold, fungus, mildew or yeast. This includes, but is not limited to, costs arising from clean up, removal, or abatement of such mold, fungus, mildew or yeast, spores or toxins. However, this exclusion does not apply to spoilage of personal property that is "perishable goods," to the extent that spoilage is covered under "Perishable Goods" coverage.

C. CONDITIONS

The following conditions are in addition to the CONDITIONS in the Physical Damage Agreement.

1. Suspension

Whenever "covered equipment" is found to be in, or exposed to, a dangerous condition, any of the Pool's representatives may immediately suspend the coverage against loss from an "accident" to that "covered equipment." This can be done by mailing or delivering a written notice of suspension to:

- a. the Member's last known address; or
- b. the address where the "covered equipment" is located.

Once suspended in this way, the Member's coverage can be reinstated only by an endorsement for that "covered equipment." If the Pool suspends the Member's coverage, the Member will get a pro rata refund of contribution for that "covered equipment" for the period of suspension. But the suspension will be effective even if the Pool has not yet made or offered a refund.



2. Jurisdictional Inspections

If any property that is "covered equipment" under this endorsement requires inspection to comply with state or municipal boiler and pressure vessel regulations, the Pool agrees to perform such inspection on the Member's behalf. The Pool does not warrant that conditions are safe or healthful.

3. Environmental, Safety and Efficiency Improvements

If "covered equipment" requires replacement due to an "accident," the Pool will pay the Member's additional cost to replace with equipment that is better for the environment, safer or more efficient than the equipment being replaced.

However, the Pool will not pay more than 125% of what the cost would have been to replace with like kind and quality. This condition does not increase any of the applicable limits. This condition does not apply to any property to which actual cash value applies.

The most the Pool will pay for loss, damage or expense under this endorsement arising from any "one accident" is the applicable Coverage Limit in the Declarations. Coverage provided under this endorsement does not provide an additional amount of coverage.

"One accident" means: If an initial "accident" causes other "accidents," all will be considered "one accident." All "accidents" that are the result of the same event will be considered "one accident."

Michigan County Road Commission Self-Insurance Pool
Physical Damage Coverage Agreement



**MICHIGAN COUNTY ROAD COMMISSION
SELF-INSURANCE POOL**

PHYSICAL DAMAGE ENDORSEMENT #2

FLOOD EXTENSION

This endorsement modifies the coverage provided under the Physical Damage Agreement form MCRCSIP-PDA2010.

A. Subject to provisions B. through D. below, the Perils Covered under this Agreement are extended to include:

1. "Flood" (meaning a general and temporary condition of partial or complete inundation of normally dry land areas affecting two or more acres and two or more properties at least one of which is your property), surface water, underground water, waves, tides, tidal waves, tsunamis, overflow of any body of water, or their spray, all whether driven by wind or not;
2. Mudslide or mudflow;
3. Release of water impounded by a dam;
all whether naturally occurring or due to manmade or other artificial causes.

The term "flood" as used in the remainder of this endorsement shall include all of the causes of loss described in A.1. through A.3. above.

B. All "flood" loss that occurs:

1. During a period of continued rising or overflow of any river(s), stream(s) or any body(ies) of water and subsidence of same within the banks of such river(s), streams(s) or body(ies) of water; or
2. Due to any tidal waves or tsunamis that occur within any 168 hour period; will constitute a single "flood" occurrence.

If "flood" loss commences prior to the expiration date of this Agreement and the "flood" occurrence, as defined above, extends beyond the expiration date

Michigan County Road Commission Self-Insurance Pool
Physical Damage Coverage Agreement



of this Agreement, the expiration of the Agreement will not reduce the "flood" occurrence period.

C. The following additional exclusions apply to this extension:

1. The Pool will not pay for loss or damage caused by or resulting from any "flood" occurrence that begins before the inception of this Agreement.
2. This extension for "flood" does not apply to, or modify the coverage otherwise provided under this Agreement for loss or damage by fire, explosion or leakage from fire protective equipment that results from "flood".
3. This extension for "flood" does not apply to the cost of restoring, recovering or de-watering land or to loss resulting from the time required to restore, recover or de-water land.
4. Unless otherwise specified in the Agreement, this extension for "flood" does not apply to loss or damage to, or loss that is a consequence of loss or damage to:
 - a. Any building or structure, or any property in the open if, at the time of loss, the building or structure or property in the open is, in whole or in part, located within "Flood" Zone A, "Flood" Zones prefixed A, "Flood" Zone V or "Flood" Zones prefixed V, Zone B, Zone X (shaded) or Zone X-500 as classified under the National "Flood" Insurance program; or
 - b. Any property in or on any building or structure, if, at the time of loss, the building or structure in or on which such property is located is, in whole or part, within "Flood" Zone A, "Flood" Zones prefixed A, "Flood" Zone V or "Flood" Zones prefixed V, Zone B, Zone X (shaded) or Zone X-500 as classified under the National "Flood" Insurance program.

- D. The most the Pool will pay for the total of all loss or damage caused by "flood", in any one Agreement year is \$1,500,000, unless the building, structure or property is subject to C. 4.a. or 4.b. above, and then, the most the Pool will pay for the total of all loss or damage caused by "flood" in any one Agreement year is \$1,000,000.



MICHIGAN COUNTY ROAD COMMISSION
SELF-INSURANCE POOL

PHYSICAL DAMAGE ENDORSEMENT #3

EARTHQUAKE EXTENSION

This endorsement modifies the coverage provided under the Physical Damage Agreement form MCRCSIP-PDA2010.

A. Subject to provisions B. through D. below the Perils Covered under this Agreement are extended to include:

1. "Earthquake", meaning a shaking or trembling of the earth's crust, caused by underground volcanic or tectonic forces or by breaking or shifting of rock beneath the surface of the ground from natural causes, including any earth sinking, rising or shifting related to such event; and
2. "Volcanic Eruption", meaning the eruption, explosion or effusion of a volcano.

All "earthquake" shocks or "volcanic eruptions" that occur within any 168 hour period will constitute a single "earthquake" or "volcanic eruption". The expiration of this Agreement will not reduce the 168 hour period.

B. This extension shall not apply to any loss caused by earth movement except loss caused by or resulting from "earthquake" or "volcanic eruption" as set forth in A. above. Nor shall this extension apply to any loss or damage caused by or resulting from flood even if attributable to "earthquake" or "volcanic eruption". Any pollution exclusion does not apply to any release, discharge, dispersal, seepage, migration or escape of pollutants that is proximately and predominately caused by "earthquake" and "volcanic eruption" to which this extension applies.

Michigan County Road Commission Self-Insurance Pool
Physical Damage Coverage Agreement



C. The following additional exclusions apply to this extension:

1. The Pool will not pay for loss or damage caused directly or indirectly by tidal wave or tsunami, even if attributable to an "earthquake" or "volcanic eruption".
2. This extension for "earthquake" and "volcanic eruption" does not apply to, or modify the coverage otherwise provided under this Agreement for loss or damage by fire or explosion that results from an "earthquake" and for loss or damage by fire or volcanic action that results from a "volcanic eruption".
3. The Pool will not pay for loss or damage caused by or resulting from any "earthquake" or "volcanic eruption" that begins before the inception of this Agreement.
4. This extension does not apply to the cost of restoring or remediating land or to loss resulting from the time required to restore or remediate land.

D. The most the Pool will pay for the total of all loss or damage caused by "earthquake" and "volcanic eruption" in any one Agreement year is \$1,500,000.

MICHIGAN COUNTY ROAD COMMISSION
SELF-INSURANCE POOL

PHYSICAL DAMAGE ENDORSEMENT # 4

OPTIONAL COVERAGE
AGREED VALUE

This endorsement modifies the coverage provided under the Physical Damage Agreement form MCRCSIP-PDA2010.

CONDITIONS 1. VALUATION is replaced by the following:

1. VALUATION

In case of loss or damage to property covered hereunder, the basis of adjustment shall be as follows:

A. AGREED VALUE COVERAGE:

For covered property listed on an Optional Coverage Agreed Value Endorsement on file with the Pool, we will pay no more for loss or damage to that property than the proportion of loss or damage amount bears to the Agreed Value up to the Agreed Value limit.

All other terms and conditions of this Agreement remain unchanged.

SAMPLE
AGREED VALUE SCHEDULE

<u>Site Number</u>	<u>Building Number</u>	<u>Site Name</u>	<u>Property Description</u>	<u>Agreed Value</u>
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Michigan County Road Commission Self-Insurance Pool
Physical Damage Coverage Agreement



MICHIGAN COUNTY ROAD COMMISSION SELF-INSURANCE POOL
Jackson County Road Commission Loss Run 4/1/02 Through 9/30/12
As of 09/30/12

Claim Type	Claim Number	Last Claim First	Open / Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Included
AL	AL38002004005301	ARNOLD, SETH	C	2/14/2005	Jackson County Road Commission	Expense	0.00	0.00	1,000.00	-1,000
			C	2/14/2005	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	2/14/2005	Jackson County Road Commission	Indemnity/PD	0.00	2,968.88	0.00	2,968.88
			C	2/14/2005	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	2/14/2005	Jackson County Road Commission	Physical Damage	0.00	0.00	0.00	0
	AL38002004005301	ARNOLD, SETH				0.00	2,968.88	1,000.00	1,968.88	
						0.00	2,968.88	1,000.00	1,968.88	
	AL38002004005323	GLENN, FARM SEEDS INC.	C	1/17/2005	Jackson County Road Commission	Expense	0.00	0.00	1,000.00	-1,000
			C	1/17/2005	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	1/17/2005	Jackson County Road Commission	Indemnity/PD	0.00	1,712.00	0.00	1,712
			C	1/17/2005	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	1/17/2005	Jackson County Road Commission	Physical Damage	0.00	0.00	0.00	0
	AL38002004005323	GLENN, FARM SEEDS INC.				0.00	1,712.00	1,000.00	712	
						0.00	1,712.00	1,000.00	712	
	AL38002005005434	AUTO-OWNERS, INSURANCE	C	8/1/2005	Jackson County Road Commission	Expense	0.00	0.00	1,000.00	-1,000
			C	8/1/2005	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	8/1/2005	Jackson County Road Commission	Indemnity/PD	0.00	3,509.68	0.00	3,509.68
			C	8/1/2005	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	8/1/2005	Jackson County Road Commission	Physical Damage	0.00	0.00	0.00	0
	AL38002005005434	AUTO-OWNERS, INSURANCE				0.00	3,509.68	1,000.00	2,509.68	
						0.00	3,509.68	1,000.00	2,509.68	
	AL38002006005645	CITIZENS, INS. CO.	C	4/25/2006	Jackson County Road Commission	Expense	0.00	3.70	0.00	3.7
			C	4/25/2006	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	4/25/2006	Jackson County Road Commission	Indemnity/PD	0.00	420.00	420.00	0
			C	4/25/2006	Jackson County Road Commission	Litigation	0.00	851.00	580.00	271
			C	4/25/2006	Jackson County Road Commission	Physical Damage	0.00	0.00	0.00	0
	AL38002006005645	CITIZENS, INS. CO.				0.00	1,274.70	1,000.00	274.7	
						0.00	1,274.70	1,000.00	274.7	
	AL38002007005614	BROOKLYN, VILLAGE OF	C	5/4/2007	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	5/4/2007	Jackson County Road Commission	Indemnity/BI	0.00	0.00	1,000.00	-1,000
			C	5/4/2007	Jackson County Road Commission	Indemnity/PD	0.00	4,800.00	0.00	4,800
			C	5/4/2007	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	5/4/2007	Jackson County Road Commission	Physical Damage	0.00	0.00	0.00	0

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MICHIGAN COUNTY ROAD COMMISSION SELF-INSURANCE POOL
Jackson County Road Commission Loss Run 4/1/02 Through 9/30/12
As of 09/30/12

Claim Type	Claim Number	Last Comm First	Open/Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Unpaid
	AL38002007005014	BROOKLYN, VILLAGE OF					0.00	4,800.00	1,000.00	3,800.00
	AL38002007005014						0.00	4,800.00	1,000.00	3,800.00
AL	AL38002007005839	CONSUMERS, ENERGY	C	5/2/2007	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	5/2/2007	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	5/2/2007	Jackson County Road Commission	Indemnity/PD	0.00	2,841.91	1,000.00	1,841.91
			C	5/2/2007	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	5/2/2007	Jackson County Road Commission	Physical Damage	0.00	0.00	0.00	0
	AL38002007005839	CONSUMERS, ENERGY					0.00	2,841.91	1,000.00	1,841.91
	AL38002007005839						0.00	2,841.91	1,000.00	1,841.91
AL	AL38002007005841	ALADDIN, ELECTRIC, INC	C	12/9/2007	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	12/9/2007	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	12/5/2007	Jackson County Road Commission	Indemnity/PD	0.00	3,239.07	1,000.00	2,239.07
			C	12/5/2007	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	12/3/2007	Jackson County Road Commission	Physical Damage	0.00	0.00	0.00	0
	AL38002007005841	ALADDIN, ELECTRIC, INC					0.00	3,239.07	1,000.00	2,239.07
	AL38002007005841						0.00	3,239.07	1,000.00	2,239.07
AL	AL38002010006821	CAMERON, CHERYL	C	11/24/2010	Jackson County Road Commission	Expense	0.00	26,887.38	0.00	26,887.38
			C	11/24/2010	Jackson County Road Commission	Indemnity/BI	0.00	250,000.00	0.00	250,000.00
			C	11/24/2010	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	11/24/2010	Jackson County Road Commission	Litigation	0.00	84,250.65	1,000.00	83,250.65
			C	11/24/2010	Jackson County Road Commission	Physical Damage	0.00	0.00	0.00	0
	AL38002010006821	CAMERON, CHERYL					0.00	341,138.03	1,000.00	340,138.03
	AL38002010006821						0.00	341,138.03	1,000.00	340,138.03
AL	AL38002011006759	WILLIAMS, TERRY	C	4/5/2011	Jackson County Road Commission	Expense	0.00	127.00	0.00	127
			C	4/6/2011	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	4/5/2011	Jackson County Road Commission	Indemnity/PD	0.00	4,400.00	1,000.00	3,400
			C	4/5/2011	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	4/5/2011	Jackson County Road Commission	Physical Damage	0.00	0.00	0.00	0
	AL38002011006759	WILLIAMS, TERRY					0.00	4,627.00	1,000.00	3,627
	AL38002011006759						0.00	4,627.00	1,000.00	3,627
AL	9						0.00	386,011.27	9,000.00	387,011.27
ALT	ALT38002004009702	STATE, FARM	C	3/18/2006	Jackson County Road Commission	Expense	0.00	58.60	0.00	58.6
			C	3/18/2005	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0

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MICHIGAN COUNTY ROAD COMMISSION SELF-INSURANCE POOL
Jackson County Road Commission Loss Run 4/1/02 Through 9/30/12

As of 09/30/12

Claim Type	Claim Number	Last Comma First	Open/Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Unpaid
ALT	ALT38002004005702	STATE, FARM	C	3/18/2005	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	3/18/2005	Jackson County Road Commission	Litigation	0.00	3,311.50	0.00	3,311.5
		STATE, FARM	C	3/18/2005	Jackson County Road Commission	Physical Damage	0.00	0.00	0.00	0
	ALT38002004005702						0.00	3,370.10	0.00	3,370.1
							0.00	3,370.10	0.00	3,370.1
Claim Type	Claim Number	Last Comma First	Open/Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Unpaid
	ALT38002007005883	JEFFREY, JAY	C	12/1/2007	Jackson County Road Commission	Expense	0.00	5,185.67	0.00	5,185.67
			C	12/1/2007	Jackson County Road Commission	Indemnity/BI	0.00	250,000.00	0.00	250,000
			C	12/1/2007	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	12/1/2007	Jackson County Road Commission	Litigation	0.00	19,832.00	0.00	19,832
		JEFFREY, JAY	C	12/1/2007	Jackson County Road Commission	Physical Damage	0.00	0.00	0.00	0
							0.00	275,027.67	0.00	275,027.67
Claim Type	Claim Number	Last Comma First	Open/Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Unpaid
	ALT38002007005883	JEFFREY, MARY	C	12/1/2007	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
		JEFFREY, MARY					0.00	0.00	0.00	0
							0.00	275,027.67	0.00	275,027.67
Claim Type	Claim Number	Last Comma First	Open/Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Unpaid
	ALT38002008006254	MARSH, HELEN	C	2/21/2009	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
		MARSH, HELEN					0.00	0.00	0.00	0
Claim Type	Claim Number	Last Comma First	Open/Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Unpaid
		STANLEY, CURTIS	C	2/21/2009	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	2/21/2009	Jackson County Road Commission	Indemnity/BI	0.00	120,000.00	0.00	120,000
			C	2/21/2009	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	2/21/2009	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
		STANLEY, CURTIS	C	2/21/2009	Jackson County Road Commission	Physical Damage	0.00	0.00	0.00	0
							0.00	120,000.00	0.00	120,000
Claim Type	Claim Number	Last Comma First	Open/Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Unpaid
		STANLEY, ELIJAH	C	2/21/2009	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	2/21/2009	Jackson County Road Commission	Indemnity/BI	0.00	1,025,000.00	0.00	1,025,000
			C	2/21/2009	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	2/21/2009	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
		STANLEY, ELIJAH	C	2/21/2009	Jackson County Road Commission	Physical Damage	0.00	0.00	0.00	0
							0.00	1,025,000.00	0.00	1,025,000
Claim Type	Claim Number	Last Comma First	Open/Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Unpaid
		STANLEY, JOSEPH	C	2/21/2009	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
		STANLEY, JOSEPH					0.00	0.00	0.00	0
Claim Type	Claim Number	Last Comma First	Open/Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Unpaid
		STANLEY, SHEILA	C	2/21/2009	Jackson County Road Commission	Expense	0.00	31,547.79	85.74	31,461.88

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Claim Type	Claim Number	Last Comm / First	Open / Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Unpaid
	ALT38002008006254	STANLEY, SHEILA	C	2/21/2009	Jackson County Road Commission	Indemnity/BI	0.00	80,000.00	0.00	80,000
			C	2/21/2009	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	2/21/2009	Jackson County Road Commission	Litigation	0.00	82,911.25	0.00	82,911.25
			C	2/21/2009	Jackson County Road Commission	Physical Damage	0.00	0.00	0.00	0
		STANLEY, SHEILA					0.00	174,459.04	96.71	174,382.33
	ALT38002008006254						0.00	1,319,459.04	96.71	1,319,362.33
Claim Type	Claim Number	Last Comm / First	Open / Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Unpaid
	ALT38002008006354	VERIZON	C	5/7/2008	Jackson County Road Commission	Expense	0.00	2.70	0.00	2.7
			C	5/7/2008	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	5/7/2008	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	5/7/2008	Jackson County Road Commission	Litigation	0.00	1,295.00	0.00	1,295
			C	5/7/2008	Jackson County Road Commission	Physical Damage	0.00	0.00	0.00	0
		VERIZON					0.00	1,297.70	0.00	1,297.7
	ALT38002008006354						0.00	1,297.70	0.00	1,297.7
Claim Type	Claim Number	Last Comm / First	Open / Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Unpaid
	ALT38002009006540	MASON, BEVERLY	C	1/12/2010	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	1/12/2010	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	1/12/2010	Jackson County Road Commission	Indemnity/PD	0.00	5,341.45	0.00	5,341.45
			C	1/12/2010	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	1/12/2010	Jackson County Road Commission	Physical Damage	0.00	0.00	0.00	0
		MASON, BEVERLY					0.00	5,341.45	0.00	5,341.45
	ALT38002009006540						0.00	5,341.45	0.00	5,341.45
Claim Type	Claim Number	Last Comm / First	Open / Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Unpaid
	ALT38002011006949	Auto, Owners	C	2/11/2012	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	2/11/2012	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	2/11/2012	Jackson County Road Commission	Indemnity/PD	0.00	2,174.17	0.00	2,174.17
			C	2/11/2012	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	2/11/2012	Jackson County Road Commission	Physical Damage	0.00	0.00	0.00	0
		Auto, Owners					0.00	2,174.17	0.00	2,174.17
	ALT38002011006949						0.00	2,174.17	0.00	2,174.17
Claim Type	Claim Number	Last Comm / First	Open / Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Unpaid
	ALT38002012006940	Jim, Winter Buick, Cadillac, GMC	C	6/13/2012	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	6/13/2012	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	6/13/2012	Jackson County Road Commission	Indemnity/PD	0.00	500.00	0.00	500
			C	6/13/2012	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	6/13/2012	Jackson County Road Commission	Physical Damage	0.00	0.00	0.00	0
		Jim, Winter Buick, Cadillac, GMC					0.00	500.00	0.00	500
	ALT38002012006940						0.00	500.00	0.00	500

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ALT 7 0.00 1,607,170.10 96.71 1,607,073.42

Claim Type	Claim Number	Last/Comma/First	Open/Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Unpaid
E&O	E&O38002004005100	TRUDELL, DAVID	C	4/7/2004	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	4/7/2004	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	4/7/2004	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	4/7/2004	Jackson County Road Commission	Physical Damage	0.00	0.00	0.00	0
E&O38002004005100										
E&O	E&O38002005005363	CLARK, LAKE GOLF CLUB	C	8/29/2005	Jackson County Road Commission	Expense	0.00	647.54	0.00	647.54
			C	8/29/2005	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	8/29/2005	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	8/29/2005	Jackson County Road Commission	Litigation	0.00	7,091.50	0.00	7,091.50
			C	8/29/2005	Jackson County Road Commission	Physical Damage	0.00	0.00	0.00	0
E&O38002005005363										
E&O	E&O38002005005504	TROUP, KAREN	C	3/6/2006	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	3/6/2006	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	3/6/2006	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	3/6/2006	Jackson County Road Commission	Litigation	0.00	5,235.00	0.00	5,235
			C	3/6/2006	Jackson County Road Commission	Physical Damage	0.00	0.00	0.00	0
E&O38002005005504										
E&O	E&O38002006005505	TRUDELL, DAVID	C	6/12/2006	Jackson County Road Commission	Expense	0.00	4,474.49	0.00	4,474.49
			C	6/12/2006	Jackson County Road Commission	Indemnity/BI	0.00	3,000.00	0.00	3,000
			C	6/12/2006	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	6/12/2006	Jackson County Road Commission	Litigation	0.00	23,896.50	0.00	23,896.5
			C	6/12/2006	Jackson County Road Commission	Physical Damage	0.00	0.00	0.00	0
			C	6/12/2006	Jackson County Road Commission	Physical Damage	0.00	31,170.99	0.00	31,170.99
E&O38002006005505										
E&O	E&O38002006006710	BENN, RICK	C	1/29/2007	Jackson County Road Commission	Expense	0.00	69.84	0.00	69.84
			C	1/29/2007	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	1/29/2007	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	1/29/2007	Jackson County Road Commission	Litigation	0.00	4,981.00	0.00	4,981
			C	1/29/2007	Jackson County Road Commission	Physical Damage	0.00	0.00	0.00	0
E&O38002006006710										
BENN, RICK										

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Claim Type	Claim Number	Last Commit File	Open/Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Insured			
							0.00	6,060.84	0.00	6,060.84			
E&O	E&O38002007005890	TROUP, KAREN	C	9/26/2007	Jackson County Road Commission	Expense	0.00	4,218.05	0.00	4,218.05			
			C	9/26/2007	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0			
			C	9/26/2007	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0			
			C	9/26/2007	Jackson County Road Commission	Litigation	0.00	48,880.75	0.00	48,880.75			
			C	9/26/2007	Jackson County Road Commission	Physical Damage	0.00	0.00	0.00	0			
										0.00	53,098.80	0.00	53,098.8
							0.00	53,098.80	0.00	53,098.8			
E&O38002010005594	FITZGERALD, CATHY	FITZGERALD, CATHY	C	11/3/2010	Jackson County Road Commission	Expense	0.00	124.95	0.00	124.95			
			C	11/3/2010	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0			
			C	11/3/2010	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0			
			C	11/3/2010	Jackson County Road Commission	Litigation	0.00	17,244.00	0.00	17,244			
			C	11/3/2010	Jackson County Road Commission	Physical Damage	0.00	0.00	0.00	0			
										0.00	17,368.95	0.00	17,368.95
							0.00	17,368.95	0.00	17,368.95			
E&O38002012006946	HELM, HAROLD	HELM, HAROLD	O	8/18/2012	Jackson County Road Commission	Expense	4,888.18	111.84	0.00	5,000			
			O	8/18/2012	Jackson County Road Commission	Indemnity/BI	15,000.00	0.00	0.00	15,000			
			O	8/18/2012	Jackson County Road Commission	Litigation	18,759.00	1,241.00	0.00	15,000			
										33,547.18	1,352.84	0.00	35,000
										33,547.18	1,352.84	0.00	35,000
										33,547.18	121,016.45	0.00	154,683.62
EPD	EPD38002003004813	JACKSON, CRC #2420	C	8/19/2003	Jackson County Road Commission	Expense	0.00	0.00	0.00	0			
			C	8/19/2003	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0			
			C	8/19/2003	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0			
			C	8/19/2003	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0			
			C	8/19/2003	Jackson County Road Commission	Physical Damage	0.00	2,173.09	500.00	1,673.09			
										0.00	2,173.09	500.00	1,673.09
							0.00	2,173.09	500.00	1,673.09			
EPD38002003004860	JACKSON, CRC #7320	JACKSON, CRC #7320	C	9/22/2003	Jackson County Road Commission	Expense	0.00	0.00	0.00	0			
			C	9/22/2003	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0			
			C	9/22/2003	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0			
			C	9/22/2003	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0			
			C	9/22/2003	Jackson County Road Commission	Physical Damage	0.00	1,838.96	500.00	1,438.96			
										0.00	1,838.96	500.00	1,438.96

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EPD38002003004980		JACKSON, CRC #7320		0.00	1,938.95	500.00	1,438.95			
Claim Type	Claim Number	Last Comm First	Open/Closed	Event Date	Member	Receipt Type	Reserve Balance	Paid	Collection	Incurred
EPD	EPD38002003005082	JACKSON, CRC #2720	C	3/1/2004	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	3/1/2004	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	3/1/2004	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	3/1/2004	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	3/1/2004	Jackson County Road Commission	Physical Damage	0.00	4,577.24	500.00	4,077.24
EPD38002003005082		JACKSON, CRC #2720		0.00	4,577.24	500.00	4,077.24			
EPD38002003005182		JACKSON, CRC #2450		0.00	4,577.24	500.00	4,077.24			
Claim Type	Claim Number	Last Comm First	Open/Closed	Event Date	Member	Receipt Type	Reserve Balance	Paid	Collection	Incurred
	EPD38002003005182	JACKSON, CRC #2450	C	2/3/2004	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	2/3/2004	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	2/3/2004	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	2/3/2004	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	2/3/2004	Jackson County Road Commission	Physical Damage	0.00	1,088.04	500.00	588.04
EPD38002003005182		JACKSON, CRC #2450		0.00	1,088.04	500.00	588.04			
EPD38002004005089		JACKSON, CRC #5280		0.00	1,088.04	500.00	588.04			
Claim Type	Claim Number	Last Comm First	Open/Closed	Event Date	Member	Receipt Type	Reserve Balance	Paid	Collection	Incurred
	EPD38002004005089	JACKSON, CRC #5280	C	4/12/2004	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	4/12/2004	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	4/12/2004	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	4/12/2004	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	4/12/2004	Jackson County Road Commission	Physical Damage	0.00	8,350.27	500.00	7,850.27
EPD38002004005089		JACKSON, CRC #5280		0.00	8,350.27	500.00	7,850.27			
Claim Type	Claim Number	Last Comm First	Open/Closed	Event Date	Member	Receipt Type	Reserve Balance	Paid	Collection	Incurred
	EPD38002004005221	JACKSON, CRC #4280	C	12/13/2004	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	12/13/2004	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	12/13/2004	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	12/13/2004	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	12/13/2004	Jackson County Road Commission	Physical Damage	0.00	6,741.77	500.00	6,241.77
EPD38002004005221		JACKSON, CRC #4280		0.00	6,741.77	500.00	6,241.77			
Claim Type	Claim Number	Last Comm First	Open/Closed	Event Date	Member	Receipt Type	Reserve Balance	Paid	Collection	Incurred
	EPD38002004005224	JACKSON, CRC #4480	C	12/16/2004	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	12/16/2004	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	12/16/2004	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	12/16/2004	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0

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EPD	Claim Number	Last Comm / First	Open / Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Incurred
EPD38002004005224	JACKSON, CRC #4460	C	12/19/2004	Jackson County Road Commission	Physical Damage	0.00	1,763.74	500.00	1,263.74	
	JACKSON, CRC #4460					0.00	1,763.74	500.00	1,263.74	
EPD38002004005224	JACKSON, CRC UNIT #7480	C	1/8/2005	Jackson County Road Commission	Expense	0.00	0.00	0.00	0	
	JACKSON, CRC UNIT #7480	C	1/8/2005	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0	
	JACKSON, CRC UNIT #7480	C	1/8/2005	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0	
	JACKSON, CRC UNIT #7480	C	1/9/2005	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0	
	JACKSON, CRC UNIT #7480	C	1/8/2005	Jackson County Road Commission	Physical Damage	0.00	25,158.20	725.00	24,433.2	
EPD38002004005227	JACKSON, CRC #7370	C	2/21/2005	Jackson County Road Commission	Expense	0.00	0.00	0.00	0	
	JACKSON, CRC #7370	C	2/21/2005	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0	
	JACKSON, CRC #7370	C	2/21/2005	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0	
	JACKSON, CRC #7370	C	2/21/2005	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0	
	JACKSON, CRC #7370	C	2/21/2005	Jackson County Road Commission	Physical Damage	0.00	3,551.24	500.00	3,051.24	
EPD38002004005298	JACKSON, CRC #3320 & 4340	C	7/26/2005	Jackson County Road Commission	Expense	0.00	0.00	0.00	0	
	JACKSON, CRC #3320 & 4340	C	7/26/2005	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0	
	JACKSON, CRC #3320 & 4340	C	7/26/2005	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0	
	JACKSON, CRC #3320 & 4340	C	7/26/2005	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0	
	JACKSON, CRC #3320 & 4340	C	7/26/2005	Jackson County Road Commission	Physical Damage	0.00	9,422.84	500.00	8,922.84	
EPD38002005005376	JACKSON, CRC UNIT 3430	C	11/21/2005	Jackson County Road Commission	Expense	0.00	0.00	0.00	0	
	JACKSON, CRC UNIT 3430	C	11/21/2005	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0	
	JACKSON, CRC UNIT 3430	C	11/21/2005	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0	
	JACKSON, CRC UNIT 3430	C	11/21/2005	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0	
	JACKSON, CRC UNIT 3430	C	11/21/2005	Jackson County Road Commission	Physical Damage	0.00	3,827.05	500.00	3,127.05	
EPD38002005005378	JACKSON, CRC UNIT 3460	C	1/30/2006	Jackson County Road Commission	Expense	0.00	0.00	0.00	0	
	JACKSON, CRC UNIT 3460	C	1/30/2006	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0	
	JACKSON, CRC UNIT 3460	C	1/30/2006	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0	

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EPD	EPD38002005005485	JACKSON, CRC UNIT 3480	C	1/30/2006	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	1/30/2006	Jackson County Road Commission	Physical Damage	0.00	1,734.14	500.00	1,234.14
	EPD38002005005485	JACKSON, CRC UNIT 3480					0.00	1,734.14	500.00	1,234.14
Claim Type	Claim Number	Last Comm/Frat	Open/Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Incurred
	EPD38002005005485	JACKSON, CRC UNIT 3100	C	1/24/2006	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	1/24/2008	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	1/24/2006	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	1/24/2006	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	1/24/2006	Jackson County Road Commission	Physical Damage	0.00	2,190.43	500.00	1,690.43
	EPD38002006005486	JACKSON, CRC UNIT 3100					0.00	2,190.43	500.00	1,690.43
							0.00	2,190.43	500.00	1,690.43
Claim Type	Claim Number	Last Comm/Frat	Open/Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Incurred
	EPD38002006005568	JACKSON, CRC UNIT 7470	C	5/16/2006	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	5/16/2008	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	5/16/2006	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	5/16/2006	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	5/16/2006	Jackson County Road Commission	Physical Damage	0.00	2,017.09	500.00	1,517.09
	EPD38002006005568	JACKSON, CRC UNIT 7470					0.00	2,017.09	500.00	1,517.09
							0.00	2,017.09	500.00	1,517.09
Claim Type	Claim Number	Last Comm/Frat	Open/Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Incurred
	EPD38002006005730	JACKSON, CRC UNIT 2430	C	2/14/2007	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	2/14/2007	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	2/14/2007	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	2/14/2007	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	2/14/2007	Jackson County Road Commission	Physical Damage	0.00	2,211.99	500.00	1,711.99
	EPD38002006005740	JACKSON, CRC UNIT 2430					0.00	2,211.99	500.00	1,711.99
							0.00	2,211.99	500.00	1,711.99
Claim Type	Claim Number	Last Comm/Frat	Open/Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Incurred
	EPD38002006005731	JACKSON, CRC UNIT 2350	C	2/14/2007	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	2/14/2007	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	2/14/2007	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	2/14/2007	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	2/14/2007	Jackson County Road Commission	Physical Damage	0.00	11,934.87	500.00	11,434.87
	EPD38002006005731	JACKSON, CRC UNIT 2350					0.00	11,934.87	500.00	11,434.87
							0.00	11,934.87	500.00	11,434.87
Claim Type	Claim Number	Last Comm/Frat	Open/Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Incurred
	EPD38002007005872	JACKSON, CRC UNIT 2460	C	9/27/2007	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	9/27/2007	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0

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MICHIGAN COUNTY ROAD COMMISSION SELF-INSURANCE POOL
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Claim Type	Claim Number	Last Comm First	Open Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Unpaid
	EPD38002007005872	JACKSON, CRC UNIT 2460	C	9/27/2007	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	9/27/2007	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
		JACKSON, CRC UNIT 2460	C	9/27/2007	Jackson County Road Commission	Physical Damage	0.00	3,224.60	500.00	2,724.60
	EPD38002007005872						0.00	3,224.60	500.00	2,724.60
	EPD38002007005808	JACKSON, CRC UNIT 3390	C	12/10/2007	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	12/10/2007	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	12/10/2007	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	12/10/2007	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
		JACKSON, CRC UNIT 3390	C	12/10/2007	Jackson County Road Commission	Physical Damage	0.00	42,300.19	500.00	41,800.19
	EPD38002007005806						0.00	42,300.19	500.00	41,800.19
	EPD38002008006024	JACKSON, CRC UNIT 5270	C	5/5/2008	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	5/5/2008	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	5/5/2008	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	5/5/2008	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
		JACKSON, CRC UNIT 5270	C	5/5/2008	Jackson County Road Commission	Physical Damage	0.00	8,401.27	1,000.00	7,401.27
	EPD38002008006024						0.00	8,401.27	1,000.00	7,401.27
	EPD38002008008184	JACKSON, CRC UNIT 4300	C	12/24/2008	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	12/24/2008	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	12/24/2008	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	12/24/2008	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
		JACKSON, CRC UNIT 4300	C	12/24/2008	Jackson County Road Commission	Physical Damage	0.00	1,601.26	1,000.00	601.26
	EPD38002008008184						0.00	1,601.26	1,000.00	601.26
	EPD38002008009262	JACKSON, CRC UNIT 3400	C	1/19/2009	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	1/19/2009	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	1/19/2009	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	1/19/2009	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
		JACKSON, CRC UNIT 3400	C	1/19/2009	Jackson County Road Commission	Physical Damage	0.00	1,731.49	1,000.00	731.49
	EPD38002008009262						0.00	1,731.49	1,000.00	731.49
	EPD38002008006337	JACKSON, CRC UNIT 5270	C	5/25/2008	Jackson County Road Commission	Expense	0.00	0.00	0.00	0

MICHIGAN COUNTY ROAD COMMISSION SELF-INSURANCE POOL
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Claim Type	Claim Number	Loss Comm/Fire	Open/Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Incurred
EPD	EPD38002009006337	JACKSON, CRC UNIT 8270	C	6/23/2009	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	6/25/2009	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	6/25/2009	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	8/23/2009	Jackson County Road Commission	Physical Damage	0.00	9,304.40	1,000.00	8,304.40
		JACKSON, CRC UNIT 8270					0.00	9,304.40	1,000.00	8,304.40
	EPD38002009006337						0.00	9,304.40	1,000.00	8,304.40
Claim Type	Claim Number	Loss Comm/Fire	Open/Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Incurred
	EPD38002009006384	JACKSON, CRC UNIT 7480	C	10/12/2009	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	10/12/2009	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	10/12/2009	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	10/12/2009	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	10/12/2009	Jackson County Road Commission	Physical Damage	0.00	2,185.96	500.00	1,685.96
		JACKSON, CRC UNIT 7480					0.00	2,185.96	500.00	1,685.96
	EPD38002009006384						0.00	2,185.96	500.00	1,685.96
Claim Type	Claim Number	Loss Comm/Fire	Open/Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Incurred
	EPD38002010006584	JACKSON, CRC UNIT 2430	C	10/19/2010	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	10/19/2010	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	10/19/2010	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	10/19/2010	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	10/19/2010	Jackson County Road Commission	Physical Damage	0.00	1,493.40	500.00	1,493.40
		JACKSON, CRC UNIT 2430					0.00	1,493.40	500.00	1,493.40
	EPD38002010006584						0.00	1,493.40	500.00	1,493.40
EPD	124						0.00	158,723.53	14,225.00	145,498.53
Claim Type	Claim Number	Loss Comm/Fire	Open/Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Incurred
EPDTL	EPDTL38002002004705	JACKSON, CRC #5740	C	7/8/2002	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	7/8/2002	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	7/8/2002	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	7/8/2002	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	7/8/2002	Jackson County Road Commission	Physical Damage	0.00	9,002.39	0.00	9,002.39
		JACKSON, CRC #5740					0.00	9,002.39	0.00	9,002.39
	EPDTL38002002004705						0.00	9,002.39	0.00	9,002.39
Claim Type	Claim Number	Loss Comm/Fire	Open/Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Incurred
	EPDTL38002003005037	JACKSON, CRC #7100	C	1/23/2004	Jackson County Road Commission	Physical Damage	0.00	0.00	0.00	0
		JACKSON, CRC #7100					0.00	0.00	0.00	0
	EPDTL38002003005037						0.00	0.00	0.00	0
Claim Type	Claim Number	Loss Comm/Fire	Open/Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Incurred
	EPDTL38002003005047	JACKSON, CRC #7910	C	2/7/2004	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	2/7/2004	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0

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Claim Type	Claim Number	Loc/Comm/Flt	Open/Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Incurred
EPDTL	EPDTL38002003005047	JACKSON, CRC #7910	C	2/7/2004	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	2/7/2004	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	2/7/2004	Jackson County Road Commission	Physical Damage	0.00	2,579.87	0.00	2,579.87
	EPDTL38002003005047	JACKSON, CRC #7910					0.00	2,579.87	0.00	2,579.87
Claim Type	Claim Number	Loc/Comm/Flt	Open/Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Incurred
	EPDTL38002008006183	JACKSON, CRC UNIT 7450	C	12/19/2008	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	12/19/2008	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	12/19/2008	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	12/19/2008	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	12/19/2008	Jackson County Road Commission	Physical Damage	0.00	2,130.83	0.00	2,130.83
	EPDTL38002008006183	JACKSON, CRC UNIT 7450					0.00	2,130.83	0.00	2,130.83
Claim Type	Claim Number	Loc/Comm/Flt	Open/Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Incurred
	EPDTL38002010006573	JACKSON, CRC UNIT 7290	C	8/17/2010	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	8/17/2010	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	8/17/2010	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	8/17/2010	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	8/17/2010	Jackson County Road Commission	Physical Damage	0.00	1,088.30	0.00	1,088.30
	EPDTL38002010006573	JACKSON, CRC UNIT 7290					0.00	1,088.30	0.00	1,088.30
Claim Type	Claim Number	Loc/Comm/Flt	Open/Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Incurred
	EPDTL38002010006622	JACKSON, CRC UNIT 7390	C	12/22/2010	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	12/22/2010	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	12/22/2010	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	12/22/2010	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	12/22/2010	Jackson County Road Commission	Physical Damage	0.00	4,289.13	0.00	4,289.13
	EPDTL38002010006622	JACKSON, CRC UNIT 7390					0.00	4,289.13	0.00	4,289.13
Claim Type	Claim Number	Loc/Comm/Flt	Open/Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Incurred
	EPDTL38002010006737	JACKSON, CRC UNIT 7490	C	2/7/2011	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	2/7/2011	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	2/7/2011	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	2/7/2011	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	2/7/2011	Jackson County Road Commission	Physical Damage	0.00	1,983.59	0.00	1,983.59
	EPDTL38002010006737	JACKSON, CRC UNIT 7490					0.00	1,983.59	0.00	1,983.59
EPDTL	17						0.00	21,073.91	0.00	21,073.91

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Claim Type	Claim Number	Last Name/First	Open/Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Incurred
GL	GL38002004005146	DEAN, EARLY	C	7/1/2004	Jackson County Road Commission	Expense	0.00	7,898.58	1,000.00	6,898.58
			C	7/1/2004	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	7/1/2004	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	7/1/2004	Jackson County Road Commission	Litigation	0.00	78,821.50	0.00	78,821.5
			C	7/1/2004	Jackson County Road Commission	Physical Damage	0.00	0.00	0.00	0
			C	7/1/2004	Jackson County Road Commission	Physical Damage	0.00	86,720.08	1,000.00	85,720.08
	GL38002004005146					0.00	86,720.08	1,000.00	85,720.08	
GL	GL38002005005382	BENTLEY, IRELAND	C	6/4/2005	Jackson County Road Commission	Expense	0.00	16,573.32	1,000.00	15,573.32
			C	6/4/2005	Jackson County Road Commission	Indemnity/BI	0.00	25,000.00	0.00	25,000
			C	6/4/2005	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	6/4/2005	Jackson County Road Commission	Litigation	0.00	35,586.50	0.00	35,586.5
			C	6/4/2005	Jackson County Road Commission	Physical Damage	0.00	0.00	0.00	0
			C	6/4/2005	Jackson County Road Commission	Physical Damage	0.00	77,159.82	1,000.00	76,159.82
	GL38002005005382					0.00	77,159.82	1,000.00	76,159.82	
GL	GL38002006005570	STATON, JEFFREY	C	4/19/2006	Jackson County Road Commission	Expense	0.00	108.32	1,000.00	-891.58
			C	4/19/2006	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	4/19/2006	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	4/19/2006	Jackson County Road Commission	Litigation	0.00	3,334.35	0.00	3,334.35
			C	4/19/2006	Jackson County Road Commission	Physical Damage	0.00	0.00	0.00	0
			C	4/19/2006	Jackson County Road Commission	Physical Damage	0.00	3,442.67	1,000.00	2,442.67
	GL38002006005570					0.00	3,442.67	1,000.00	2,442.67	
GL	GL38002007005976	SPAULDING, DANIEL	C	7/13/2007	Jackson County Road Commission	Expense	0.00	13,261.09	0.00	13,261.09
			C	7/13/2007	Jackson County Road Commission	Indemnity/BI	0.00	85,000.00	0.00	85,000
			C	7/13/2007	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	7/13/2007	Jackson County Road Commission	Litigation	0.00	30,876.50	1,000.00	29,876.5
			C	7/13/2007	Jackson County Road Commission	Physical Damage	0.00	0.00	0.00	0
			C	7/13/2007	Jackson County Road Commission	Physical Damage	0.00	129,167.58	1,000.00	128,167.58
	GL38002007005976					0.00	129,167.58	1,000.00	128,167.58	
GL	GL38002009005358	WILLIAMS, MICHELLE	C	8/25/2009	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	8/25/2009	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	8/25/2009	Jackson County Road Commission	Indemnity/PD	0.00	3,660.00	1,000.00	2,660
			C	8/25/2009	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	8/25/2009	Jackson County Road Commission	Physical Damage	0.00	0.00	0.00	0
			C	8/25/2009	Jackson County Road Commission	Physical Damage	0.00	3,660.00	1,000.00	2,660
	GL38002009005358					0.00	3,660.00	1,000.00	2,660	

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GL	38002003006368				0.00	3,860.00	1,000.00	2,660.00
GL	S				0.00	300,140.16	5,000.00	295,140.16

Claim Type	Claim Number	Last/Complaint	Open/Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Unpaid
NF	NF38002005005500	SURQUE, SHAWN	C	1/25/2006	Jackson County Road Commission	Expense	0.00	0.00	1,000.00	-1,000.00
			C	1/25/2006	Jackson County Road Commission	Indemnity/BI	0.00	1,763.16	0.00	1,763.16
			C	1/25/2006	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	1/25/2006	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	1/25/2006	Jackson County Road Commission	Physical Damage	0.00	0.00	0.00	0
		SURQUE, SHAWN					0.00	1,763.16	-1,000.00	763.16
	NF38002005005500						0.00	1,763.16	1,000.00	763.16
NF	1						0.00	1,763.16	1,000.00	763.16

Claim Type	Claim Number	Last/Complaint	Open/Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Unpaid
PPD	PPD38002002004645	JACKSON, CRC-LOC#2/BLDG#2	C	4/16/2002	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	4/16/2002	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	4/15/2002	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	4/16/2002	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	4/16/2002	Jackson County Road Commission	Physical Damage	0.00	2,454.00	0.00	2,454.00
		JACKSON, CRC-LOC#2/BLDG#2					0.00	2,454.00	0.00	2,454.00
	PPD38002002004645						0.00	2,454.00	0.00	2,454.00

Claim Type	Claim Number	Last/Complaint	Open/Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Unpaid
PPD	PPD38002002004929	JACKSON, CRC-LOC #3 BLDG#4	C	2/28/2003	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	2/28/2003	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	2/28/2003	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	2/28/2003	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	2/28/2003	Jackson County Road Commission	Physical Damage	0.00	5,116.00	0.00	5,116.00
		JACKSON, CRC-LOC #3 BLDG#4					0.00	5,116.00	0.00	5,116.00
	PPD38002002004929						0.00	5,116.00	0.00	5,116.00

Claim Type	Claim Number	Last/Complaint	Open/Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Unpaid
PPD	PPD38002003004998	JACKSON, CRC PUMPING FACILITY	C	9/9/2003	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	9/9/2003	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	9/9/2003	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	9/9/2003	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	9/9/2003	Jackson County Road Commission	Physical Damage	0.00	2,925.00	500.00	2,425.00
		JACKSON, CRC PUMPING FACILITY					0.00	2,925.00	500.00	2,425.00
	PPD38002003004998						0.00	2,925.00	500.00	2,425.00

Claim Type	Claim Number	Last/Complaint	Open/Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Unpaid
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Claim Type	Claim Number	Last Contm #/rat	Open/Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Incurred
PPD	PPD38002004005317	JACKSON, CRC LOC #6	C	3/25/2005	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	3/25/2005	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	3/25/2005	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	3/25/2005	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	3/25/2005	Jackson County Road Commission	Physical Damage	0.00	291,577.43	500.00	291,077.43
		JACKSON, CRC LOC #8					0.00	291,577.43	500.00	291,077.43
	PPD38002004005317						0.00	291,577.43	500.00	291,077.43
Claim Type	Claim Number	Last Contm #/rat	Open/Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Incurred
	PPD38002006005692	JACKSON, CRC LOC 3 BLDG 1	C	11/7/2006	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	11/7/2006	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	11/7/2006	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	11/7/2006	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	11/7/2006	Jackson County Road Commission	Physical Damage	0.00	2,484.08	500.00	1,984.08
		JACKSON, CRC LOC 3 BLDG 1					0.00	2,484.08	500.00	1,984.08
	PPD38002006005692						0.00	2,484.08	500.00	1,984.08
Claim Type	Claim Number	Last Contm #/rat	Open/Closed	Event Date	Member	Reserve Type	Reserve Balance	Paid	Collection	Incurred
	PPD38002008006283	JACKSON, CRC LOC 4 BLDG 1	C	3/26/2009	Jackson County Road Commission	Expense	0.00	0.00	0.00	0
			C	3/26/2009	Jackson County Road Commission	Indemnity/BI	0.00	0.00	0.00	0
			C	3/26/2009	Jackson County Road Commission	Indemnity/PD	0.00	0.00	0.00	0
			C	3/26/2009	Jackson County Road Commission	Litigation	0.00	0.00	0.00	0
			C	3/26/2009	Jackson County Road Commission	Physical Damage	0.00	5,500.00	5,450.00	50
		JACKSON, CRC LOC 4 BLDG 1					0.00	5,500.00	5,450.00	50
	PPD38002008006283						0.00	5,500.00	5,450.00	50
PPD	6						0.00	310,056.51	8,950.00	303,106.51
Totals		67					33,647.16	2,886,955.13	36,271.71	2,884,330.56

APPENDIX 46

Joni Johnson

From: Joni Johnson
Sent: Tuesday, January 15, 2013 2:56 PM
To: Anne Walts
Subject: RE: Jackson County's MMRMA Renewal information for 2013

Thanks Anne. Tonight the Board of Commissioners will be deciding on the Road Commission so we should know which way we are going tomorrow.

From: Anne Walts [mailto:AnneW@ibexagency.com]
Sent: Tuesday, January 15, 2013 11:58 AM
To: Joni Johnson
Subject: Jackson County's MMRMA Renewal information for 2013

Joni,
Attached is the current Bond List, Consumers Energy Certificate, State of MI Certificate for 1697 Lansing Ave. and the Penske Truck Leasing Certificate all updated for 2013-2014. Also, attached are the No Fault Certificate and the Blanket Fidelity Bond.

I believe this plus yesterday's email attachment includes the entire renewal package. Once the decision is made on the Road Department coverage the respective Proposal signed page 4 can be forwarded to me so that we can process with the MMRMA.

If you need anything further or have any questions, please contact me.

Thank you,
Anne Walts
Ibex Insurance Agency
PO Box 3355
Farmington Hills, MI 48333-3355
248-538-0470

APPENDIX 47

Appendix A

Page 1 of 3

Act No. 14

Public Acts of 2012

Approved by the Governor

February 21, 2012

Filed with the Secretary of State

February 21, 2012

EFFECTIVE DATE: February 21, 2012

STATE OF MICHIGAN

96TH LEGISLATURE

REGULAR SESSION OF 2012

Introduced by Rep. Switalski

ENROLLED HOUSE BILL No. 5125

AN ACT to amend 1909 PA 283, entitled "An act to revise, consolidate, and add to the laws relating to the establishment, opening, discontinuing, vacating, closing, altering, improvement, maintenance, and use of the public highways and private roads; the condemnation of property and gravel therefor; the building, repairing and preservation of bridges; maintaining public access to waterways under certain conditions; setting and protecting shade trees, drainage, and cutting weeds and brush within this state; providing for the election or appointment and defining the powers, duties, and compensation of state, county, township, and district highway officials; and to prescribe penalties and provide remedies," by amending section 6 of chapter IV (MCL 224.6), as amended by 2009 PA 39.

The People of the State of Michigan enact:

CHAPTER IV

Sec. 6. (1) Except as otherwise provided by law and under subsection (4), (5), (7), or (8), in a county where the county road system is adopted, a board of county road commissioners consisting of not less than 3 members or more than 5 members shall be elected by the people of the county. The initial road commissioners shall be appointed by the county board of commissioners or elected at a general or special election called for that purpose, as determined by the county board of commissioners. The county board of commissioners may by resolution provide for staggered terms of office for the road commissioners under this

subsection so that not more than 2 road commissioners' terms of office expire in the same year.

(2) If the road commissioners are appointed, they shall hold office only until January 1 of the first odd numbered year following the date of appointment. If the road commissioners are to be elected at a general or special election, notice of the election, embodying a copy of the resolutions of the county board of commissioners, giving the number and terms of the office of the road commissioners to be elected, shall be published by the clerk as required by section 3 of this chapter.

(3) The regular election of county road commissioners shall be held at the general election on the first Tuesday after the first Monday in November. The term of office of an elected county road commissioner shall commence on January 1 in the year following his or her election. The notice of the election shall be given at the time notice is given of the general election of county officers.

(4) The election of county road commissioners shall not be mandatory in any county that contains all or part of 12 surveyed townships as determined by the government survey of the county. Except as provided under subsection (5), in a county under this subsection the county board of commissioners, by a majority of its members elect, may appoint the county road commissioners. A county road commissioner appointed under this subsection shall not be removed from office before the expiration of his or her term of office without being given written notice of the charges made against him or her and an opportunity to appear before the county board of commissioners for a hearing on the charges.

(5) In a county having a population of 750,000 or more that has adopted a charter under 1966 PA 293, MCL 45.501 to 45.521, the powers and duties that are otherwise provided by law for a board of county road commissioners may be reorganized by amendment to the charter. In a county having a population of 750,000 or more with a charter commission proposing a charter under 1966 PA 293, MCL 45.501 to 45.521, the powers and duties that are otherwise provided by law for a board of county road commissioners may be reorganized under the charter if, at the election considering the approval of the charter, the voters approve both the charter and a separate ballot question presented by the charter commission to reorganize the board of county road commissioners. Funds provided to the county under 1951 PA 51, MCL 247.651 to 247.675, shall only be expended for the purposes provided under 1951 PA 51, MCL 247.651 to 247.675.

(6) If the county board of commissioners proposes to alter the number of county road commissioners as allowed under this act, the county board of commissioners shall hold not less than 1 public hearing on the proposed change to the road commission. The county board of commissioners shall give notice as required under the open meetings act, 1976 PA 267, MCL 15.261 to 15.275, of the time and place of the public hearing not less than 28 days before the hearing. The county board of commissioners shall also provide written notice of the hearing to the county road commission and, if available, by posting the notice on the county's website. The county board of commissioners may vote on whether to alter the

number of county road commissioners at the meeting noticed under this subsection.

(7) Except as otherwise provided under subsection (5) and subject to the requirement provided in subsection (9), before January 1, 2015, the powers, duties, and functions that are otherwise provided by law for an appointed board of county road commissioners may be transferred to the county board of commissioners by a resolution as allowed under section 11 of 1851 PA 156, MCL 46.11. The appointed board of county road commissioners of that county is dissolved on the date specified in the resolution adopted under this subsection, and the county board of commissioners is authorized to receive and expend funds as allowed under 1951 PA 51, MCL 247.651 to 247.675.

(8) Except as otherwise provided in subsection (5) and subject to the requirement provided in subsection (9), before January 1, 2015, the county board of commissioners in a county with an elected board of county road commissioners may, by a resolution as allowed under section 11 of 1851 PA 156, MCL 46.11, submit to the qualified and registered electors of the county at the next regular election to be held in the county the question of transferring the powers, duties, and functions of the elected board of county road commissioners of that county to the county board of commissioners. If a majority of the qualified and registered electors of the county voting on the question vote in favor of transferring the powers, duties, and functions of the elected board of county road commissioners of that county to the county board of commissioners, the elected board of county road commissioners of that county is dissolved and the county board of commissioners is authorized to receive and expend funds as allowed under 1951 PA 51, MCL 247.651 to 247.675.

(9) Before adopting a resolution under subsection (7) or (8), the county board of commissioners shall conduct, at a minimum, 2 public hearings on whether to transfer the powers, duties, and functions of the board of county road commissioners to the county board of commissioners.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5126 of the 96th Legislature is enacted into law.

This act is ordered to take immediate effect.

Clerk of the House of Representatives

Secretary of the Senate

Approved

Governor

Act No. 15

Public Acts of 2012

Approved by the Governor

February 21, 2012

Filed with the Secretary of State

February 21, 2012

EFFECTIVE DATE: February 21, 2012

STATE OF MICHIGAN

96TH LEGISLATURE

REGULAR SESSION OF 2012

Introduced by Rep. Zorn

ENROLLED HOUSE BILL No. 5126

AN ACT to amend 1851 PA 156, entitled "An act to define the powers and duties of the county boards of commissioners of the several counties, and to confer upon them certain local, administrative and legislative powers; and to prescribe penalties for the violation of the provisions of this act," by amending section 11 (MCL 46.11), as amended by 2003 PA 94.

The People of the State of Michigan enact:

Sec. 11. A county board of commissioners, at a lawfully held meeting, may do 1 or more of the following:

- (a) Purchase or lease for a term not to exceed 20 years, real estate necessary for the site of a courthouse, jail, clerk's office, or other county building in that county.
- (b) Determine the site of, remove, or designate a new site for a county building. The exercise of the authority granted by this subdivision is subject to any requirement of law that the building be located at the county seat.
- (c) Authorize the sale or lease of real estate belonging to the county, and prescribe the manner in which a conveyance of the real estate is to be executed.
- (d) Erect the necessary buildings for jails, clerks' offices, and other county buildings, and

prescribe the time and manner of erecting them.

(e) Borrow or raise by tax upon the county those funds authorized by law. The exercise of the authority granted by this subdivision is subject to any voting requirement provided by the law authorizing the borrowing or tax if different from the voting requirement under section 3.

(f) Provide for the repayment of a loan made by the board, by tax upon the county. The loan shall be repaid within 15 years after the date of the loan, except that a loan to erect a county building for a public function shall be repaid within 30 years after the date of the loan.

(g) Prescribe and fix the salaries and compensation of employees of the county if not fixed by law and, except in a county having a board of county auditors, adjust claims against the county. The sum allowed in the adjustment of a claim is subject to appeal as provided by law.

(h) Direct and provide for the raising of money necessary to defray the current expenses and charges of the county and the necessary charges incident to or arising from the execution of the board's lawful authority, subject to the limitations prescribed in this act. The county board of commissioners may borrow in a year, in anticipation of the levy or collection of taxes for the year, a sum of money, not exceeding 50% of the tax to be levied or collected for the general fund of the county, necessary to defray current expenses of the county. The money borrowed shall be repaid from the tax when levied and collected.

(l) Authorize the making of a new tax roll.

(j) By majority vote of the members of the county board of commissioners elected and serving, pass ordinances that relate to county affairs and do not contravene the general laws of this state or interfere with the local affairs of a township, city, or village within the limits of the county, and pursuant to section 10b provide suitable sanctions for the violation of those ordinances. The board may change the limits of a city, village, or school district within the county as provided by law. If there is not a general law governing the subject, or if a change cannot be made pursuant to a general law, the board may change the limits of the village upon petition of at least 10% of the resident taxpayers. An ordinance or act of incorporation provided in this subdivision shall take effect when notice of the adoption is published in a newspaper of general circulation in the county. The clerk of the county board of commissioners shall engross each ordinance or act, and it shall be signed by the chairperson of the county board of commissioners and certified by the clerk of the county board of commissioners. If, within 50 days after the county board of commissioners adopts an ordinance or act, a petition signed by not less than 20% of the electors residing in the district to be affected by the ordinance or act is filed with the county clerk asking that the ordinance or act be submitted to electors of the district to be affected by the ordinance or act for approval or rejection, then the ordinance or act shall not take effect until it is approved by a majority of the electors of the district affected voting on that issue at a regular or special election called for that purpose. The county board of commissioners shall provide

the manner of submitting the ordinance or act to the electors for their approval and of determining the result of the election.

(k) Require a county officer whose salary or compensation is paid by the county to make a report under oath to the county board of commissioners on any subject connected with the duties of that office and require the officer to give a bond reasonable or necessary for the faithful performance of the duties of the office. An officer who neglects or refuses either to make a report or give a bond within a reasonable time after being required to do so may be removed from office by the board by a vote of 2/3 of the members elected or appointed, and the office declared vacant. The board may fill the vacancy for the unexpired portion of the term for which the officer was elected or appointed. If an election occurs before the expiration of the unexpired term, and if the office is elective, the vacancy shall be filled at that election. The board shall give reasonable notice of the election to fill the vacancy.

(l) Represent the county and have the care and management of the property and business of the county if other provisions are not made.

(m) Establish rules and regulations in reference to the management of the interest and business concerns of the county as the board considers necessary and proper in all matters not especially provided for in this act or under the laws of this state. The county board of commissioners shall not audit or allow a claim, including a bill or charge, against the county unless the claim has been filed with the county clerk of the county before the fourth day of a regular meeting of the board, or before the second day of an adjourned or other meeting, the claim is contracted by the board during the session of the board or the claim is for mileage and per diem of the members of the board. The county clerk shall keep a book of all claims in the order in which the claims are presented, giving the name of each claimant and the amount and date of presentation of each claim. The book, after the time prescribed for the presentation of claims, shall be delivered to the chairperson for the use of the board. At the October session, the board, by a vote of 2/3 of the members, may receive and allow accounts that have wholly accrued during the session.

(n) Subject to subdivision (o), remove an officer or agent appointed by the board if, in the board's opinion, the officer or agent is incompetent to execute properly the duties of the office or if, on charges and evidence, the board is satisfied that the officer or agent is guilty of official misconduct, or habitual or willful neglect of duty, and if the misconduct or neglect is a sufficient cause for removal. However, an officer or agent shall not be removed for that misconduct or neglect unless charges of misconduct or neglect are preferred to the county board of commissioners or the chairperson of the county board of commissioners, notice of the hearing, with a copy of the charges, is delivered to the officer or agent, and a full opportunity is given the officer or agent to be heard, either in person or by counsel.

(o) If the county has an appointed county manager or other appointed chief administrative officer or a county controller, the county board of commissioners may enter into an employment contract with that officer. The term of the employment contract may extend beyond the terms of the members of the county board of commissioners. The term of the

employment contract shall be 3 years or less, unless the employment contract is entered into on or after August 1 of an even-numbered year, in which case the term of the employment contract shall be 1 year or less. However, in a county organized under 1966 PA 293, MCL 45.501 to 45.521, with an appointed chief administrative officer, an employment contract with the appointed chief administrative officer shall be for the term provided by section 11a of 1966 PA 293, MCL 45.511a. An employment contract under this subdivision shall be in writing and shall specify the compensation to be paid to the officer, any procedure for changing the compensation, any fringe benefits, and any other conditions of employment. If the officer serves at the pleasure of the county board of commissioners, the contract shall so state and may provide for severance pay or other benefits in the event the employment of the officer is terminated at the pleasure of the county board of commissioners.

(p) Establish rules consistent with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275, for the manner of proceeding before the board.

(q) Acquire by exchange land needed for county purposes, including the purchase of land to be used in exchange for other land of approximate equal value owned by the federal government and needed for county purposes.

(r) Grant or loan funds to a nonprofit corporation organized for the purpose of providing loans for private sector economic development initiatives. A grant or loan under this subdivision shall not be derived from ad valorem taxes except for ad valorem taxes approved by a vote of the people for economic development. The county shall establish an application process for proposals to receive a grant or loan under this subdivision. The awarding of a grant or loan under this subdivision shall be made at a public hearing of the county board of commissioners. The grant or loan contract shall require a report to the county board of commissioners regarding the activities of the recipient and the degree to which the recipient has met the stated public purpose of the funding.

(s) Before January 1, 2015, by majority vote of the members of the county board of commissioners elected and serving in a county with an appointed board of county road commissioners, pass a resolution that transfers the powers, duties, and functions that are otherwise provided by law for the appointed board of county road commissioners of that county to the county board of commissioners. The resolution is subject to the requirement in section 6(9) of chapter IV of 1909 PA 283, MCL 224.6. The appointed board of county road commissioners of that county is dissolved on the date specified in the resolution adopted under this subdivision, and the county board of commissioners is authorized to receive and expend funds as allowed under 1951 PA 51, MCL 247.651 to 247.675. If the powers, duties, and functions of the board of county road commissioners of a county are transferred to the county board of commissioners of that county under this subdivision and the powers and duties of the office of county drain commissioner of that county had previously been transferred to the board of county road commissioners as provided in section 21(3) of the drain code of 1956, 1956 PA 40, MCL 280.21, then the county board of commissioners of that county shall reestablish, by resolution, the office of county drain commissioner as an elected office. The resolution reestablishing the office of county drain commissioner shall

provide for the appointment of an acting county drain commissioner for that county who shall hold office until the next general election at which a county drain commissioner will be elected as provided in chapter X of the Michigan election law, 1954 PA 116, MCL 168.191 to 168.211.

(t) Before January 1, 2015, by majority vote of the members of the county board of commissioners elected and serving in a county with an elected board of county road commissioners, pass a resolution to submit to the qualified and registered electors of the county at the next regular election to be held in the county the question of transferring the powers, duties, and functions of the elected board of county road commissioners of that county to the county board of commissioners. The resolution is subject to the requirement in section 6(9) of chapter IV of 1909 PA 283, MCL 224.6. If a majority of the qualified and registered electors of the county voting on the question vote in favor of transferring the powers, duties, and functions of the elected board of county road commissioners of that county to the county board of commissioners, the elected board of county road commissioners of that county is dissolved and the county board of commissioners is authorized to receive and expend funds as allowed under 1951 PA 51, MCL 247.651 to 247.675. If the powers, duties, and functions of the board of county road commissioners of a county are transferred to the county board of commissioners of that county under this subdivision and the powers and duties of the office of county drain commissioner of that county had previously been transferred to the board of county road commissioners as provided in section 21(3) of the drain code of 1956, 1956 PA 40, MCL 280.21, then the county board of commissioners of that county shall reestablish, by resolution, the office of county drain commissioner as an elected office. The resolution reestablishing the office of county drain commissioner shall provide for the appointment of an acting county drain commissioner for that county who shall hold office until the next general election at which a county drain commissioner will be elected as provided in chapter X of the Michigan election law, 1954 PA 116, MCL 168.191 to 168.211.

(u) If, after a board of county road commissioners is dissolved as provided in subdivision (s) or (t), the county board of commissioners for a county determines that a board of county road commissioners would provide a cost savings to the county residents and would better meet the needs of the county residents, the county board of commissioners for that county may, upon majority vote of the members of the county board of commissioners, submit the question of adopting a county road system with a board of county road commissioners to a vote of the electors of the county as provided in chapter IV of 1909 PA 283, MCL 224.1 to 224.32.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5125 of the 96th Legislature is enacted into law.

This act is ordered to take immediate effect.

Clerk of the House of Representatives

Page 6 of 6

Secretary of the Senate

Approved

Governor

4/20/10 4:34:25 PM

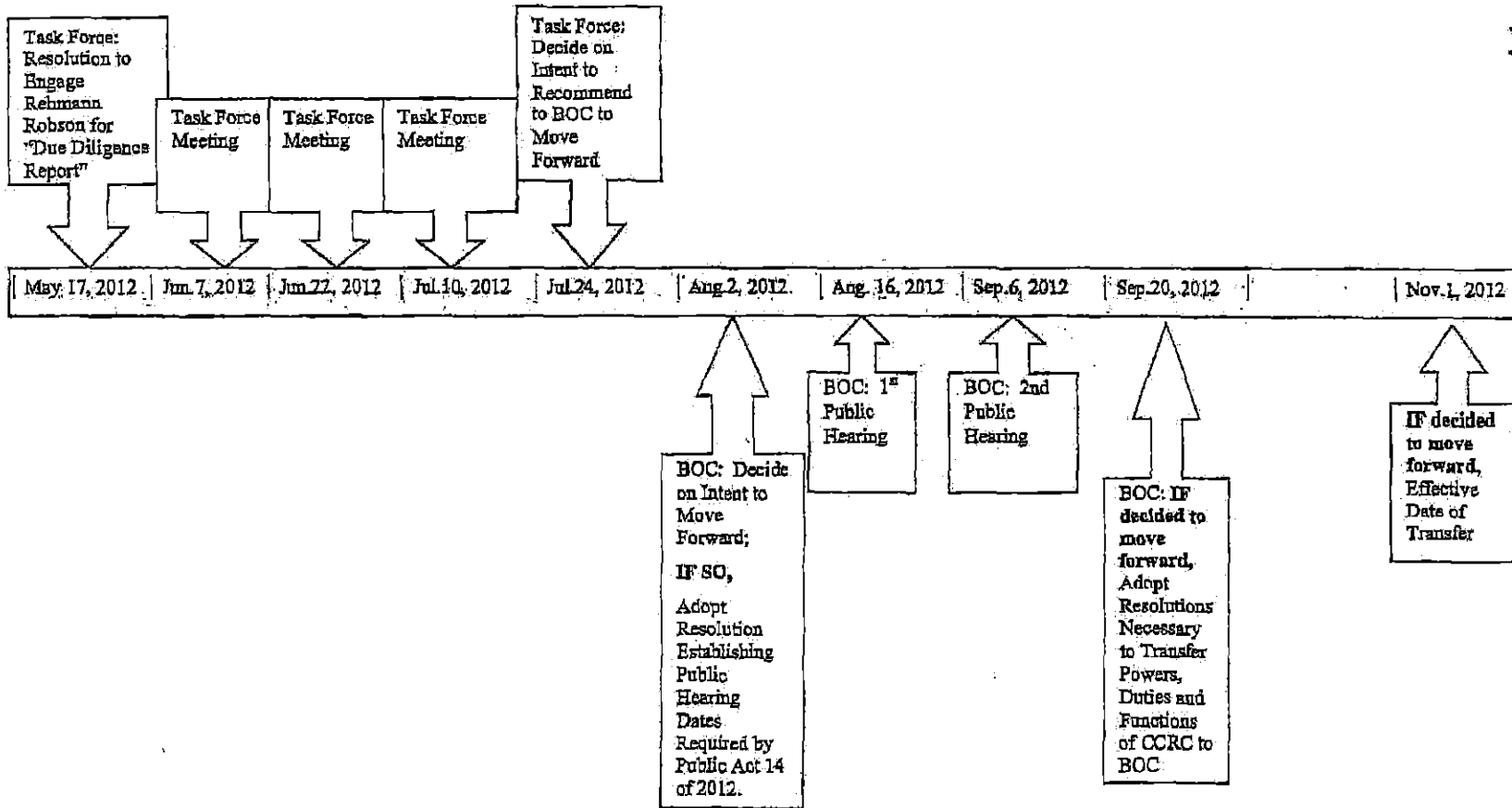


Calhoun County Road Commission Task Force:

Proposed Timeline

Last Revised: July 2, 2012

Appendix B



Appendix C

Requested Information from CCRC

Calhoun County Road Commission Task Force

April 25, 2012

1) Oversight:

- a) Board Policies
- b) Board Rules
- c) Board Meeting Schedule
- d) Board Strategic plan
- e) Organizational Chart
- f) Road Commissioner Position Descriptions and Compensation Structure
- g) Business plan/model for oversight of CCRC
- h) Managing Director Employment Contract
- i) Managing Director Performance Evaluation process and results for past five (5) years

2) Management:

- a) Employment Agreements and/or Offer to Hire Letters for Non-Union Employees
- b) Performance Reviews for Non-Union Employees for past five (5) years
- c) Policies and procedures/employee handbook(s) -- general and for specific tasks
- d) Annual and Long-Term Plans for Maintenance and Construction of Roads and Bridges
- e) Preventative Maintenance / Rehabilitation Analysis 2010, 2011
- f) Total Patching by Township 2010, 2011
- g) Primary Road Sealcoat Plan 2012-2018
- h) Last five (5) years annual adopted Budgets and Presentations
- i) Year to date financial reports/budget
- j) Last five (5) years annual audits
- k) Act 51 Annual Reports past five (5) years
- l) Insurance--health, workers comp., property/ liability insurance
- m) Employee Retirement Plan Documents or Summaries thereof
- n) Lease / Purchase Agreements on equipment or other capital assets
- o) Current Accounts Payable and Receivable Listings with Aging
- p) Existing and Pending Grant Information and Budgets
- q) Current List of Contracts for services (legal, financial, IT maintenance, etc.)
- r) Inventory of Fixed Assets including IT equipment
- s) List of Software Applications and Systems

3) Operations

- a) Position Descriptions for Non-Union Employees
- b) Labor Agreements
- c) Performance Reviews for Union Employees for past two (2) years
- d) Policies and procedures for non-management/hourly employees
- e) Safety procedures; five (5) year history of safety violations
- f) Quality control/complaint procedure
- g) List of complaints/resolutions – last five (5) years
- h) Procedure for assigning work to hourly employees

4) Other:

- a) List of pending litigation and unasserted claims
- b) List of former Road Commissioners and contact information for last fifteen (15) years
- c) Contact information for all employees of CCRC
- d) CRCC Staff representation on external Boards and Committees (i.e. BCATS, etc.)

Calhoun County Road Commission Financial History - Past 5 Years

Data Sources: Act 51 Reports, Audited Financial Statements; compiled by K.Scott 5-31-12

	2007	2008	2009	2010	2011
Cash	\$ 202,309	\$ 8,498	\$ 26,170	\$ 195,796	\$ 66,911
Accounts Receivable, Deferred Expenses	\$ 2,479,343	\$ 2,092,604	\$ 2,025,550	\$ 1,413,620	\$ 1,470,127
Inventories	\$ 871,040	\$ 912,647	\$ 640,380	\$ 620,719	\$ 636,148
Total Assets	\$ 3,552,692	\$ 3,013,749	\$ 2,692,100	\$ 2,230,135	\$ 2,173,186
Accounts Payable, Accrued Liabilities, Advances, Performance Bonds	\$ 2,186,177	\$ 2,303,392	\$ 737,663	\$ 1,304,456	\$ 1,720,896
Total Liabilities	\$ 2,186,177	\$ 2,303,392	\$ 737,663	\$ 1,304,456	\$ 1,720,896
Reserved Governmental Fund Balance (for Inventory)	\$ 871,040	\$ 912,647	\$ 640,380	\$ 620,719	\$ 636,148
Unreserved Governmental Fund Balance	\$ 495,475	\$ (202,290)	\$ 1,314,057	\$ 304,960	\$ (183,858)
Total Governmental Fund Balance	\$ 1,366,515	\$ 710,357	\$ 1,954,437	\$ 925,679	\$ 452,290
Revenue - Federal	\$ 1,616,749	\$ 32,910	\$ 1,784,465	\$ 987,745	\$ 2,336,143
Revenue - State	\$ 9,191,254	\$ 9,438,235	\$ 8,103,346	\$ 7,818,624	\$ 8,001,107
Revenue - Contributions from Local Units	\$ 422,945	\$ 587,326	\$ 95,474	\$ 297,919	\$ 513,457
Revenue - Charges for Service (primarily trunkline)	\$ 2,887,867	\$ 2,176,009	\$ 1,613,312	\$ 1,271,299	\$ 1,940,792
Revenue - Other (permits, refunds, etc.)	\$ 751,637	\$ 424,510	\$ 280,035	\$ 442,517	\$ 3,054,833
Revenue - Other Financing Sources	\$ 10,000	\$ 275,114	\$ 500	\$ 567,397	\$ 705,038
Total Operating Revenues	\$ 14,880,452	\$ 12,934,104	\$ 11,877,132	\$ 11,385,501	\$ 15,951,370
Expenditures - Construction, Structural Improvements	\$ 3,348,142	\$ 2,099,313	\$ 2,369,325	\$ 1,064,000	\$ 4,472,011
Expenditures - Maintenance	\$ 8,395,563	\$ 8,528,230	\$ 6,193,319	\$ 7,327,519	\$ 6,091,284
Expenditures - Trunkline	\$ 2,553,616	\$ 1,906,021	\$ 1,600,455	\$ 1,504,077	\$ 1,277,166
Expenditures - Administrative	\$ 1,068,077	\$ 979,043	\$ 975,350	\$ 1,135,115	\$ 1,106,245
Expenditures - Net Capital Outlay	\$ (202,438)	\$ 63,282	\$ (203,407)	\$ 769,923	\$ 661,502
Expenditures - Net Equipment (Prorated Gain/ Loss on Usage)	\$ (545,393)	\$ (660,951)	\$ (912,362)	\$ (284,307)	\$ 104,557
Expenditures - Debt Service	\$ 520,693	\$ 409,493	\$ 418,601	\$ 523,954	\$ 741,735
Expenditures - Other (Engineering, Parks, BPW, Drain Assessment, Etc)	\$ 1,127,843	\$ 265,918	\$ 191,770	\$ 373,977	\$ 1,030,250
Total Operating Expenditures	\$ 16,261,103	\$ 13,590,349	\$ 10,633,051	\$ 12,414,258	\$ 16,424,750
Excess of Revenues Over (Under) Expenditures	\$ (1,380,651)	\$ (656,245)	\$ 1,244,081	\$ (1,028,757)	\$ (473,380)

Calhoun County Road Commission Financial History - Past 5 Years

Data Sources: Act 51 Reports, Audited Financial Statements; compiled by K. Scott 5-31-12

	2007	2008	2009	2010	2011
Fringe Benefit Factor (% of Payroll)	83.0%	87.9%	87.4%	86.2%	89.0%
Overhead Factor (% of Operations)	5.9%	5.6%	5.4%	5.1%	3.9%
Capital Assets Net of Depreciation (Governmental)	\$ 43,754,181	\$ 44,217,681	\$ 44,664,899	\$ 44,890,187	not yet available
Long Term Debt - Bonds Payable	\$ 1,860,000	\$ 1,545,000	\$ 1,265,000	\$ 975,000	\$ 670,000
Long Term Debt - Installment / Lease Purchase/Contracts Payable	\$ 15,470	\$ 270,116	\$ 201,639	\$ 611,233	\$ 1,046,370
Long Term Debt - Compensated Absences (Accumulated vacation time)	\$ 86,377	\$ 113,119	\$ 117,623	\$ 108,106	not yet available
Annual Pension Cost	\$ 497,365	\$ 517,141	\$ 535,483	\$ 606,067	\$ 588,936
Required Pension Contribution Rate (MERS - DB)	16.4%	16.4%	16.4%	18.3%	18.0%
Unfunded Actuarial Liability - Pension	\$ 4,835,164	\$ 5,028,619	\$ 5,725,209	\$ 5,504,085	\$ 5,945,626
Annual OPEB (Retiree Health Insurance) Contributions	N/A	\$ 226,189	\$ 271,941	\$ 311,597	not yet available
Required OPEB (Retiree Health) Contribution Rate	N/A	12.4%	12.4%	12.8%	not yet available
Unfunded Actuarial Liability - Retiree Health	N/A	\$ 4,079,394	\$ 4,079,394	\$ 4,079,394	not yet available
Original Budget (Rev)	not requested	\$ 10,031,229	\$ 9,158,359	\$ 9,088,359	\$ 9,432,359
Amended Budget (Rev)	not requested	\$ 10,708,109	\$ 9,553,439	\$ 10,640,140	\$ 15,956,459
Original Budget (Exp)	not requested	\$ 10,031,229	\$ 9,131,602	\$ 9,087,469	\$ 9,432,359
Amended Budget (Exp)	not requested	\$ 10,790,174	\$ 9,299,110	\$ 10,649,420	\$ 16,465,614

4/20/10 4:34:25 PM



Rehmann Robson
675 Robinson Rd.
Jackson, MI 49203
Ph: 517.787.6503
Fax: 517.788.8111
www.rehmann.com

June 12, 2012

Board of Commissioners
In Care of Calhoun County Road Commission Task Force
County of Calhoun, Michigan
315 West Green Street
Marshall, Michigan 49068

RE: Road Commission Financial Analysis – Phase 1

Public Acts 14 & 15, enacted earlier this year, allows a county board of commissioners, to assume the powers, duties, and functions of the county road commission to the county board of commissioners. Among the tasks the county board of commissioners must accomplish is to perform a review of the road commission's operations. In accordance with your request, we have prepared a financial analysis of the Calhoun County Road Commission in connection with this project in order to facilitate the review of Road Commission operations.

In this first phase of this project, we have summarized our assessment of the previous 15 years of Calhoun County Road Commission's ("the Road Commission") operating results, looking at financial trends of the Road Commission itself, and then comparing this information to other selected Michigan county road commissions. The paragraphs that follow refer to metric information found on two Exhibits which are attached to this report.

After the historical analysis of the Road Commission as described above, we will conclude with our comments assessing the financial outlook for the future of the Road Commission.

A glossary of financial ratios and other financial terms is presented on the back page of this document to assist the reader in understanding the information presented.

Appendix E



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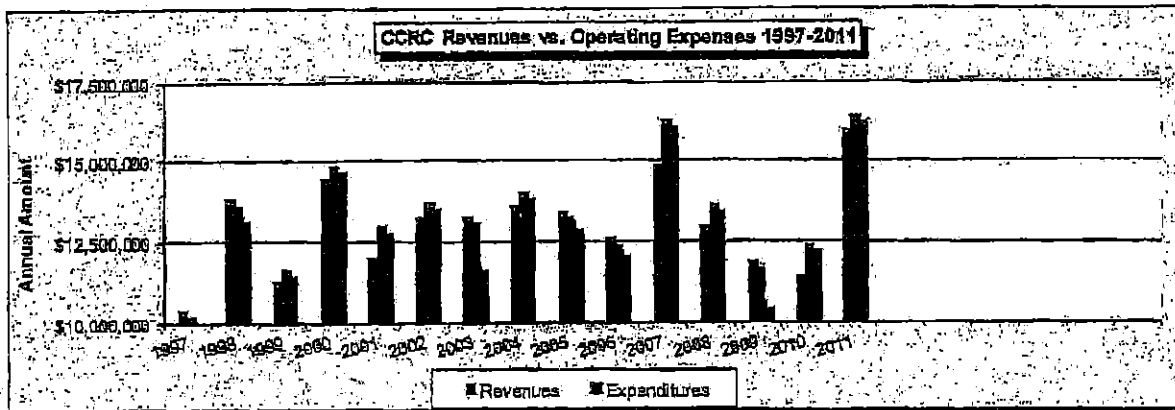
Overview of Financial Assessment

Exhibit #1: This Exhibit provides a Financial Trend Analysis for fiscal years 1997 through 2011, with 2011 being the most recent fiscal year that has been audited. This analysis includes various financial statement and other trends over this period of time in order to see how the Road Commission's operations have changed, and provides key financial indicators over this timeframe.

Exhibit #2: This Exhibit reports the same information for the Road Commission for fiscal 2011, in comparison to the same metric data for seven other randomly selected road commissions. Though this comparison group does not reflect the results of all other road commissions in the state of Michigan, we believe that the seven selected provide a representative sampling for comparison to the Road Commission of Calhoun County.

Exhibit #1 Recap

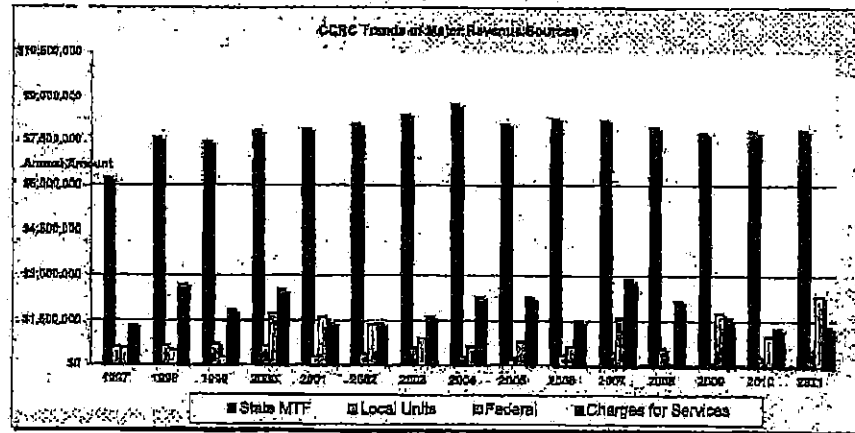
In Exhibit #1, it is evident that the annual Michigan Transportation Fund (MTF) distributions have been reduced relative to overall revenues starting in 2003, which is generally the case with all road commissions over this period of time. The 2011 MTF distribution was approximately the same dollar amount as it was in the year 2000. Over this period of time, costs have increased significantly, including wages, fringe benefits, fuels, and other costs including materials that use petroleum based product. The following chart presents revenue versus operating expenditures over the past 15 years.



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State MTF distributions fluctuate based on weight and gas taxes collected under formula, and are restricted for primary and local road expenditures. Local units revenue varies based on the amount of township projects undertaken under township cost sharing agreements. Federal source revenue includes force account projects as well as State-administered projects, and peaked in year 2009. The 2011 federal revenue includes \$678,000 for an EPA Waste Water Treatment project that was passed through to other municipalities, and is not a typical federal revenue source. Charges for services revenue is generated primarily from the state contract with MDOT for maintaining state highways in Calhoun County and the reimbursable revenue generated equates with incurred costs on an annual basis. Other revenues have stayed relatively steady except for a higher amount in years 2011, which included \$2,393,860 in contributions revenue from Enbridge for work provided by contractors for damage to Calhoun County roadways from oil spill cleanup road use. The related expenditure for \$2,393,860 is included in the 2011 expenditures under Preservation- structural improvements. The EPA federal revenue and Enbridge contribution, and related expenditures recorded are not normal, and inflate revenues and expenditures in 2011 by approximately \$3,072,000.

The following chart presents major revenue sources of the Road Commission from 1997 through 2011.

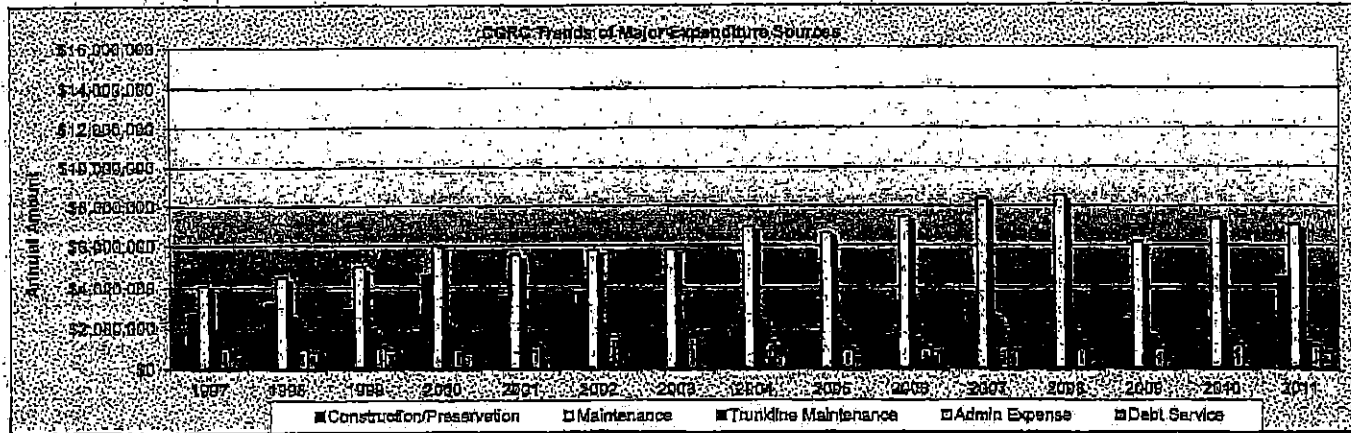


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In reviewing expenditures, construction and preservation – structural improvements, peaked in the years 2000 through 2002. In 2011, this category reported \$4,472,012, which included the Enbridge work noted on the previous page of \$2,393,860. Without this special contribution, this category would have approximated \$2,078,000, which would have put construction and preservation – structural improvements more in line with most years in this 15 year timeframe. Routine maintenance expenditures have remained consistent from 1997 through 2011. Trunk line maintenance costs have varied, and will have generally an equal amount of revenue included under “Charges for Services” each year. Administrative expense as a percent of total expenditures has generally been in the 6% to 9% for most of this 15 year timeframe. Debt service has ranged from 3% to 8% of annual operating expenditures from 1997 through 2011, and at December 31, stands at 4.5%.

The following chart depicts major expenditure sources from 1997 through 2011.



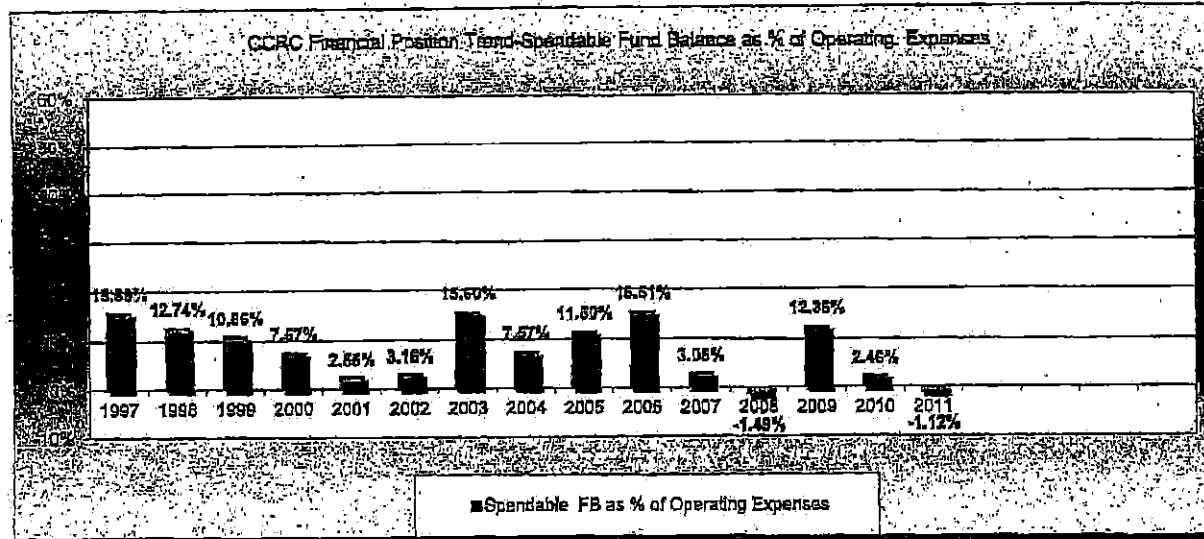
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For long term installment indebtedness, which includes Transportation bonds as well as obligations under capital lease purchase agreements, the Road Commission is responsible for servicing the annual installments out of current operating funds, referred to as "Debt service". At 12/31/11 total installment debt was \$1,696,175, and the annual debt service for 2011 was \$741,735 and represents 4.5% of total expenditures in fiscal 2011. Total installment debt has trended down for the Road Commission over the past 15 years.

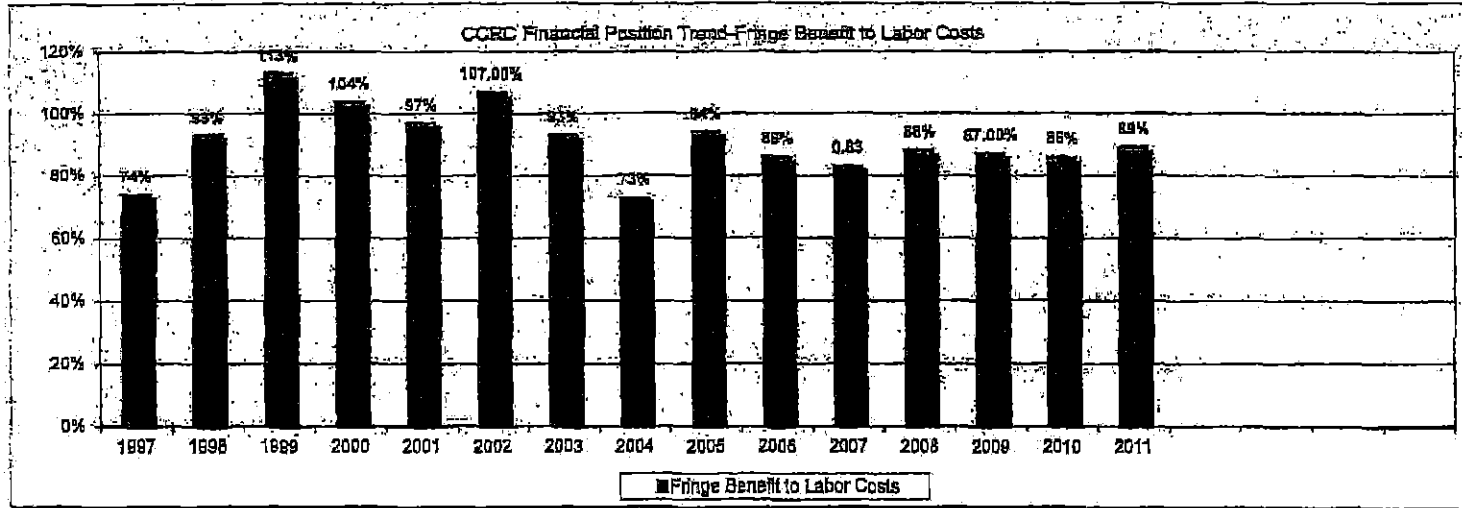
Regarding financial position, a measure of an entity to maintain adequate reserves is determined by the relationship of spendable fund balance to total operating expenditures, and is expressed as a percentage. Spendable fund balance for this purpose is calculated as total fund balance, less the fund balance portion of the amount of inventories and prepaid assets included in the balance sheet. This percentage was 15.7% in 1997, and over this 15 year period of time has slipped to a negative (1.1%) of operating expenditures. This is similar to the trend of other road commissions over this 15 year time period as MTF distributions remained stagnant over this same timeframe. However, the level of fund balance of other road commissions has remained positive.

The following chart presents Spendable Fund Balance as a % of Operating Expenditures from 1997 through 2011.



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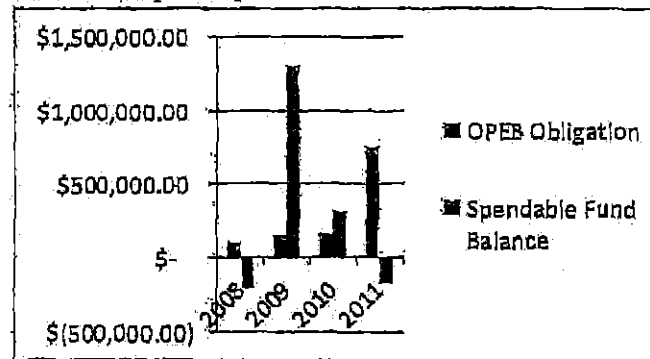
Fringe benefits to labor costs show how fringe benefits of project labor relate to labor applicable wages. This relationship is shown in the chart below. For each \$1 of wages in 2011 an additional \$.89 is expended on fringes. Fringes include holiday, vacation and sick time as well as health insurance, pension and other payroll related costs. These additional costs for fringe rates are expended to fund benefits for both active employees and servicing obligations for the retired employee workforce. A chart showing this relationship over the past 15 years is shown below.



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The postemployment benefit obligation (retiree health and life insurance obligations), commonly referred to as "OPEB" is being financed currently on a "pay as you go" basis through 2011. Accordingly, the Road Commission has an OPEB liability of approximately \$758,870 at 12/31/11. In accordance with GASB Statement #45, this amount is not included as a liability of the road operating fund at 12/31/11, but rather, only as a liability in the government wide financial statements, along with other long term indebtedness, as well as infrastructure and other assets. However, this liability is growing each year since inception of this accounting reporting standard, and like other entities that are accumulating this OPEB liability, will have to be serviced by future operational budgets. The Actuary report for this Plan for 12/31/11 reflects the impact of lowering the eligibility requirements and adding surviving spouses. The ARC (annual required contribution) as reflected in the most recent actuarial valuation increased accordingly. The impact on the ARC was even more pronounced because older participants (closer to retirement) that otherwise wouldn't have been eligible (not enough years at retirement) now would be as they only need 6 years if age 60. This brings in a service cost for these employees in addition to the higher liability created. It should be noted that at 12/31/11 the funded ratio of this Plan is 0%, and the total actuarial accrued liability is \$10,807,728.

This liability was not required to be calculated and recorded by governmental entities until 2007 for larger governmental entities, and in the case of the Road Commission, not until 2008. In 2011, the OPEB obligation exceeded spendable fund balance by approximately \$943,000. A chart showing the OPEB obligation in relation to spendable fund balance is shown following. The OPEB obligation at December 31, 2011 at \$758,870 measures the excess of cumulative annual estimates of providing healthcare benefits (referred to as "annual required contributions") over cumulative payments out (representing retiree healthcare costs paid currently.) Since 2008, these actuarial computed expenses have exceeded the payments by \$758,870, and for governmental entities that have this situation, the OPEB obligation at any point in time has to be looked at in conjunction with its reported spendable fund balance.

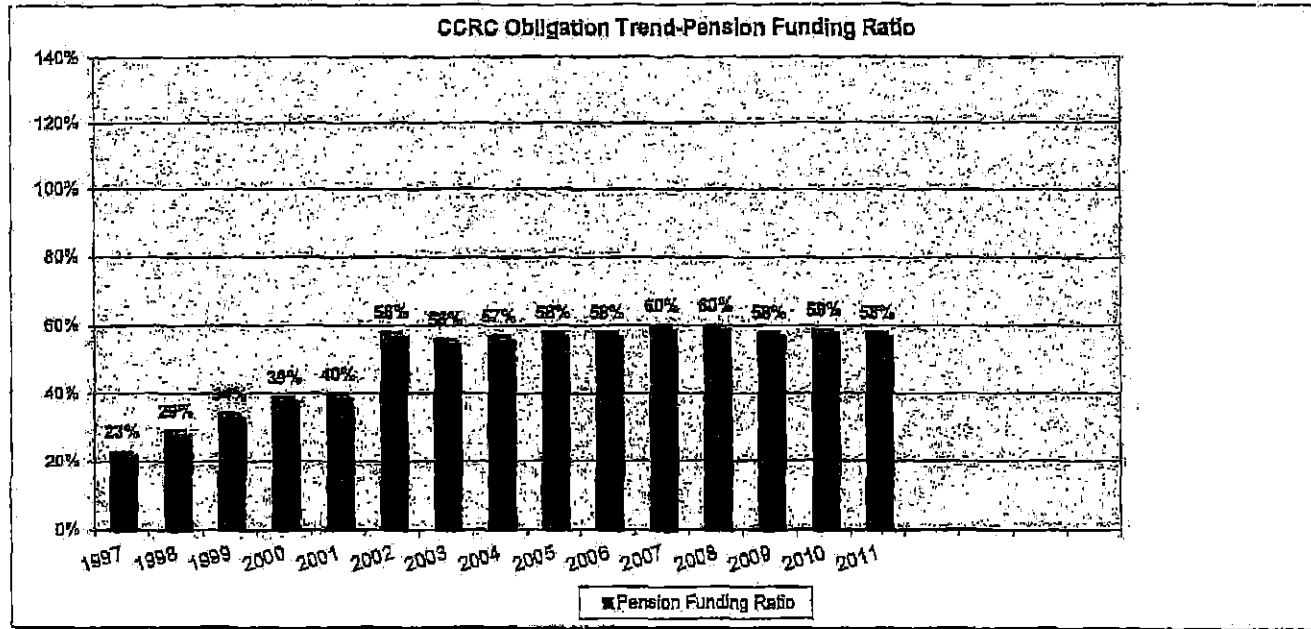


CCRC Financial Position Trend - OPEB

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The Road Commission has been making 100% of the annual pension cost as determined by the actuary for the last several years, and the funded ratio of the Road Commission defined benefit plan is 58%, which is 14 percentage points lower than the 72% funding level of the selected other road commissions. The funded ratio of the Pension Plan – Road Commission component is shown on the following chart.



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Exhibit #2 Recap

Overview

Exhibit #2 presents various financial information for the Road Commission at 12/31/11 in comparison with the same financial information for seven other randomly selected road commissions in Michigan for the most recent audit year. The Road Commission, as is the case with 4 of the 7 other road commissions in this comparative analysis, has contracted with MDOT for state maintenance, so the charges for services revenue and related trunk line maintenance expenditures for these four road commissions will be inherently higher because of this contract.

Construction/Preservation- Structural Improvement Expenses

These costs track how a road commission is spending its resources on long-term improvements, which generally will benefit future years that will require less in costs required to make structural repairs. For Calhoun County Road Commission, this percentage was 24% to 31% for years 1997 through 2002, but in the last 9 years has trended downward. In 2011, adjusting for the non-recurring one-time Enbridge revenue and expense for that road repair project of \$2,393,860 described previously, Calhoun County Road Commission would have an adjusted percentage of Construction/Preservation- Structural Improvement Expenses in relation to total operating expenses of 15%. The average of the other road commissions in this analysis shows 31% in 2011.

Administrative costs

Administrative costs for the Road Commission are at 7% of total expenditures, compared to an average of 5% of the selected other road commissions. The amount for administrative costs are net of credits to the administrative cost pool, which are primarily credits from State Trunkline Maintenance administrative allocations.

Spendable fund balance

Under the Current Financial Position Trend section, spendable fund balance of the Road Commission at a negative (1.1%) compares to 25% for the other road commissions in the this analysis. It should be noted that for all road commissions in Michigan, cash resources are inherently strained because the November and December distributions are not received in cash until January and February of the ensuing year, and are carried as an account receivable at year end. This receivable amount for the Road Commission at 12/31/11 was \$1,231,263. This receivable is noncash, and the amount is included in the spendable fund balance under present fund balance reporting standards. Even with this receivable, the Road Commission has a negative spendable fund balance.

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Cash and investments

Cash and investments as a percentage of operating expenditures of the Road Commission at .4% is significantly lower than the average of the selected other road commissions of 16%. Furthermore, the Road Commission has accounts payable to vendors of approximately \$1,245,000 at 12/31/11. This has posed severe cash flow problems for the Road Commission, which has generally existed over the last 15 years, but which has become significantly worse in recent years.

Debt service

The Road Commission has installment debt of \$1,696,175 at 12/31/11 consisting of amounts due for 4 series of Michigan Transportation Fund Bonds, and two capital leases for road equipment. Future installments for this debt service through the year 2015 will be serviced by the Road Commission general operating fund. The total amount of the debt over the past 15 years has trended down. However, in 2011, the annual debt service in relation to total operating expenditures of 4.3% is higher than the composite average of the other road commissions in this analysis.

Postemployment benefit obligation

The OPEB liability of the Road Commission as a percent of operating expenditures is 5% at 12/31/11, which is significantly higher than the average of 2% of the selected other road commissions. This liability is growing faster because of the change in Plan provisions (lowering eligibility requirements and adding surviving spouses), combined with not in a financial position of being able to prefund this sizeable obligation.

Pension plan

The funded ratio of the Road Commission component of the defined benefit plan is 58%, which compares to the average of 72% of the selected other road commissions. Future actuarial reports will inevitably require higher employer contributions to the pension plan in order to keep the funded ratio of the Plan in line.

Other Comments Regarding Financial Position

Included in assets of the Road Commission is inventory of approximately \$636,000 at 12/31/11, which includes road materials (gravel, stone, salt, culvert as well as equipment parts and supplies). This amount represents 3.9% of operating expenditures. By comparison, looking at two other counties, Washtenaw and Jackson County Road Commissions have 3.4% and 11.9%, respectively, of inventories in relation to total operating expenditures. The amount of inventory as an asset has an equal amount reserved, or considered nonspendable of the Road Commission's fund balance. The balance of inventories of the Road Commission is not excessive, and has remained steady over the past decade.

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Summary of Road Commission's Financial Position and Outlook for the Future

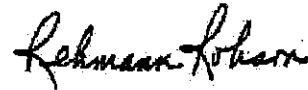
1. Administrative costs as a percentage of expenditures have decreased over the past decade. However, at 12/31/11 at 7% the Road Commission is at a level which is 2 percentage points higher than average of the other road commission's in this comparison analysis. Reasons for the higher relative costs of the Road Commission should be determined.
2. Cash flow has been deteriorating over the past 15 year period, but in the last 5 years the cash positing of the Road Commission has deteriorated significantly. Total cash at 12/31/11 is only \$66,911, and is .4% of operating expenditures and only 3% of total assets. This has caused a severe cash flow problem for the Road Commission, as accounts payable to vendors was approximately \$1,245,000 at 12/31/11. The Road Commission is unable to pay most of its bills on a timely basis.
3. Spendable fund balance of the Road Commission has been decreasing over the past decade, which is similar to the trend of other road commissions in Michigan. However, at December 31, 2011, the Road Commission's spendable fund balance percentage is a negative (1.1%), while the average of the other road commissions in this comparison is a positive 25%. Thus, the Road Commission has not been able to establish any positive fund balance. Financial analysts maintain that a governmental entity should strive maintain a minimum spendable fund balance of 10% to 15% of its annual operating expenditures.
4. Over the past decade, the Road Commission has made an admirable effort in reducing its long-term installment debt load level. However, at 12/31/11, the Road Commission's annual debt service as a percent of expenditures is 50% higher than the average for the other road commissions in this comparison. Debt service expenditures, of course, reduce the amount of resources that can be used for primary and local road projects.
5. The OPEB liability for retiree health and life insurance is considerably higher than the average of the other road commissions in this comparison. The OPEB obligation as a percentage of operating expenditures is 5%, which compares to a 2% average for the other road commissions in this comparison. The Road Commission must find ways to either advance fund this OPEB liability by contributions to the OPEB Trust fund, or by changing the requirements for this benefit which will reduce costs in the future. Increasing contributions to the OPEB Trust fund obviously will reduce the funds available to perform preservation and maintenance on primary and local road projects. If the Road Commission continues its "pay as you go" funding plan, this situation along with the recent eligibility changes (which added a significant "annual required contribution" calculated amount,) will cause this liability to rise at an even higher rate in future years.

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In summary, the financial condition of the Road Commission has deteriorated over the past 15 years. Certain key ratios, including spendable fund balance to annual operating expenditures, debt service expenditures to total expenditures, percentage of construction/structural improvement costs to total expenditures, and the increasing OPEB obligation to spendable fund balance have all reflected adverse trends over this period of time. The cash position of the Road Commission at December 31, 2011 is poor, and the funded percentage of the defined benefit pension plan has remained around 58% for the last decade. Facing the increased legacy requirements (primarily as a result of the OPEB obligation costs), and increased wages, fringes, fuels, and materials, coupled with stagnant MTF distributions, the ability of the Road Commission to preserve and maintain its primary and local road system will be challenged more than ever in future years. Additional State funding would mitigate this situation, but the possibility of increased MTF funding is unknown at this time.

Respectfully Submitted,



David M. Fisher, CPA
Principal

Attachments: Exhibits 1 and 2, and Glossary

DMF:tkb

Exhibit 1

Calhoun County Road Commission
Financial Trend Analysis
1997 through 2011

	1997	1998	1999	2000	2001	2002
Operating trend						
Revenue Sources						
Licenses and permits	\$ 34,771	\$ -	\$ 110,347	\$ 156,635	\$ 140,488	\$ 132,614
Federal sources	583,984	489,182	234,488	1,740,825	1,638,829	1,391,032
State sources	-	681,274	748,580	596,823	489,585	219,296
State MTR distributions	6,533,963	7,596,966	7,451,954	7,128,227	7,409,621	8,048,888
Contributions from local units	600,584	645,033	722,014	850,478	289,394	384,388
Charges for services	1,351,317	2,707,786	1,840,978	2,583,428	1,428,578	1,417,250
Interest and rents	50,329	52,029	82,816	57,287	31,935	9,850
Other	94,584	57,770	105,458	35,601	60,577	61,788
Other financing sources	761,948	1,596,680	-	885,134	-	1,541,872
Total revenues	10,408,128	11,739,850	11,275,483	14,407,148	11,987,987	13,211,230
Expenditures						
Construction/Capacity	-	-	-	-	-	3,750,554
Preservation - Structural Improvements	2,888,113	3,224,272	2,902,329	4,606,772	3,398,411	5,778,435
Maintenance	4,865,578	4,481,178	4,099,857	3,981,284	5,577,208	1,424,647
Trendline maintenance and non-maintenance	1,459,378	2,500,411	1,931,028	2,100,915	1,045,126	1,558,805
Administrative expense	1,081,973	966,395	1,021,170	989,704	1,148,449	884,188
Equipment expense	51,183	415,741	(237,584)	(524,183)	484,188	(127,298)
Capital outlay - net	(125,340)	452,154	(663,577)	670,685	(125,589)	508,547
Debt service	484,419	618,225	331,462	610,110	659,385	357,110
Other	423,872	389,384	370,319	204,595	72,887	12,944,056
Total operating expenses	10,118,730	13,260,661	11,610,915	14,835,889	12,544,056	13,670,011
Excess revenues over (under) expenditures	289,398	479,189	(335,432)	(428,741)	(556,069)	(458,781)
Total spendable fund balance	1,607,992	1,688,887	1,341,885	1,127,523	830,170	832,088
Total cash and investments	676,537	1,163,218	395,135	406,771	252,127	1,471,737
Excess of expenditures over (under) total amended budget	1,727,346	585,047	(266,375)	2,880,556	2,774,892	2,656,867
Fringe benefit to labor costs	0.74	0.59	1.11	1.04	0.87	1.07

Exhibit 1

	1997	1998	1999	2000	2001	2002
Current Financial Position trend						
Spentable fund balance as % of operating expenditures	15.7%	11.7%	10.9%	7.6%	2.5%	3.2%
Cash and investments as % of operating expenditures	8.7%	8.8%	4.6%	2.7%	1.9%	1.3%
Administration costs as % of operating expenditures	10.7%	7.8%	9.3%	6.7%	8.9%	11.4%
Construction and Heavy Maintenance as % of operating expenditures	25.3%	24.0%	23.0%	31.1%	27.3%	22.4%
Debt and other obligations trend						
Total Installments debt	2,849,783	3,579,071	2,517,676	2,755,552	2,216,223	3,384,357
Total RC Installment debt as % of spentable fund balance	166.5%	711.5%	198.5%	245.5%	671.4%	783.2%
Primary debt service	484,419	818,225	531,462	810,110	659,885	808,547
Annual debt service as % of operating expenditures	4.9%	6.2%	6.0%	3.5%	5.1%	3.7%
DPER obligation at end of year	N/A	N/A	N/A	N/A	N/A	N/A
DPER obligation as % of spentable fund balance	N/A	N/A	N/A	N/A	N/A	N/A
Funded ratio of defined benefit plan	23%	29%	34%	39%	40%	57%

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**Calhoun County Road Commission
Financial Trend Analysis (Concluded)
1997 through 2011**

	2003	2004	2005	2006	2007	2008	2009	2010	2011
Operating trend									
Revenue Sources									
Dances and permits	\$ 124,850	\$ 131,821	\$ 120,527	\$ 80,490	\$ 81,351	\$ 81,540	\$ 95,721	\$ 119,828	\$ 244,993
Federal sources	522,512	623,651	818,831	637,185	1,616,749	32,509	1,784,465	987,745	2,336,143
State Sources	390,802	717,016	434,553	958,665	1,005,144	1,482,323	342,878	-	127,842
State MTF distributions	5,408,911	5,769,175	8,059,698	8,242,227	8,156,110	7,845,912	7,700,469	7,818,624	7,873,285
Contributions from local units	610,066	315,200	246,231	348,434	422,945	587,328	85,474	257,819	513,457
Charges for services	1,653,055	2,305,705	2,277,239	1,526,892	1,887,867	2,176,010	1,613,315	1,271,259	1,340,792
Interest and rents	5,874	3,182	11,405	33,057	31,472	2,530	1,400	-	-
Other	239,800	674,657	704,244	793,758	547,414	360,427	183,415	322,668	2,809,838
Other financing sources	850,000	-	650,000	-	-	275,114	-	567,397	705,038
Total revenues	13,208,870	13,541,397	13,362,728	12,620,708	14,880,452	12,934,191	11,877,381	11,385,501	15,951,970
Expenditures									
Construction/Capacity	-	167,205	60,373	-	2,978	630,086	10,667	-	-
Preservation - Structural Improvements	1,566,811	1,829,077	1,731,010	1,549,716	3,345,168	1,469,227	2,358,658	1,054,000	4,472,012
Maintenance	3,783,630	6,826,336	8,594,915	7,424,025	8,395,563	8,528,230	6,189,317	7,317,519	7,051,284
Trunkline maintenance and nonmaintenance	1,874,637	2,308,854	2,236,357	1,474,694	1,353,616	1,906,023	1,600,455	1,504,077	1,277,165
Administrative expense	1,574,509	1,299,838	949,338	1,005,116	1,068,076	875,043	975,250	1,155,852	1,106,235
Equipment expense	478,934	367,393	88,316	(140,655)	(545,391)	(660,951)	(912,362)	(244,306)	104,558
Capital outlay - net	(398,155)	20,294	(104,512)	(245,877)	(202,438)	63,282	(203,407)	769,924	661,502
Debt service	655,181	734,367	721,515	765,334	855,020	809,492	418,601	523,954	741,735
Other	773,330	320,258	812,846	348,473	788,394	265,918	191,771	393,169	1,030,244
Total operating expenses	11,808,867	13,968,639	13,060,158	12,200,728	16,261,483	13,530,350	10,633,050	12,414,259	16,424,759
Excess revenues over (under) expenditures	1,394,983	(427,239)	322,570	419,982	(1,381,031)	(656,159)	1,244,081	(1,028,758)	(473,388)
Total spendable fund balance	1,842,199	1,057,364	1,601,984	1,892,277	495,675	(202,251)	1,314,057	904,960	(189,856)
Total cash and investments	508,782	529,670	736,055	726,026	202,308	8,498	26,170	195,796	66,911
Excess of expenditures over (under) final amended budget	551,580	5,779,384	(358,847)	(2,185,493)	4,566,253	815,547	1,310,337	1,764,839	336,823
Fringe benefit to labor costs	0.93	0.73	0.94	0.86	0.83	0.83	0.57	0.86	0.89

Exhibit 1

	2016	2016	2016	2017	2018	2018	2019	2019	2020	2020	2021
Current Financial Position trend											
Spendable fund balance as % of operating expenditures	15.6%	7.6%	11.5%	15.5%	11.5%	3.0%	4.5%	17.4%	2.3%	-1.1%	
Cash and investments as % of operating expenditures	4.3%	3.7%	5.6%	6.0%	1.2%	1.6%	0.4%	1.6%	1.6%	0.4%	
Administration costs as % of operating expenditures	13.3%	9.3%	7.3%	8.2%	6.8%	7.2%	9.2%	9.2%	9.2%	6.7%	
Construction and Heavy Maint as % of operating expenditures	13.3%	34.3%	13.6%	12.7%	20.6%	13.4%	22.3%	22.3%	8.6%	27.2%	
Debt and other obligation trend											
Total Installments Debt	3,745,351	3,177,016	3,243,289	2,594,703	1,875,470	1,825,116	1,466,619	1,386,233	1,696,173		
Total AC Installment debt as % of spendable fund balance	209.3%	300.5%	215.9%	137.1%	576.5%	-897.3%	111.6%	520.1%	-922.5%		
Primary debt service	855,591	794,367	721,515	785,334	865,010	408,452	418,601	533,954	746,733		
Annual debt service as % of operating expenditures	5.3%	5.3%	5.5%	6.4%	5.3%	3.0%	3.5%	4.2%	4.3%		
OPFB obligation at end of year	N/A	N/A	N/A	N/A	N/A	94,072	150,132	787,534	788,870		
OPFB obligation as % of spendable fund balance	N/A	N/A	N/A	N/A	N/A	-47%	11%	55%	-13%		
Funded ratio of defined benefit plan	56%	57%	55%	56%	60%	60%	58%	59%	58%		

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Exhibit 2

**Calhoun County Road Commission
Financial Metric Comparisons *
2011**

	Calhoun County Road Commission	Selected Other RC Average	Ingham (2010)	Etowah 9/30/11	Jackson (2010)	Hillsdale	Cass 9/30/11	Branch	Kent 9/30/11
Operating trend									
Revenue Sources									
Licenses and permits	\$ 244,995	\$ 69,963	\$ 131,999	\$ 62,100	\$ 65,152	\$ 36,545	\$ 20,709	\$ 19,505	\$ 156,088
Federal sources	2,336,143	2,208,369	4,185,660	1,800,508	1,572,978	843,889	1,053,681	484,142	3,537,726
State Sources	127,842	521,115	1,650,348	77,382	1,060,744	132,499	260,879	485,957	-
State MTF distributions	7,879,265	10,103,739	12,189,437	7,475,998	10,045,706	4,223,195	4,339,724	3,993,898	28,460,215
Contributions from local units	513,457	1,119,981	1,393,742	420,981	251,054	742,462	2,099,959	585,232	2,340,438
Charges for services	1,340,792	1,816,130	-	-	2,458,093	757,620	2,134	780,893	8,714,168
Interest and rents	-	57,338	5,844	334	44,662	7,936	14,428	3,151	925,029
Other	2,809,838	110,714	60,779	107,067	177,123	87,142	298,790	80,428	(36,320)
Other financing sources	705,038	136,806	-	-	-	-	-	957,642	-
Total revenues	\$ 15,951,570	\$ 16,144,155	\$ 19,623,444	\$ 9,944,370	\$ 15,679,502	\$ 6,809,288	\$ 8,090,304	\$ 7,390,833	\$ 45,477,344
Expenditures									
Construction/Capacity	-	347,143	-	1,189,844	-	-	242	-	1,289,317
Preservation - Structural Improvements	4,472,012	4,515,231	9,727,720	422,662	4,096,476	1,005,657	3,271,674	766,803	12,314,587
Maintenance	7,031,284	7,877,249	7,285,339	4,943,853	8,419,148	4,768,109	3,508,782	4,942,857	21,162,134
Trunkline maintenance and nonmaintenance	1,277,165	1,710,439	-	-	2,310,005	814,894	-	784,054	8,064,021
Administrative expense	1,108,255	730,095	1,226,332	819,148	727,189	493,463	564,759	293,070	886,739
Equipment expense	104,558	25,781	508,631	64,180	(364,374)	(4,324)	(97,782)	44,534	29,582
Capital outlay - net	661,502	(306,414)	(370,185)	(211,081)	(517,946)	(344,258)	(434,630)	222,443	(489,259)
Debt service	741,795	237,344	-	644,900	92,849	108,833	689,549	114,478	-
Other	1,030,248	478,068	656,466	597,317	-	64,371	743,315	3,156	1,936,649
Total operating expenses	15,424,759	15,614,936	19,034,823	8,491,038	14,779,321	6,908,625	8,355,909	7,176,415	44,564,364
Excess revenues over (under) expenditures	(473,389)	529,219	588,621	1,453,332	900,181	(99,337)	(265,605)	214,418	912,980
Total spendable fund balance	(183,858)	4,564,550	3,092,083	3,962,833	2,779,954	995,818	1,739,298	1,108,295	18,279,829

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**Calhoun County Road Commission
Financial Metric Comparisons ***
2011:

Exhibit 2

	Calhoun County Road Commission	Selected Other RC Average ¹	Ingham	Eaton 9/30/11	Jackson	Hillsdale	Cass 9/30/11	Branch	Kent
Total cash and investments	\$ 66,911	\$ 3,192,347	\$ 1,509,500	\$ 2,029,002	\$ 1,574,449	\$ 486,556	\$ 1,389,597	\$ 623,755	\$ 14,333,690
Excess of expenditures over (under) final amended budget	336,823	(580,149)	(374,613)	166,354	(684,235)	(787,315)	(14,711)	231,591	(2,598,411)
Fringe benefits to labor costs	0.89	1.02	Unk	1.32	1.00	0.81	0.79	1.41	0.68
Administrative exp as % of total expenditures	7%	5%	6%	11%	5%	7%	7%	4%	4%
Current Financial Position trend									
Spentable Fund balance as % of operating expenditures	-1.1%	25%	16.2%	46.7%	18.6%	14.4%	20.8%	15.4%	41.0%
Cash and investments as % of operating expenditures	0.4%	16%	7.9%	23.9%	13.4%	7.0%	15.6%	8.7%	32.2%
Debt and other obligation trend									
Primary installment debt	1,696,175	1,847,471	-	3,320,000	410,507	107,172	6,642,388	852,233	-
Primary installment debt as % of operating expenditures	10.3%	20%	0.0%	41.5%	2.8%	1.6%	79.5%	11.8%	0.0%
Annual primary debt service	741,735	237,344	-	644,900	92,848	109,633	693,549	114,478	-
Annual debt service as % of operating expenditures	4.5%	3%	0.0%	7.6%	0.6%	1.5%	8.4%	1.6%	0.0%
OPEB obligation at end of year (asset)	758,870	414,561	1,485,843	(652,725)	1,677,657	-	301,085	78,535	11,531
OPEB obligation as % of operating expenditures	5%	2%	8%	-8%	11%	0%	4%	1%	0%
Funded ratio of defined benefit plan	58%	72%	73%	N/A	97%	72%	N/A	N/A	46%

N/A Not applicable

* For calendar 2011, or 9/30/11 for those on fiscal year as indicated, or calendar 2010 as indicated in cases 2011 reports not issued as final

1 Amount is net of State Trunkline overhead (where applicable) and other credits

**Calhoun County Road Commission
Financial Analysis – Phase 1
Glossary of Position and Ratio Terminology**

- Total cash and investments – though not all of the Road Commission's assets, it is the most important, and the level is an indicator of an entity's ability to pay its bills.
- Total spendable fund balance – at a point in time, this measure includes cash and investments, and other near term assets such as receivables like MTF fund distributions received in January and February (for the months of November and December), less any accounts and accrued expenses payable which are normally paid within 60 days after year end. The spendable portion of this fund balance does not include inventories, which are considered nonspendable fund balance.
- Fringe benefit to labor cost – this is a measure of the how fringe benefits of line staff relate to the applicable wages. The higher this ratio, then the higher are an entity's fringe benefit costs, and the more costs that are spread to a project.
- Spendable fund balance as % of expenditures – the higher the percentage, then the greater the ability of the entity to absorb downturns in future revenues, unexpected expenditures, or both. Financial analysts generally recommend a minimum spendable fund balance of 10-15% of annual operating expenditures.
- Cash and investments as % of expenditures – the higher the percentage, then the greater the ability of the entity to have available cash to absorb downturns in future revenues, unexpected expenditures, or both.
- Administrative costs as % of expenditures – the higher the percentage, then the higher the entity's cost of administrative costs to its total costs, and the less resources the entity has to provide direct project costs.
- Construction and Heavy Maintenance as % of operating expenditures - a measure to track the amount of annual expenditures devoted to new roadway and roadway reconstruction, which are project costs spent for the future, as opposed to routine maintenance and other costs which serve to maintain the existing roadways.

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- Total installment debt – amount of obligations that must be paid for out of future road commission revenues.
- Road Commission installment debt as % of operating expenditures – the higher this percentage, the higher is its installment debt to its overall activity.
- Annual debt service as % of operating expenditures – the higher this percentage, the more of its annual revenues have to go to pay debt service.
- OPEB obligation at year end - This is a new Governmental Accounting Standards Board requirement starting in 2007, and measures the shortfall of an entity not paying currently for its annual health benefit to retirees (annual required contribution as computed by actuaries). The higher the balance, the more the entity will have to come up with from future revenue sources to pay this liability. This is not recorded as a liability at the fund level in the current financial statement model.
- OPEB obligation as % of fund balance - the higher this percentage, the higher is its shortfall for this retiree benefit to its existing ability to fund the liability.
- Funded ratio of defined benefit pension plan – the higher the percentage, the more the entity has been able to pay for this actuarial computed benefit and earn investment gains for pensions over time.



Rehmann Robson
 675 Robinson Rd.
 Jackson, MI 49203
 Ph: 517.787.6503
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 www.rehmann.com

June 28, 2012

Board of Commissioners
 In Care of Calhoun County Road Commission Task Force
 County of Calhoun, Michigan
 315 West Green Street
 Marshall, Michigan 49068

RE: Road Commission Financial Analysis – Phase 2

Public Acts 14 & 15, enacted earlier this year, allows a county board of commissioners, to assume the powers, duties, and functions of the county road commission to the county board of commissioners. Among the tasks the county board of commissioners must accomplish is to perform a review of the road commission's operations. We have prepared a financial analysis of the Calhoun County Road Commission in connection with this project in order to facilitate the review of Road Commission operations as Phase 1 Analysis completed June 12, 2012.

This next analysis as Phase 2 provides a pro forma cost savings analysis, as well as developing pros and cons if the County were to take over the operations of the Road Commission. In this analysis, we have looked at various opportunities for savings as a consolidated unit, where some of these savings are quantified, and where others are characterized as potential savings.

Estimated cost savings from consolidation

In reviewing the Road Commission and County operations, there would be some synergies and cost savings, by certain departmental areas and cost centers as follows:

1. Maintenance/grounds - There is presently an hourly employee of the Road Commission that provides approximately 8 hours per week for roughly 26 weeks for mowing and grounds maintenance. County maintenance personnel could take on this function and in a consolidation would free up approximately 208 hours of this employee's time for other Road Commission duties.
2. Human resources/payroll - presently, the Deputy Managing Director devotes approximately 60% of her time to human resources issues and matters. Another individual does the payroll, which for road commissions in Michigan is quite complex, as daily time cards are involved, which contain for each hour the project/township worked on, hours for equipment worked on which must be charged to the jobs at prescribed rates, and each of these entries must be posted into the Precision labor and equipment cost

system. In a consolidation, the County could possibly continue to use one of these positions to continue this unique payroll process and handle the additional personnel matter load. The current salary of the payroll clerk is \$43,145, and benefits are an estimated \$17,250.

Additionally, the Road Commission presently uses an outside organization to process benefits claims, which amounts to approximately \$16,000 per year. In a consolidation, there is potential for absorbing this claim processing function by other County Human Resources personnel.

3. Legal services - Within the legal services costs are expenses of outside attorneys that deal with Teamster and S.E.I.U labor issues and contracts. The total incurred for these costs was approximately \$25,000 in 2011. These issues could possibly be taken on by the County Attorney (Corporation Counsel).
4. Administrative support - Any cost savings would be minimal, as the function is essentially non-existent at the Road Commission, since the receptionist position was not filled after a retirement in February 2012. By Road Commission accounts, there are approximately 6000 service requests per year that have to be handled by one of the present Road Commission staff that rotate these duties amongst themselves. However, there may be synergies in a consolidation by having County support staff fill this void, which would free up the salaried Road Commission staff to perform other Road Commission matters. However, the logistics of this may prevent this from working, since the Road Commission staff would presumably be still working from its main facility at 13300 Fifteen Mile Road.
5. Accounting - The accounting and reporting requirements for road commissions in Michigan is very unique and specialized. There is a 319 page "Uniform Accounting and Procedures Manual" issued by the Michigan Department of Treasury, dealing with accounting for the various revenues and expenditures by project coding, equipment record cost, depreciation details and methods, federal and state aid project accounting, and infrastructure accounting and reporting with detail records of primary and local roadways and bridges by type in the County. Accordingly, it is believed that this function and position would be retained in a consolidation of operations.
6. Purchasing - There may be some synergies in using the County purchasing system and co-op buying in order to secure the best competitive prices, and this would free up some Road Commission staff to do other Road Commission functions, as the quotation and bid attainment could be done centrally. It is unknown what the cost savings would be under a consolidation.
7. Board member salaries - There would be a cost savings for the 5 Road Commissioner salaries in a consolidation. This equates to approximately \$37,200 on an annual basis, which includes F.I.C.A.

Page 3

8. Information Technology - There is a position at the Road Commission for a Technical Assistant that provides support for servers, computer hardware and other devices. Also, for a two week period on an annual basis this employee does "road rating" tests. The County could explore whether these functions could be absorbed by the County IT staff in a consolidation. This position presently has a salary of \$45,656, and benefits estimated at \$18,200.
9. Insurance - The Road Commission presently is covered by the Michigan County Self-Insurance Pool (MCRC SIP). In the event of a consolidation, it is believed that comparable insurance coverage could be secured through the County risk carrier Michigan Municipal Risk Management Authority (MMRMA) without an increase in cost.

It should be noted that historical refunds of the Road Commission from MCRC SIP have been generous, with annual refunds averaging approximately \$200,000. For example, the 2010 refund received totaled \$196,084, which represented the closeout of 1998 of \$114,039, and partial refunds of \$82,045. According to the Road Commission Manager, if the Road Commission were to become a fund of the County and lose its separate identity, then future refunds on "open" years would not be earned by the Calhoun County Road Commission, and its refund would be spread to other members in the pool. It is the Road Commission Manager's contention that the Road Commission would not enjoy the benefits of the open years 1999 through 2011 where there could be significant refunds resulting based on historical results.

At this time, this issue still has to be resolved, since there are pending bylaw changes that may allow counties to keep their "road departments" with the insurance pool to enable the continuance of the rebates in the event of a consolidation.

10. Engineering - The Road Commission has a full time engineer. In a consolidation, depending on the utilization of this Engineer at the Road Commission, there can be consideration for providing engineering services to the Water Resources Department. Over the past twelve months, there has been over \$400,000 paid by the Water Resources Department to 4 engineering firms, which included work on various drainage projects including surveying, environmental assessments, scientist activities, as well as engineering services. This engineering position could possibly take on a portion of these services that are presently contracted to the outside firms by the Water Resources Department.

Other considerations in a consolidation

Besides some administrative savings that would be generated as discussed in the foregoing section, there are other non-financial considerations as well, and are summarized as follows.

If there was a consolidation, the Road Commission would cease to exist as a legal entity, and the operations of this fund would be accounted for as a special revenue fund of the County. As a special revenue fund, this fund would have to adhere to the Uniform Accounting and Budgeting Act and a budget would be approved by the County Board, and amended during the budgetary year. The assets (including buildings, road equipment, other equipment, and infrastructure) would become County assets, and long-term installment debt and the OPEB obligation, which were \$1,696,175 and \$758,750 at 12/31/11, respectively, would become County debt. It should be noted that for the OPEB obligation, the total actuarial accrued liability of this obligation is \$10,807,728, all of which is unfunded at 12/31/11. Of course, the new Road Transportation Special Revenue Fund would continue to account for the capital assets, and service the debt out of that fund's annual budgets. Like any other special revenue fund, it would be contemplated that the fund would operate on its own funds, and not rely on a County appropriation.

Cons to consolidation

1. There could potentially be a shift in County Board focus from normal county affairs to this new public road administration function, and the Board could be spread too thin administering this new undertaking.
2. As an operation that has an inherent funding problem (since the level of MTF distributions for all Michigan county road commissions is essentially flat over the past 12 years), it is probable that the public outcry over road and bridge conditions will be borne by the County Board.
3. There is a risk to the County general fund that the new Road Transportation Special Revenue Fund would not be able to fund necessary primary and local road and bridge preservation and routine maintenance expenditures, and that to avoid a deficit, an appropriation from the general fund would have to be made. As an alternative to a general fund appropriation, in order to generate sufficient funds for a shortfall, the County could go to the voters for passage of a millage to support local roads in Calhoun County.
4. If revenues are not sufficient to cover necessary primary and local road and bridge preservation and routine maintenance expenditures and an appropriation from the general fund or other local County sources is not made, and the fund ends up in a deficit, a deficit elimination plan would have to be filed with the Michigan Department of Treasury. Continued deficits could bring down the County bond rating, and depending on the magnitude of the deficit, the Michigan Department of Treasury could review the operations of that fund in conjunction with other County funds and appoint a task force to determine if an Emergency Financial Manager should be put in place.

Pros to consolidation

1. Though not significant, there would be some administrative savings as discussed in the first part of this memo. In the areas of Human Resources/payroll, Legal costs, Board pay and other, there could be \$100,000 to \$200,000 in annual savings involving a consolidated entity. However, this savings is only .6 to 1.2 percent of the Road Commission's annual budget. However, as pointed out above in the Insurance section, these savings could be negated if the Road Commission were to become a fund of the County, and would relinquish its claim on any potential refunds from MCRCSIP membership.
2. Greater accountability through more oversight, which could lead to additional cost savings in the future.
3. May enhance opportunities for greater synergies with other County departments.

As you can see, there are many factors that go into this decision. All factors must be weighed in order to determine the best model for ensuring that the residents of Calhoun County are provided with suitably maintained roadways and bridges. Please call if you have questions or need any additional information.

Respectfully submitted,



David M. Fisher, CPA
Principal

Appendix F



CALHOUN COUNTY

Board of Commissioners

315 W. Green St.
Marshall, MI
49068
(269)781-0966

**KATHY-SUE
DUNN**
District 1

TERRIS E. TODD
District 2

JIM HAADSMA
District 3

STEVE FRISBIE
District 4

**JULIE CAMP
SEIFKE**
Vice Chair,
District 5

**BLAINE
VANSICKLE**
District 6

ART KALE
Chairman,
District 7

May 4, 2012

Mr. Christopher Vreeland, Chair
Calhoun County Board of Road Commissioners
13300 - 15 Mile Road
Marshall, MI 49068

Dear Mr. Vreeland:

I am following up with this letter to reiterate my verbal request made at last night's Board of Commissioners meeting during my update report on the Calhoun County Road Commission Task Force. I respectfully ask that the Board of the Road Commission not renew or extend any long-term contracts - employment or otherwise, not revise or create policies that have long-term financial impact, and not enter into new long-term obligations until the task force has completed its work and the County Board has decided what action to take.

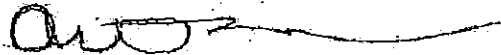
As I reported at last night's Board of Commissioners meeting, the Task Force met yesterday in open session and received several public comments from CCRC employees, vendors and others. The response could be summarized as one of deep concern over the poor condition of our roads, and also alleged financial and managerial issues including the Road Commission's failure to pay vendors timely.

We then appreciated hearing from County Administration that Managing Director Kevin Henning and Assistant Managing Director Mary Jo Crumpton were extremely helpful in providing requested materials and even creating informational binders for the Task Force members. We did not review the documents in any detail, however, before or at the meeting, simply because we had just received them.

After the Task Force meeting, I reviewed some of the materials and after discussions with County Administration, became convinced that it would be in the best interests of the citizens of this County for the Road Commission Board to hold off on long-term financial commitments during this Task Force's deliberations on whether to eliminate the Road Commission as recently authorized by HB 5125 and 5126. This type of requested "holding pattern" is reasonable due to the potential for transition and to minimize associated negative impacts on Road Commission's staff, its business partners and its overall operations.

I would appreciate your cooperation in this regard as well as in the broader Task Force process, and I hope that you'll consider this request as one that is beneficial to both of our organizations and the public.

Sincerely,



Art Kala, Chair
Calhoun County Board of Commissioners

Cc via email:

Board of Commissioners
Road Commissioners
Keyin Henning, CCRC Managing Director
Kelli Scott, Calhoun County Administrator/Controller
Richard Lindsey, Calhoun County Corporation Counsel
Road Commission Task Force

Law Office of Christopher B. Vreeland

105 West Michigan Avenue
Marshall, Michigan 49068
(269) 789-0787
FAX (269) 789-0815
www.VreelandLaw.com

June 21, 2012

County Commissioner Kale
315 West Green St.
Marshall, MI 49068

Re: Your correspondence dated May 4, 2012.

Dear Commissioner Kale:

Please allow this letter to respond to your correspondence dated May 4, 2012, a copy of which is enclosed for ease of reference.

The Road Commission Board is fully supportive of any and all review procedures, including but not limited to, the Road Commission Task Force. As anyone who follows roads in Michigan even casually will know, there is much room for improvement at this time. If the Task Force should generate any new information for improvement of operations at the Road Commission, we would welcome hearing that information. Accordingly, we agree with your request that we not renew or extend any long-term contracts or enter into long-term obligations until such time as the Task Force concludes its work.

Please be advised that we will continue to do our best to balance the needs of the Task Force and the County Board for a "holding pattern" with the need to maintain continuity of operations at the Road Commission. As I am sure you are aware after reviewing the materials we have given the Task Force, the Road Commission signs many different contracts and incurs obligations over a variety of time periods on a daily basis. Accordingly, we will treat your request, as you indicated in your remarks at our board meeting last night, not as a request that we cease all contracting activity but as a request that we not incur obligations that will adversely affect the County's ability to choose to implement different measures in the event that the County Board elects to disband the Road Commission after the Task Force completes its work.

After considering and debating the practical implications of your request on behalf of the County Board, we have extended our managing director's contract for a one-year period rather than the standard three-year contract. Of course, the Managing Director position, as well as all non-union positions at the road commission, remain terminable at will, which will remain the case until such time as the County Board may elect to disband the Road Commission as a separate entity. In any case, we believe our

decision is the best compromise to serve the best interests of the motoring public of Calhoun County and are hopeful that you will agree.

Our staff has spent considerable time and resources compiling information responsive to all requests received, and, as you acknowledged in your letter and as Mr. Fisher of Rehman Robson stated last night, our staff has done an excellent job of providing the Task Force and Mr. Fisher with any and all documentation requested. Please let us know of any additional information or documentation that you believe may be of assistance to you.

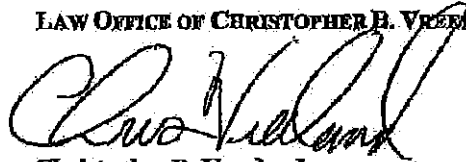
We renew our request to have any member of the task force contact all board members for input in the process. To date, none of our board members report having received any requests for information from any task force member or county commissioner, but our staff members have spent many hours compiling the voluminous documents requested by the Task Force. We are hopeful that the Task Force will conclude its operations in an efficient manner as a "holding pattern" is not a sustainable model for conducting business on an ongoing basis, particularly when the subject matter, roads, requires significant long-term planning.

Please do not hesitate to contact me with any questions or concerns.

Yours for better roads,

Very truly yours,

LAW OFFICE OF CHRISTOPHER B. VREELAND



Christopher B. Vreeland

Cc: Steve Frible, Calhoun County Commissioner & Task Force member
 Jim Haadsma, Calhoun County Commissioner & Task Force member
 Terris K. Todd, Calhoun County Commissioner
 Julie Camp-Siefke, Calhoun County Commissioner
 Blaine VanSickle, Calhoun County Commissioner & Task Force member
 Rob Bekke, Task Force member
 Richard Swert, Task Force member
 Richard Lindsey, Jr., Esq. Corporate Counsel
 Kevin Henning, CCRC Managing Director
 Eric Johnson, CCRC Board member
 Hugh Coward, CCRC Board member
 Scott Brown, CCRC Board member
 Doug Wildt, CCRC Board member

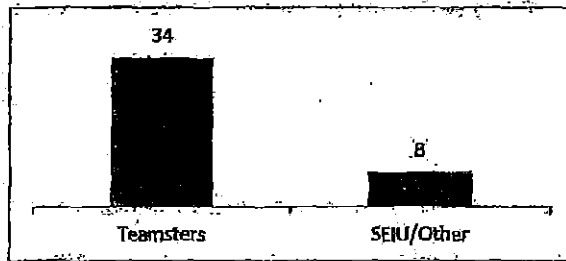
Appendix G

Calhoun County Road Commission Task Force

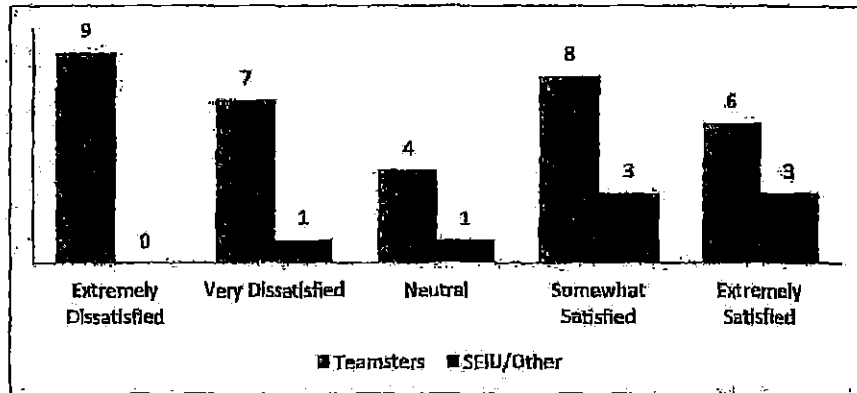
Road Commission Employee Survey Results

9-Jul-12

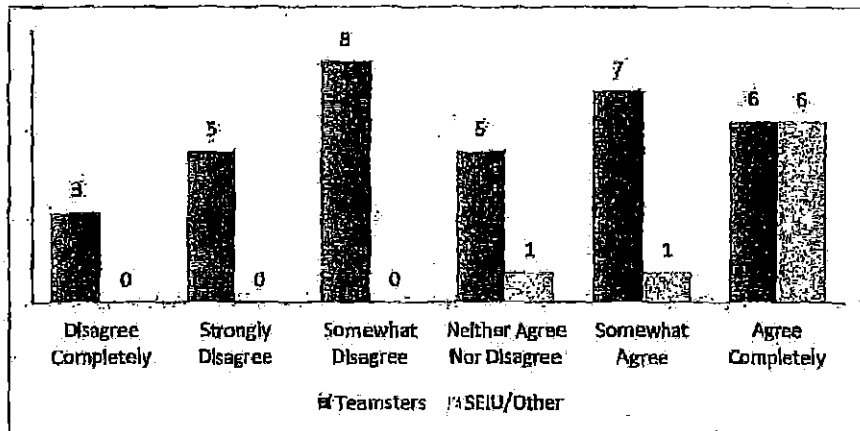
1. What type of position do you currently hold at the CCRC?



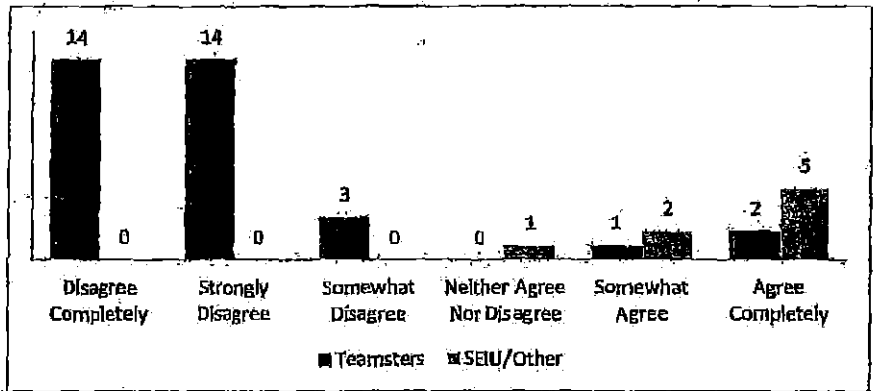
2. Overall, how satisfied are you working for the CCRC?



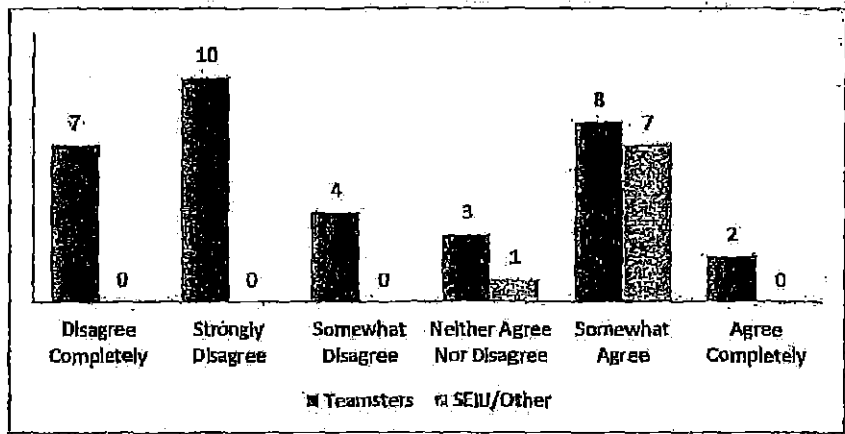
3. I feel like I am a part of the CCRC.



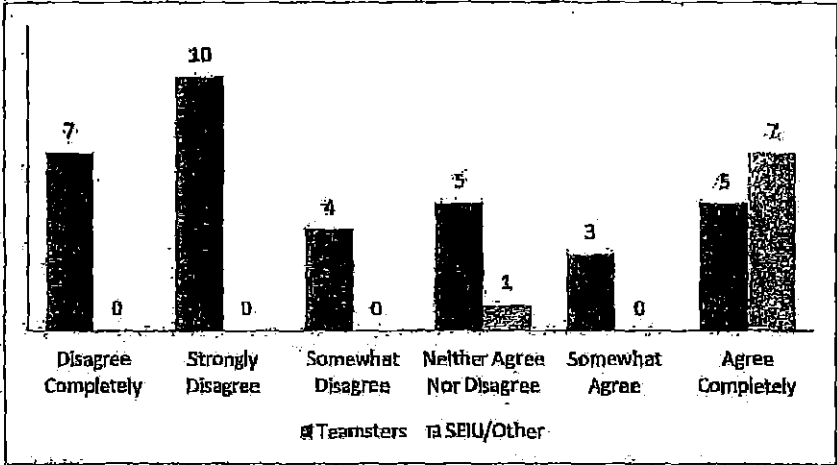
4 There is good communication from managers to employees in the CCRC.



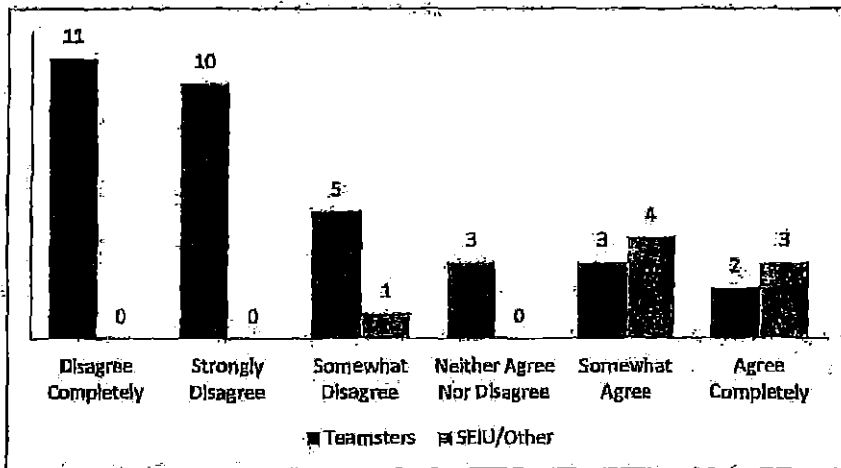
5 There is good communication from employees to managers in the CCRC.



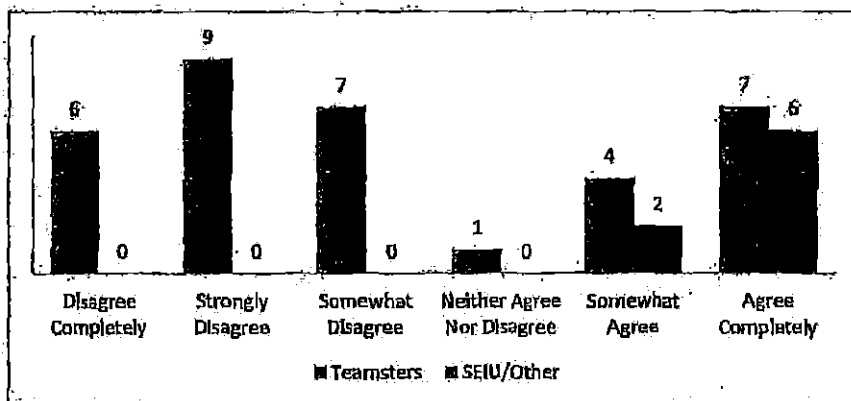
6 My job gives me the opportunity to learn.



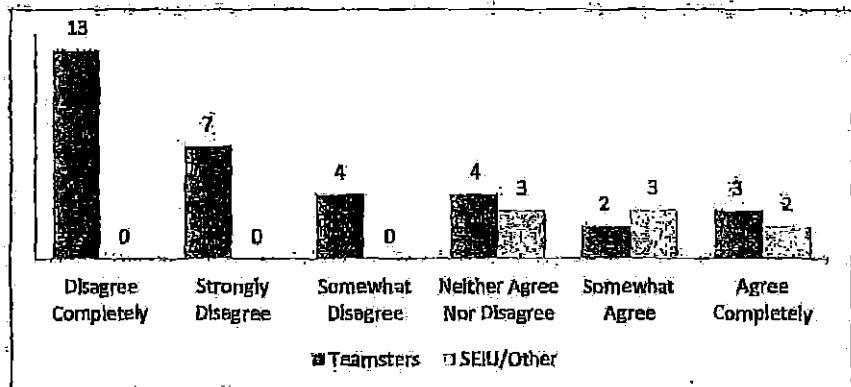
7 I consistently have the tools and resources I need to do my job.



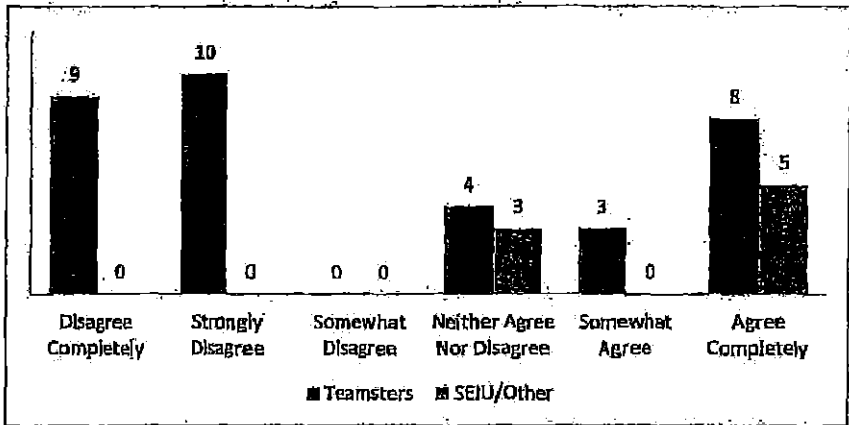
8 I have the training I need to do my job.



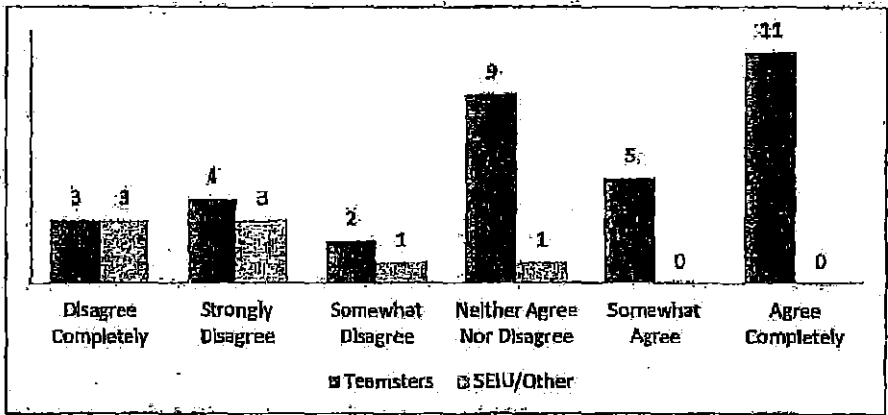
9 I receive the right amount of recognition for my work.



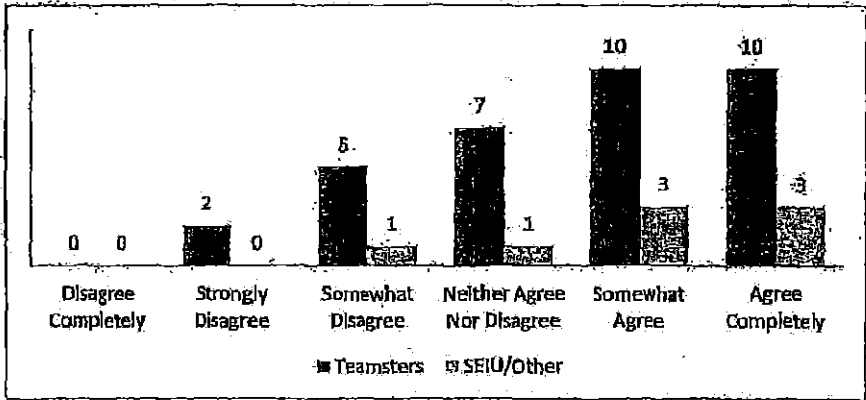
10 I am aware of the advancement opportunities that exist in the CCRC for me.



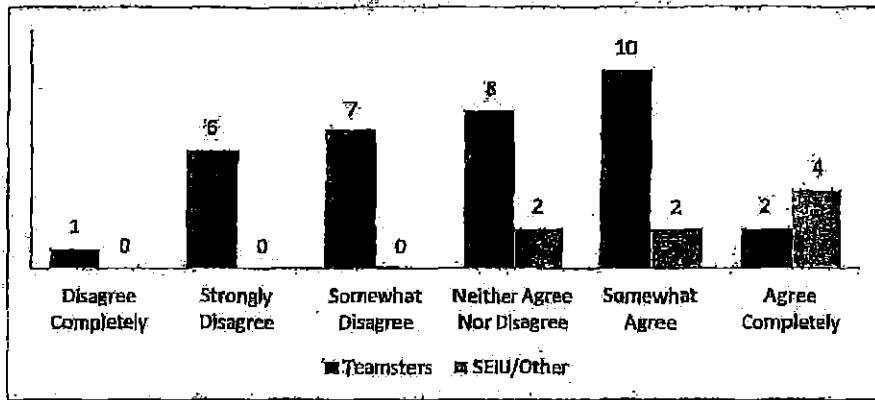
11 I feel underutilized in my job.



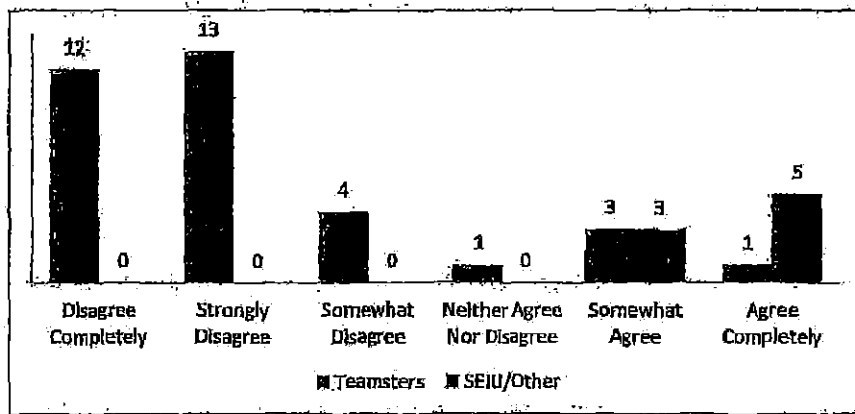
12 The amount of work expected of me is reasonable.



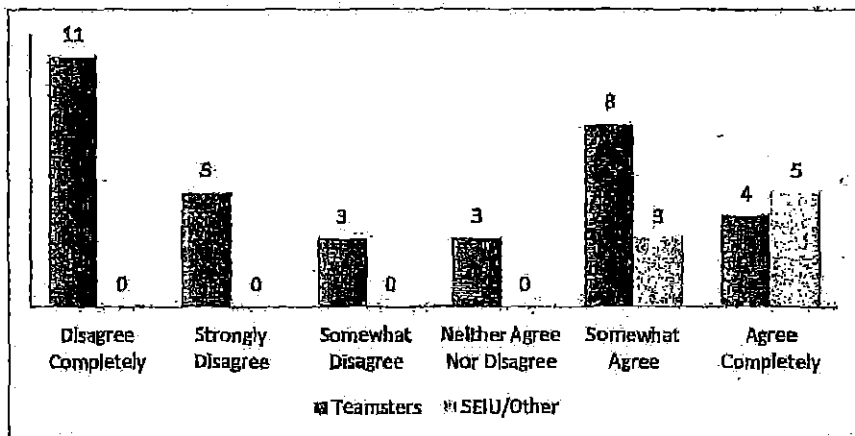
13 It is easy to get along with my co-workers.



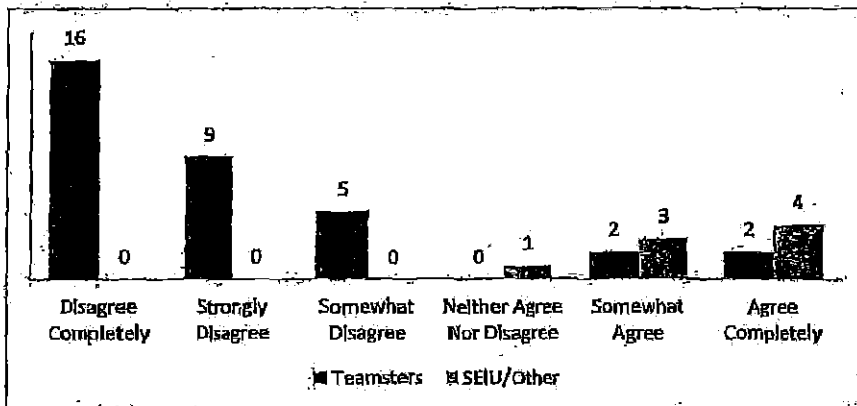
14 Overall, my supervisor does a good job.



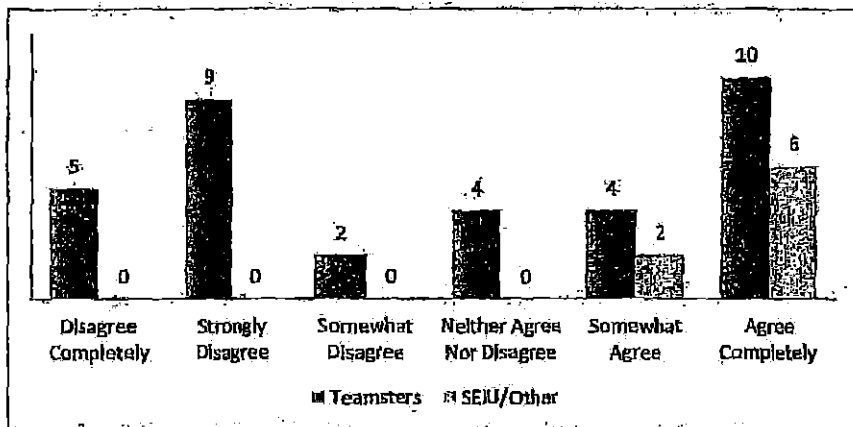
15 My supervisor actively listens to my suggestions.



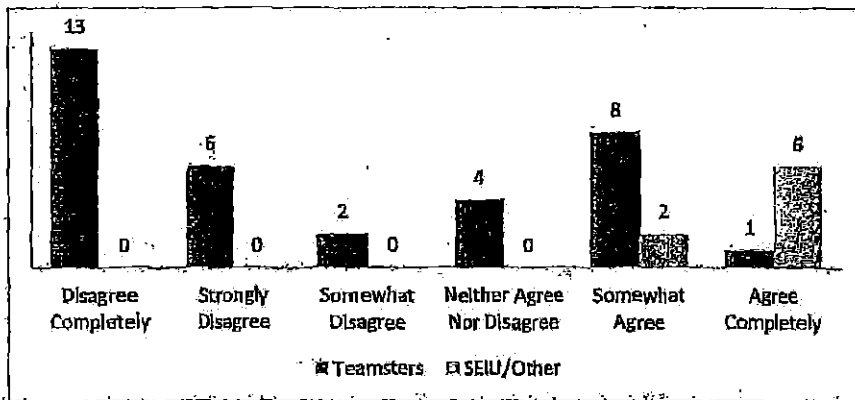
16 My supervisor promotes an atmosphere of teamwork.



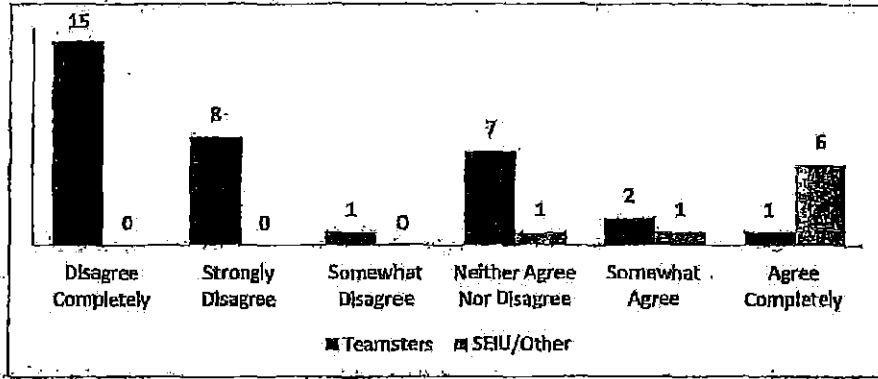
17 It is clear to me what my supervisor expects of me regarding my job performance.



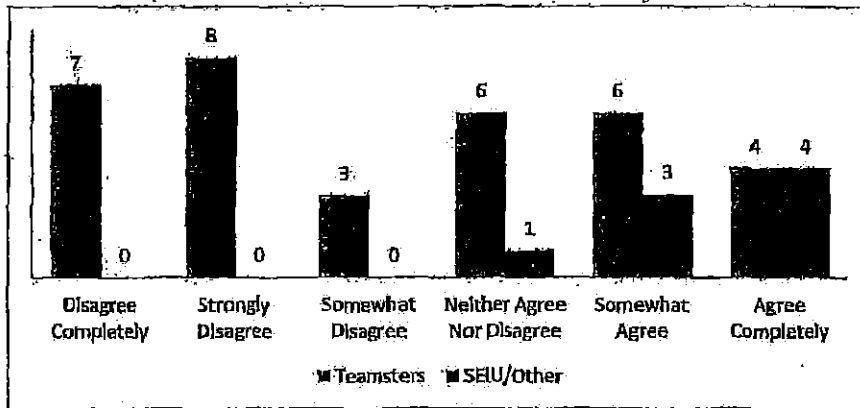
18 My supervisor evaluates my work performance on a regular basis.



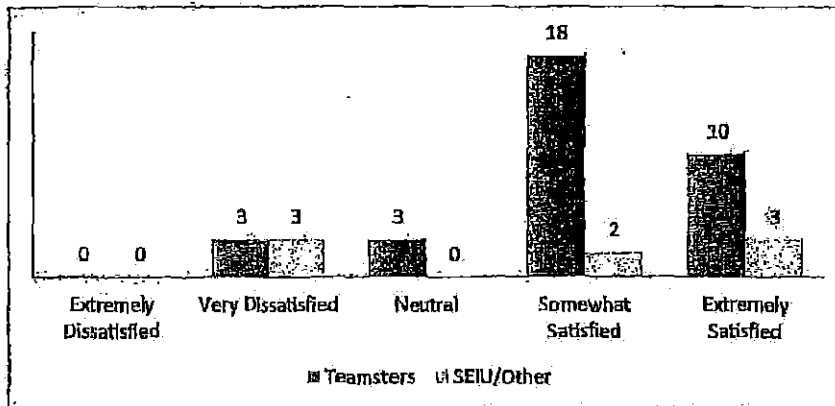
19 My supervisor provides me with actionable suggestions on what I can do to improve.



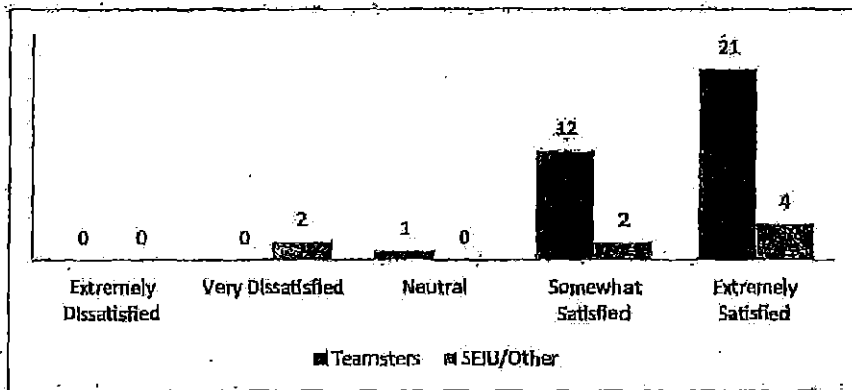
20 When I have questions or concerns, my supervisor is able to address them.



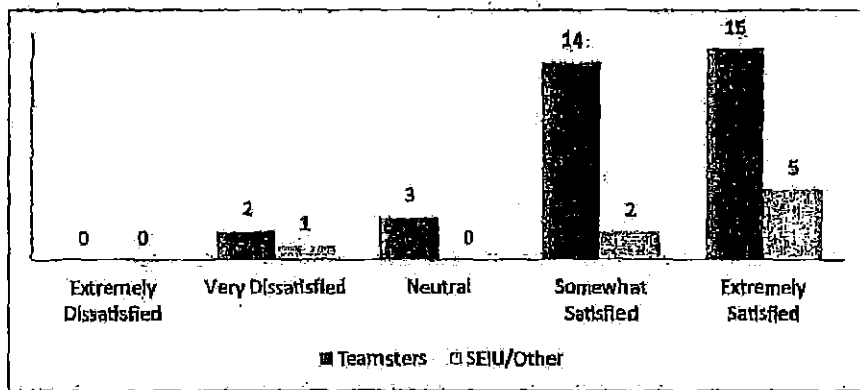
21 Your base pay?



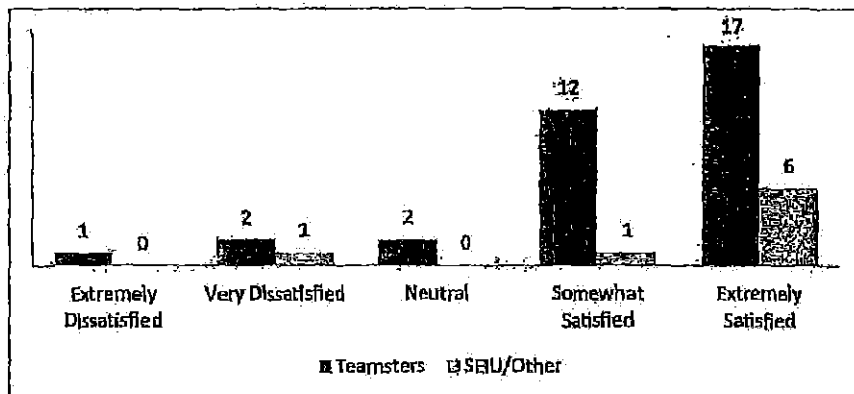
22 The vacation time you receive?



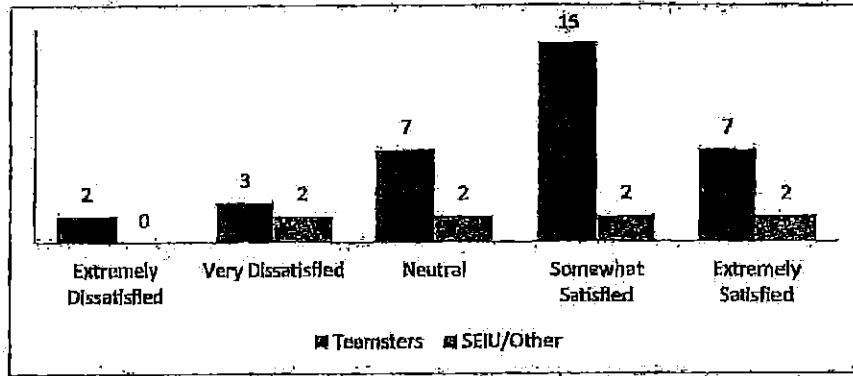
23 The retirement plan?



24 Your medical insurance?



25 Your annual raise?



Appendix H



June 27, 2012

Chris Vreeland, Chair
Calhoun County Road Commission
13300 15 Mile Road
Marshall, MI 49068

RE: Road Commission Task Force

Dear Chris:

Following up on Richard Lindsey's e-mail to you on Monday, June 25, 2012, as Chair of the Road Commission Task Force I am formally requesting that you be present at the Task Force meeting scheduled on July 10, 2012, at 8:00 a.m. in the Board of Commissioners Chambers at the County Building. I am also requesting that Managing Director Kevin Henning be present. It is my understanding that he has already confirmed via e-mail with Mr. Lindsey that he is planning to be at that meeting.

I have enclosed a list of questions which Mr. Henning (and you) will be asked to address at the meeting. There may be other questions which may arise depending on the answers given so neither you nor Mr. Henning should view this as an exhaustive list.

This is open meeting and other Road Commission Board members are welcome to attend along with other staff from the Road Commission. I would appreciate it if you could confirm your attendance in writing (via e-mail is fine) and we look forward to seeing you and Mr. Henning on July 10th.

Sincerely,

Art Kale, Chair
Calhoun County Board of Commissioners

Calhoun County Road Commission Task Force

Questions from Members to Managing Director and/or Board Chair For the July 10, 2012 Task Force Meeting

1. Financial Review of last 5 years; a. EOY Cash position; b. EOY General Fund; c. Spent roughly \$2.3 million more than revenues...justification? d. Sustainability of benefits, ie, retirement (18%), retiree healthcare, etc.?
2. Whether the Road Commission has had the vision to see this and what if anything has been, or is in the process of being done to put the "financial house" in order.
3. Has there been strategic planning of operations, including planned service delivery methods considered with declining revenues/increasing costs?
4. Why has the RC decided to go into deficit spending?
5. What is your plan to match revenue and expenditures going forward?
6. Why have they not addressed unfunded liabilities for retirees? If they have addressed the issue, then what is the plan?
7. Is there currently any investigation taking place by the State for alleged "mis-management"?
8. Has the Board of Road Commissioners considered bankruptcy, chapter 7, 11 or 9?
9. Has this Road Commission Board considered raising taxes or fees within the county & townships to make up for the short-falls?
10. Has the Road Commission Board considered "restructuring" its management and operating protocols to move toward a balanced budget and eliminate the deficit?
11. Is the Road Commission currently engaged in a "policy" of returning paved roads back to gravel in an attempt to cut expenses?
12. What is the RC's capital equipment replacement plan?
13. Review of past 5 years capital purchases- effectiveness, cost, bidding/ acquisition methods used

14. How much road repair/maint. money has been left on the table and not spent from townships for the past 5 years in 50/50 match?
15. What is the procedure/paperwork to establish the cost analysis to determine the cost effectiveness of purchasing new equipment? Training to run?
16. Why pages 6,7,8 of Policy 12, Purchasing?
17. What was the justification of the 4 new cabs, plus add-on of frames in front?
18. Does the CCRC reimburse for personal miles of CCRC owned vehicles?
19. DOT/CDL certification for supervisors?
20. Workplace accident, immediate drug test always?
21. Concern about the "calling in" of CCRC board members for meetings.
22. Mary Jo Crumpton's contract: Is it accurate that it included an \$18,500 raise after one year? 4 weeks vacation the first year?
23. Many procedures appear to have been developed to be able to respond to the County's Road Commission Task Force request (No numbering system, etc.. Is that true?
24. How are employees scheduled in the morning?
25. How are projects monitored?
26. Hiring of staff? Background?
27. How does the in call system work; how often used?
28. Would the Road Commissioners and Managing Director describe their performance and outcome as satisfactory or not? If yes why, if no why?
29. Any reviews of the quality of work performed and materials utilized?
30. Proof of procedures followed for all purchases over Purchase Policy threshold level. Any purchases that exceeded the threshold where policy was not utilized?
31. Why does the night shift utilize cold patch all year? Why do you utilize a 2nd shift crew?
32. What was the topic of your closed session in April or May? Did you attempt to censure a Road Commissioner in closed session under what was listed as "legal matters"?
33. Why was it necessary to spend over \$10k on a lawyer to review an internal matter?
34. Was a RC supervisor allowed to drive RC vehicles after his arrest/conviction of DUI and not having a valid driver's license? If the supervisor did not operate RC vehicles during that time was he allowed to work?

35. Did RC supervisors and other employees use RC equipment and work time last May to cut firewood and transport cut wood to their home(s)?
36. Why does the RC issue quad cab 4x4 pickups to all their supervisors and managing director?
37. Why do the RC Managing Director and supervisors utilize their pickups to travel to and from work? How many supervisors are on-call at one time?
38. Do you have a log of mileage where the supervisor vehicles were used for business and personal use? Were any personal miles reimbursed by the supervisors/Managing Director?
39. How many office staff were included in the July 2011 staffing report and what were their functions?
40. Do you have 2 full time LT. personnel? If so, why?
41. Why do you employ 2 Lead Mechanics out of a staff of 4 total?
42. How long did the RC employ their Engineer without that person having the proper/required credentials? Was there any loss in revenue from the State as a result, and if so, how much? How much money did it cost to have prints sealed by a qualified engineer as a result?

-
- 1) **ALLEGED EMPLOYEE CONCERN:** The correct oil and stone was used in the dirtpatches for about the first year. Since then management has used the wrong oil and stone. Therefore, the result is a failed patch. Is this true? Add chip & seal, and pothole repair material to the statement regarding inferior materials.
 - 2) **ALLEGED EMPLOYEE CONCERN :** After the May 2011 storm, management had a prison crew of 10 to 15 individuals, rented equipment, and other employees out on a local road cleaning trees out of ditch lines which posed no hazard to the public when management should have had them on primary roads where traffic could not pass through due to debris. Is this true?
 - 3) **ALLEGED EMPLOYEE CONCERN :** Employees who speak in favor of RC elimination or speak with Doug Wildt/ County Commissioners feel they are singled out and retaliated against. Are they in fact retaliated against? What have Commissioners and Managing Director done to prevent that from happening?
 - 4) **ALLEGED EMPLOYEE CONCERN :** Last year several employees report they were ordered to utilize defective cold patch (someone forgot to put binding agent into the mix) and fill potholes with nothing more than oil-coated stone. It was also reported the cold patch without binding agent required a dike to be constructed when the oil ran across the parking lot. Please speak to this.

-
1. **OBSERVATION:** The Calhoun County Road Commission train company has a full complement of passengers, is spending nearly all of its revenue on paying people to ride. Very little monies left to repair the tracks or maintain the train. Please speak to this.
 2. **OBSERVATION:** The primary task of the CCRC is to preserve the road infrastructure for the residents of Calhoun County.....there simply is not enough revenue projected to do that with nearly 90% of every \$ being used for pensions and benefits!!! Another way of seeing that, perhaps is to say that 1\$ out of every 10\$ is spent on road infrastructure for the Calhoun County Residents.....or.....9 \$ out of every 10 \$ is spent on the Road Commissioners, pensions and benefits.
 3. **OBSERVATION:** The primary evidence, is that the Road Commission Board and Management (past and present) has spent its' vast revenues on preserving & Growing the Road Commission entity!!!



CALHOUN COUNTY ROAD COMMISSION
PUBLIC WORKS • PARKS • SOLID WASTE
 13300 15 Mile Road • Marshall, Michigan 49068
 (269) 781-9841 • (800) 781-5512 • (269) 781-6101 FAX
 www.calhouncountyroada.com

TO: Arthur Kale, Chairman, Calhoun County Board of Commissioners
FROM: Christopher B. Vreeland, Chairman, CCRC Board
DATE: July 11, 2012
RE: Your communication dated June 27, 2012

Please allow this memorandum to respond to your correspondence dated June 27, 2012 but received electronically on July 3, 2012. Thank you for sending us the list of questions, comments and observations compiled by the Task Force.

The CCRC staff has spent considerable time and resources compiling information responsive to all requests received, and, as you and Mr. Fisher have publicly acknowledged, our staff has done an excellent job of providing the Task Force and Mr. Fisher with any and all documentation requested. Mr. Fisher indicated at our last board meeting that he did not require any further information from anyone at the CCRC.

We, as a board, are not opposed to sitting down with you, other task force members or other county commissioners to assist you in understanding the information that has been provided to you. We would submit that a public forum is the preferable mechanism for doing so except when prohibited by law or when a closed session would be appropriate to facilitate business operations at the CCRC.

Unfortunately, many of the questions, concerns and observations forwarded appear to be suggestive in nature and not truly fact-finding questions. For instance, one question appears to assume that the CCRC is legally capable of enacting a tax to fund road maintenance, a function which, of course, only the county board, a township board, or the voters can undertake. Other questions make factual assertions that appear to be wildly at odds with reality such as "\$9 out of every \$10 is spent on the Road Commissioners, pensions and benefits."

Reality is that, out of every \$10 spent at the CCRC, somewhat less than half a penny is spent on Road Commissioners and approximately \$5 goes toward paying people to plow snow, patch potholes, maintain roads, and reconstruct roads (i.e. employee wages, benefits and pensions). The remainder is spent on equipment and materials (e.g. gas, hot mix, equipment, etc.). As an entity whose primary function is the provision of service to the motoring public, it would seem rather obvious that a significant portion of our budget would be spent on the people who provide the service.

The level of involvement by members of the Task Force with certain employees of the CCRC has created a politicized workforce and has hampered effective operations at the road commission. Interference from the task force, such as requesting that we make no big decisions or long-term contracts, has hampered this board's ability to continue to correct the previously ineffective road commission which we inherited from past management. Nevertheless, we will respond in writing to each question as we deem appropriate after making due diligence inquiries to avoid incurring any liability and diverting scarce resources that would otherwise be used on the roads of Calhoun County.

If you would like a quicker response which may help to focus the task force on the issues at play, please feel free to have the individual task force member asking any particular question contact any board member to gain some perspective. To date, no Task Force member has contacted any road commissioner other than possibly Commissioner Wildt to ask anything as simple as "Hey, why did you do X?" A simple phone call or two would be a step forward in generating factual discussions that would greatly assist the Task Force in understanding the functioning of the CCRC and, not so incidentally, avoid the appearance of a process with a preordained outcome.

If you, or any Task Force member or other county commissioner would care to discuss the particulars of any question with any of our board members, we would be happy to give you our individual perspectives as members of our board. If the point of the Task Force is to actually gain an understanding of the operations of the CCRC to assist the Board of Commissioners in making an informed decision, we are more than willing to help out.

Appendix I

RESOLUTION TO PROCEED WITH PUBLIC HEARINGS ON WHETHER TO TRANSFER THE POWERS, DUTIES AND FUNCTIONS OF THE BOARD OF THE CALHOUN COUNTY ROAD COMMISSION TO THE CALHOUN COUNTY BOARD OF COMMISSIONERS

WHEREAS Public Acts No. 14 and 15 of 2012, effective February 21, 2012, permit the Calhoun County Board of Commissioners, prior to January 1, 2015, by resolution, to transfer the powers, duties, and functions of the appointed board of the Calhoun County Road Commission to the Board of Commissioners and dissolve the Board of the Road Commission; and

WHEREAS the Board of Commissioners on April 10, 2012, created a Road Commission Task Force whose members were to gather information and make a recommendation relative to the issue of whether the Board of Commissioners should take action to assume the powers, duties and functions of the Board of the Road Commission; and

WHEREAS the Road Commission Task Force, over the course of multiple meetings, received public comments including those from multiple Road Commission employees, gathered and reviewed numerous Road Commission documents relating to its governance, management, and operations, engaged Rehmann Robson to prepare Phase I and II of Due Diligence Reports summarizing financial indicators and potential consolidation savings, conducted an employee survey, and submitted follow up questions to the Road Commission Managing Director and Chair to which they did not respond with answers; and

WHEREAS the Road Commission Task Force met on July 24, 2012, and unanimously (5 -- 0) voted to recommend to the Board of Commissioners that it move forward with dissolving the Board of the Road Commission, with the Task Force members citing as key areas that must be addressed in the best interest of Calhoun County citizens: 1) responsiveness to the public and a governing board accountable to those who elect them; 2) sound long-term management of finances in spite of limited revenues; 3) leadership that maintains high employee morale and is responsive to employee opinions and suggestions; and 4) planning and execution of best practices that focus on improving the condition of the roads and infrastructure in Calhoun County as the paramount priority; and

WHEREAS pursuant to Public Act 14 of 2012, before adopting a resolution to dissolve the Road Commission Board and transfer its powers, duties and function to the Board of Commissioners, the Board of Commissioners shall conduct a minimum of two properly noticed public hearings;

NOW THEREFORE, IT IS RESOLVED that the Calhoun County Board of Commissioners hereby sets public hearings for August 16, 2012, at 7:00 p.m. and September 6, 2012, at 7:00 p.m. in the Board Chambers at 315 W. Green Street, Marshall, MI to hear any interested persons on the issue of the dissolution of the Calhoun County Road Commission and the transfer of the powers, duties, and functions of the Board of County Road Commissioners to the County Board of Commissioners.

**RESOLUTION ESTABLISHING THE CALHOUN
COUNTY ROAD DEPARTMENT**

WHEREAS the Calhoun County Board of Commissioners did, on September 20, 2012, authorize by resolution the dissolution of the Calhoun County Board of Road Commissioners and the transfer of its powers, duties, and functions provided by law to the Calhoun County Board of Commissioners, effective November 1, 2012, and

WHEREAS the Calhoun County Board of Commissioners wishes to set forth the powers, duties, and functions of the successor to the Calhoun County Road Commission as of November 1, 2012;

NOW THEREFORE, it is hereby resolved that the functions of the Calhoun County Road Commission are hereby absorbed into Calhoun County government operations by establishing the Calhoun County Road Department (herein "Road Department") effective November 1, 2012;

IT IS FURTHER RESOLVED that the Road Department will utilize the funding available to Calhoun County under Public Act 51 of 1951, MCL §247.651 to §247.675 or under any successor Act for the purposes allowed under Public Act 51 of 1951, MCL §247.651 to §247.675, or any successor Act;

IT IS FURTHER RESOLVED that the Road Department Special Revenue Fund is hereby established to account for the activity of the Road Department;

IT IS FURTHER RESOLVED that effective November 1, 2012, the Managing Director of the former Calhoun County Road Commission will transfer to the new Road Department and will report to the County Administrator/Controller;

IT IS FURTHER RESOLVED that all employees and positions transferred from the former Calhoun County Road Commission to the Road Department, with the exception of the Environmental Services Coordinator (as set forth below), will report to the Managing Director and all other reporting relationships in place as of October 31, 2012, will be maintained on and after November 1, 2012;

IT IS FURTHER RESOLVED that the duties and functions of the Board of Public Works, which were transferred to the Calhoun County Board of Road Commissioners by Resolution 656 -1992, shall be reassigned to a Board of Public Works to be appointed, with the first meeting to be held after January 1, 2013 (the two meetings scheduled for 2012 for the Board of Public Works are hereby cancelled); and

IT IS FURTHER RESOLVED that the duties and functions of the Board of Parks Trustees, which were transferred to the Calhoun County Board of Road Commissioners by Resolution 171-1995, shall be transferred to a new board to be formed which shall govern the

County's parks and which shall meet after January 1, 2013 (the two meetings scheduled for 2012 for the Board of Parks Trustees are hereby cancelled); and

IT IS FURTHER RESOLVED that the Environmental Services Coordinator shall report directly to the County Administrator/Controller as of November 1, 2012.

**RESOLUTION REGARDING CONTRACTUAL OBLIGATIONS OF
THE CALHOUN COUNTY ROAD COMMISSION**

WHEREAS the Calhoun County Board of Commissioners did on September 20, 2012, resolve to dissolve the Calhoun County Board of Road Commissioners and transfer the powers, duties and functions provided by law for that Board to the Calhoun County Board of Commissioners, effective November 1, 2012; and

WHEREAS the Calhoun County Board of Commissioners wishes to assume, honor, or otherwise take action relative to the contractual obligations of the Calhoun County Road Commission in existence as of October 31, 2012;

NOW THEREFORE, IT IS HEREBY RESOLVED, that the Calhoun County Board of Commissioners will, solely to the extent required by law, honor the terms of the Labor Agreement between the Board of County Road Commissioners and Unit 1 Service Employees International Union, Local No. 517M, through the end of the December 31, 2012, contract term;

IT IS FURTHER RESOLVED that the Calhoun County Board of Commissioners will, solely to the extent required by law, honor the terms of the Labor Agreement between the Board of County Road Commissioners and Teamsters, State, County and Municipal Workers Local No. 214, through the end of the May 19, 2013, contract term;

IT IS FURTHER RESOLVED that each of the above-mentioned unions is recognized as the collective bargaining representative for the bargaining units covered by said Labor Agreements;

IT IS FURTHER RESOLVED that all references in the above-mentioned Labor Agreements to the "Employer" shall be deemed to reference the Calhoun County Board of Commissioners and all references to the "Managing Director" shall be deemed to reference the Calhoun County Administrator/Controller or designee;

IT IS FURTHER RESOLVED that, as of November 1, 2012, the Calhoun County Board of Commissioners recognizes and assumes all existing grant-related contractual obligations entered into by the Calhoun County Board of Road Commissioners through the end of the applicable grant-contract periods;

IT IS FURTHER RESOLVED that, as of November 1, 2012, the following existing contractual agreements entered into by the Calhoun County Board of Road Commissioners are recognized and assumed by the Calhoun County Board of Commissioners through the end of the applicable contract period:

Expiring in 2012:

Roadside mowing – Dick's Landscaping & Snowplowing – Effective Date: 4/11/11
Expiration 12/31/12

Dust Control - Michigan Mineral Resources - Effective Date: 7/21/10
Expiration: 12/31/12

Snow removal - Pro Lawn Care - Effective Date: 11/10/11
Expiration: 12/31/12

Expiring in 2013:

Brush grinding - Mid-Michigan Recycling - Effective Date: 8/8/11
Expiration: 8/1/13

Sodium chloride - Cargill, Inc. - Effective Date: 9/13/10
Expiration: 4/30/13

Culverts - Jensen Bridges & Supply Company - Effective date: 5/14/12
Expiration: 5/2/13

Hot Mix Asphalt (HMA) - Michigan Paving and Material - Effective Date: 5/14/12
Expiration: 5/2/13

Asphalt emulsion - Asphalt Materials - Effective Date: 5/7/12
Expiration: 5/2/13

Tree and stump removal - Lonnie's Tree Service - Effective Date: 5/14/12
Expiration: 5/2/13

Turkeyville Rest Area Maintenance - Hi-Tec Building Services - Effective Date:
9/18/09
Expiration: 9/30/13

28B Aggregate - Carr Bros. & Sons - Effective Date: 7/11/12
Expiration: 7/3/13

Expiring in 2014 or later:

Trash, recycling collection - Republic Waste Services - Effective Date: 1/1/12
Expiration: 12/31/14

Pavement markings (lines) - P.K. Contracting - Effective Date: 5/14/12
Expiration: 5/2/14

22A, 23A, 29A, & 2NS Aggregate - JK Gravel - Effective Date: 5/14/12
Expiration: 5/2/14

Materials Testing Services - Primary - Professional Services Industries, Inc.; secondary
Driesenga & Associates - Effective Date: 10/3/12

Expiration: 12/31/14

MDOT – State Trunkline Maintenance Contract – Effective Date: 10/1/12
Expiration: 9/30/16

Project Specific Contracts:

Bridge Engineering, 23 Mile Road Bridge Replacement Project – Brechting Bridge & Engineering, Inc. – Effective Date: 10/3/12

All contracts related to the development of Phase 1, Segment 1, of the Calhoun County Trailway Project

IT IS FURTHER RESOLVED that as of November 1, 2012, the Capital Lease Agreement between the Calhoun County Board of Road Commissioners and Michigan Leasing and Financial Services for the financing/lease/purchase and outfitting of six trucks is recognized and assumed by the Calhoun County Board of Commissioners;

IT IS FURTHER RESOLVED that as of November 1, 2012, the obligations relative to all outstanding Transportation Fund Notes issued by the Calhoun County Road Commission, Series 2002A, 2002B, 2003, and 2005, are recognized and assumed by the Calhoun County Board of Commissioners;

IT IS FURTHER RESOLVED that as of November 1, 2012, all existing software licenses held by the Calhoun County Board of Road Commissioners are recognized and assumed by the Calhoun County Board of Commissioners;

IT IS FURTHER RESOLVED that the Employment Agreements between Managing Director Kevin Henning and Assistant Managing Director Mary Jo Crumpton and the Calhoun County Board of Road Commissioners are not adopted or assumed by the Calhoun County Board of Commissioners and the Calhoun County Administrator/Controller is hereby authorized to negotiate employment with said individuals as of November 1, 2012; and

IT IS FURTHER RESOLVED that, other than as set forth herein or in any prior or subsequent resolution of the Calhoun County Board of Commissioners, no other existing contractual or other obligations of the Calhoun County Board of Road Commissioners are recognized, adopted or assumed by the Calhoun County Board of Commissioners.

**RESOLUTION DISSOLVING THE BOARD OF THE CALHOUN COUNTY
ROAD COMMISSION AND TRANSFERRING ALL OF ITS POWERS, DUTIES
AND FUNCTIONS TO THE CALHOUN COUNTY BOARD OF COMMISSIONERS**

WHEREAS, Public Acts 14 and 15 of 2012 authorize a county board of commissioners with an appointed board of county road commissioners to transfer the powers, duties, and functions that are provided by law (collectively referred to herein as "powers") for the road commission board to the county board of commissioners by majority vote; and

WHEREAS the Calhoun County Road Commission Board is an appointed board; and

WHEREAS, Section 9 of Public Act 14 of 2012 requires that prior to adopting a resolution transferring the powers of appointed board of the road commission to the county board of commissioners, that two public hearings be held on that issue; and

WHEREAS, the Calhoun County Board of Commissioners properly noticed and did on August 16, 2012, and September 6, 2012, hold two public hearings as required by law and has therefore met the statutory prerequisite to taking the action set forth below;

NOW THEREFORE IT IS RESOLVED, pursuant to the authority set forth in Public Acts No. 14 and 15 of 2012, that the Calhoun County Board of Commissioners hereby transfers the powers, duties, and functions provided by law for the Calhoun County Board of Road Commissioners to the Calhoun County Board of Commissioners, effective November 1, 2012;

IT IS FURTHER RESOLVED that effective November 1, 2012, the Calhoun County Board of Road Commissioners is dissolved;

IT IS FURTHER RESOLVED that the Calhoun County Administrator/Controller is authorized to take all necessary and prudent steps to effectuate and facilitate the dissolution of the Calhoun County Board of Road Commissioners and the transfer of its powers, duties, and functions provided by law to the Calhoun County Board of Commissioners;

IT IS FURTHER RESOLVED that the transfer of all the powers, duties, and functions provided by law includes but is not limited to the following assets: real and personal property, furniture, equipment of every type, cash, and investments.

APPENDIX 48

CALHOUN COUNTY ROAD COMMISSION TRANSITION PLAN

DRAFT 1

August 31, 2012

I. Enabling Legislation

Public Acts 14 and 15 of 2012 were signed by Governor Snyder on February 12, 2012. They enable Michigan Counties, by a majority vote of the Board of Commissioners, to dissolve Boards of Road Commissioners and transfer all powers, duties and functions of the Road Commission to County Board of Commissioners. *Copies of these bills are attached as Appendix A.*

II. Creation of Task Force

The Board of Commissioners established the Calhoun County Road Commission Task Force on April 10, 2012. The list of members and contact information are attached. The County's Human Resources/Labor Relations Director and Assistant County Administrator also attended Task Force meetings and provided input at the request of the Task Force.

III. Task Force Activities

The Task Force met 7 times from April through July 2012. Meetings were open to the public and included opportunities for public comment. Their objective was to review and better understand the oversight, management, and operations of the Road Commission in order to recommend to the County Board of Commissioners whether the County should transfer the powers, duties and functions of the Road Commission to the County Board of Commissioners. The Task Force expressed an intense desire to make the best decision in the best interest of Calhoun County residents to ensure transparent use of funds, trust, accountability, efficiency and quality control.

Key task force activities included:

- ✓ Creation of a **Task Force Timeline** that shows key meeting dates and decision points spanning an eight month period from May to November 2012. A key consideration in the development of this timeline was to minimize the length of time Road Commission employees would be subjected to a state of uncertainty as to their future governance. The Timeline has been revised several times, *and the latest version as of July 24, 2012 is attached as Appendix B.*
- ✓ **Requested Information** from the Road Commission, totaling 40 items and covering policies, procedures, road maintenance plans, staffing, safety, budgets and financial reports, among others. Road Commission staff provided all materials with copies for each Task Force member. *A copy of the list of items requested is attached as Appendix C.*

- ✓ Reviewed **5-Year Road Commission Financial History, and Comparison of Road Commission Employee Benefits vs. County Employee Benefits**, both prepared by County staff. *Copies are attached as Appendix D.*
- ✓ Engaged Rehmann Robson to prepare **Phase I and Phase II Due Diligence Reports**. Phase I entailed an assessment of the previous 15 years of operating results, looking at financial trends of the Road Commission itself, and comparing this information to other Michigan road commissions. Phase II provided a pro forma liabilities and cost saving analysis, a discussion of potential pros and cons, including road funding, if the Road Commission were to be consolidated with the County. *Copies of both reports are attached as Appendix E.*
- ✓ Issued letter to Road Commission Board Chair requesting the Road Commission refrain from entering into long-term financial commitments extending beyond 12/31/12 and during the Task Force's activities. *A copy of the letter and the response is attached as Appendix F.*
- ✓ Conducted a **Road Commission Employee Survey** to get employees' perspectives on working conditions, job satisfaction and suggestions for improvements. Approximately 70% of Road Commission employees responded to the survey. *Its results are attached as Appendix G.*
- ✓ Requested the presence of **Road Commission Board Chair and Road Commission Managing Director** at the July 24, 2012 Task Force meeting to address 42 follow up questions from Task Force members regarding materials received from the Road Commission, and several additional concerns voiced to Task Force members from employees and other interested persons. The request was declined. *Copies of the request letter with list of questions, and the response letter are attached as Appendix H.*
- ✓ Reviewed **Ingham County's Transportation Transition Plan** as approved by their County Services Committee on March 20, 2012.

IV. Recommendation of Task Force

The Task Force voted **unanimously on July 24, 2012** to recommend that the County Board of Commissioners dissolve the County Road Commission and transfer all powers, duties and functions to the County.

V. Board of Commissioners Vote of Intent

The Calhoun County Board of Commissioners passed a resolution on **August 2, 2012** to set two public hearings to hear interested persons on the issue of the dissolution of the Calhoun County Road Commission. *A copy of the resolution is attached as Appendix I.*

VI. Public Hearings

The first public hearing was held on Thursday, August 16, 2012 during a regular County Board of Commissioners meeting at 7pm. No comments were received. The second public hearing is scheduled for Thursday, September 6, 2012, again during a regular meeting of the County Board of Commissioners.

VII. Final Board of Commissioners Approval

On Thursday, September 20, 2012, during the regularly scheduled Board of Commissioners meeting at 7pm, the County Board of Commissioners is scheduled to vote on whether to dissolve the Road Commission.

VIII. Transitional Advisory Board

The County may choose to create an Advisory Board, to include representatives from townships, cities, villages, MDOT and others, to provide broader input for the transition and for future road management issues.

IX. Meetings of County and Road Commission Management

County Administrator/Controller Kelli Scott has been meeting regularly since August 2 with Road Commission Managing Director Kevin Henning to exchange ideas for this transition plan.

X. Meeting with Ingham County Management

The County is planning to request a visit to Ingham County to seek input on our transition plan, based on their recent dissolution of their Road Commission and transition that occurred in June 2012. Ingham County is the only other known county in Michigan to have dissolved their Road Commission since the passage of PA 14 and PA 15.

XI. Transition Date

The latest version of the Task Force Timeline calls for a **November 1, 2012** transition date.

Powers, Duties and Functions

The current CCRC organizational chart is attached as Appendix J. If this transition takes place in Calhoun County, it is expected that the resulting organizational structure would place the Calhoun County Road Commission (CCRC) as a County Department reporting to County Administration. Once staffing details are worked out, the County will integrate the CCRC staff into the County's organizational charts.

Communication of Transition

County Administration will work with CCRC Management to ensure the transition is communicated to the public and that any language on websites, FaceBook, voicemails, letterhead, business cards, etc. are revised as needed to reflect the consolidation.

Board Policies

The CCRC has 46 Board Policies covering various topics from personnel to road closures. Many of them were recommended by legal counsel, state agencies and associations, and insurance carriers. County Administration will work with the CCRC Managing Director to determine which policies will need to be adopted by the County Board of Commissioners by November 1, 2012 in order to maintain proper governance and ensure operational continuity.

Operating Procedures

County Administration and the CCRC Managing Director will together review operating procedures and seek input from employees and others on an ongoing basis to identify and implement best practices. The Winter Maintenance Procedure is likely to be an initial priority, given the timing of the scheduled November 1 transition.

Non-union Employment Agreements

The CCRC's Managing Director and Assistant Managing Director currently have Employment Agreements with the Board of Road Commissioners. The County will seek legal counsel and determine how to proceed, and will ensure adequate advance communication is given to these two individuals to clarify the intended nature of their continued employment after November 1, 2012.

SEIU and Teamsters Contracts

The CCRC has two unions—the Service Employees International Union (SEIU) and the Teamsters, State, County and Municipal Workers (Teamsters). The SEIU represents 10 employees who are supervisors, technical and office staff, and has a current labor agreement in place. The Teamsters represents 48 employees who are mechanics and truck drivers, and also has a current labor agreement in place. The County will consult with legal counsel to determine how to proceed from a labor relations standpoint and will be prepared to communicate with union representatives prior to the scheduled November 1, 2012 transition date. The County has nine unions including two court employees' unions, and also unrepresented groups of employees.

Physical Location of Offices and Staff

The County Administration will work with CCRC Management to determine whether any staff relocations will take place immediately on November 1 or soon thereafter.

Job Descriptions

The CCRC's job descriptions are inconsistent as to format with the County's standard job description elements. Once the job descriptions are reviewed and, in some cases, revised as to content due to the transition, the County's HR staff will assist in modifying the CCRC job descriptions so that they match the County's standard format and elements.

Budget 2012 and 2013

The County Board of Commissioners will need to adopt, by November 1, 2012, CCRC budgets for the remainder of 2012. The CCRC budgets will also become part of the recommended County budgets for 2013, which are expected to be adopted by the County Board of Commissioners on December 6, 2012.

Cash

The County Treasurer already manages cash for the CCRC. CCRC funds are accounted for separately from those of the County, and so no expected changes are needed.

Finance/Accounting/Accounts Payable and Receivable

The CCRC has one Finance Clerk, whose primary duties include accounts payable, accounts receivable, purchasing, inventory, and insurance processing. The County has a Finance Department with one Finance Analyst, one Budget Analyst, and one Accounts Payable Clerk, in addition to the Payroll Technician. The County's Finance Director position has been vacant since 2010. The CCRC's finance and payroll software is highly specialized for Road Commissions to accommodate detailed project and cost accounting and reporting to the state. It is expected that this software will need to continue to be used after the transition for continued processing of all financial/accounting and payroll transactions. It is also expected that the current combined staffing count of Finance positions the County and CCRC have will be necessary for the foreseeable future.

Payroll

The CCRC has one Payroll Clerk, who does daily time entry and biweekly payroll processing for the CCRC's 61 employees. This position's responsibilities also include various reports, workers' compensation administration, leave bank management, mail duties and payroll bank depositing. The County has one Payroll Technician who processes payroll for the County's approximately 550 employees and the 32 employees of the Calhoun County Consolidated Dispatch. This position is also responsible for various reporting and analysis functions, training of end users of the computerized payroll entry system, as well as assistance to management with labor negotiations calculations and spreadsheets. As mentioned under Finance/Accounting, the CCRC utilizes an integrated software system including payroll, and this system is expected to remain in place after the transition.

Human Resources/Labor Relations

The CCRC has no full-time Human Resources positions. HR duties are currently spread among the Deputy Managing Director, the Finance Clerk and the Payroll Clerk. The CCRC uses an outside third party benefits administrator, and outside labor counsel. These functions would be absorbed into the County's Human Resources Department. The County has a HR department of four staff, led by an HR/Labor Relations Director. It is expected that the County will absorb the HR functions and duties of the CCRC, possibly with the addition of one HR staff. The job descriptions of CCRC staff currently containing HR functions and duties will be reviewed and adjusted accordingly.

Employee Benefits Open Enrollment

The CCRC has a benefits plan year beginning July 1, while the County's benefits plan year begins January 1. Both entities currently offer Blue Cross Blue Shield as the employee health insurance claims administrator, but the plans, plan costs and employee cost share amounts are different. Both entities also offer vision, dental and life insurance for employees with varying plan provisions. The County will seek advice from legal counsel and our Benefits Consultants to determine the best timing and procedure

for working toward an integration of CCRC employees into the County's plans. The County also intends to continue to comply with PA152 of 2011 (the Board of Commissioners opted for the 80%/20% section for 2012), which limits the employer's share of employee health insurance costs.

Workers Compensation Insurance

The County is self-insured. The CCRC's carrier is the County Road Association Self Insurance Fund. The County will absorb the CCRC employees into the County's self insurance pool.

Retiree Health Insurance

The CCRC offers health insurance coverage for medical care and pharmaceuticals to eligible retirees and retirees' spouses, with the CCRC paying 90% of the premium cost and the retirees contributing 10%. The CCRC's retiree health insurance program is set forth in Board Policy 27. The County also offers retiree health insurance, but with retirees contributing the entire amount of the premium costs. Certain retirees meeting age and years of service eligibility requirements are given a discount toward their premium of up to \$10 per month per year of service. The County's retiree health insurance program is set forth in Board Policy 361. Due to the CCRC's growing postemployment benefit obligation related to the current retiree health insurance program, and the lack of sufficient spendable fund balance (as of the last audited financial statement dated 12/31/11), this benefit will be reviewed to determine how to make it financially sustainable in the future.

MERS Pension Benefits

The CCRC currently offers defined benefit pension plans for employees through the Municipal Employee Retirement System (MERS). The Teamsters' plan (B-3; V-6; FAC-3) provides for a 2.25% multiplier and a vesting period of 6 years, with a normal retirement age of 60, at no cost to Teamsters employees. The SEIU plan (B-4; V-6; F55(30); FAC-3) provides for a 2.5% multiplier and vesting period of 6 years, with early retirement with full benefits available at age 55 with 30 years of service, with an employee contribution rate of 3.1%. The non-union plan (B-4; V-6; F55(15); FAC-3; E-2) provides for a 2.5% multiplier and vesting period of 6 years, with early retirement with full benefits available at age 5 with 15 years of service, and an automatic 2.5% annual increases each year after retirement, at no cost to non-union employees.

The County has an internally administered defined benefit (DB) plan, with a 2.0% multiplier and a vesting period of 8 years, with a normal retirement age of 60, with an employee contribution rate of 9.5%. Most employees within the county and courts (other than Office of the Sheriff) are either in the County DB Plan or a 401K plan with a 1 for 1 match up to 7% of employee contributions.

The above pension benefits are provided for in collective bargaining agreements, non-union benefits policies and employment agreements. As part of the transition, the Board of Commissioners will adopt a resolution that establishes Calhoun County as the employer for the CCRC divisions of MERS. The divisions will be tracked separately as far as funded ratios and employer contributions, so that all costs will appropriately be charged against transportation funds.

Legal Counsel

The County has a full-time Corporation Counsel on staff for general legal counsel and representation. The County also engages outside legal counsel as needed, in areas such as labor relations and specialized topics such as drain/water resources litigation. The County's liability insurance carrier MMRMA also provides legal counsel to represent the County in claims against the County. The CCRC has utilized outside legal counsel exclusively, and so it is expected that the County's Corporation Counsel will be able to assist in road commission related legal issues and thus create some savings in outside legal fees.

Property and Liability Insurance

The County is a member of the Michigan Municipal Risk Management Authority (MMRMA), which is a public entity self-insurance pool that provides liability and property coverage to municipal governmental entities across Michigan. MMRMA has indicated that the CCRC's current coverage through the Michigan County Road Commission Self Insurance Pool (MCRCSIP) can be transferred to the County's policy with MMRMA, and the County will ensure this transition happens smoothly effective November 1, 2012.

Facilities/Grounds Maintenance

Both the County and the CCRC currently maintain our facilities and grounds with a combination of staff and contractors. Initial discussions indicate the possibility for there to be some savings in this area due to consolidation and sharing of services and contracts.

Information Technology

The CCRC has one full-time Technical Assistant and one Intern who support the CCRC's IT networking and software systems, maintain the CCRC's website and integrated applications, and manage its social media presence. The County has an IT department of four, led by an IT Manager. The County has a centralized IT support model that will likely support the CCRC's IT needs as well, with the transfer or addition of one IT staff whose responsibilities will likely include support of other County departments and applications as well. This additional position is already being included in the County's IT Budget submission.

Purchasing

The CCRC has no dedicated purchasing staff, but rather purchasing duties are shared. These duties should be absorbed by the County. The County has one Purchasing Coordinator. It is expected that the CCRC's purchases will follow the County's Purchasing Policy after November 1, 2012, and that the County's staff may become the authorized purchasing agent for the CCRC under our centralized purchasing system.

Receptionist

The CCRC has not filled a vacant receptionist position, and so front office duties are currently being filled on a rotation basis by SEIU staff. Due to the physical location of current CCRC offices, it is not practical for the County to absorb this function. The important duties of greeting the public and communicating with field staff will need to be considered as part of the review of job descriptions and staffing of office positions.

Parks

Calhoun County owns three parks—Historic Bridge Park, Ott Biological Preserve, and Kimball Pines. The Calhoun County Parks are currently managed by the County Road Commissioners, which also act as the County Parks Trustees Board pursuant to MCL 123.66. The Parks Trustees have the “management and control” of the parks and hold in trust for the county the title to any real estate purchased by the county (or gifted to it) for park purposes. If the Road Commission is dissolved, the County Board of Commissioners will need to either create a Parks Commission or appoint members of the Board of Commissioners to a new Parks Trustees Board, with both options requiring a resolution, before November 1, 2012. The CCRC staffs the parks management function with one Environmental Services Coordinator, who also manages solid waste management and other projects relating to natural resources and the environment. Teamsters employees and contractors handle park maintenance and grounds upkeep. The County also has three different master plans dealing with park related issues. A Recreation Plan was adopted in February of 2009. A Trailway Master Plan was developed in July of 2006. A Parks and Recreation Master Plan was developed for the 2002 – 2007 time-period. All three County parks are currently in a state of transition, and it is recognized that updated plans for managing them, and the related staffing/contracting requirements, will be needed soon. The County and CCRC will also continue discussions with local townships and the Calhoun County Conservation District regarding coordination of all current parks and new parks created by Enbridge following the July 2011 oil spill impacting the Kalamazoo River and surrounding land.

Public Works

The County will need to pass a resolution before November 1, 2012, appointing a new Board of Public Works.

Solid Waste

The CCRC's solid waste activities are coordinated by one Environmental Services Coordinator, who had multiple other duties. The County has a County-wide Solid Waste Plan and collects fees from the Convis Township landfill as part of that plan and a related Agreement between BFI (and its successor) and the County. There is also a Solid Waste Advisory Committee appointed by the County Board of Commissioners.

Engineering, Inspections, Permitting

The CCRC has one countywide Permit Agent who also serves as the Address Administrator for the County Address Ordinance. The CCRC has one required certified Engineer for all civil and construction engineering tasks and projects, with additional duties including preparing grant proposals and applications for Federal Aid and state funding. The CCRC has one Construction Inspector for work performed on the county road system. This position also acts as the right-of-way agent to ensure safety along roadways, and makes recommendations to supervisors/coordinators about quality control. These specialized functions are not ones the county could absorb. There will, however, be discussions about whether there can be any cost savings with the transition due to leveraging the expertise to assist with other county departments (for example, the Office of the County Water Resources Commissioner currently contracts all engineering services for drain projects).

Transportation Planning

Continued and more formal long-term planning and budgeting for maintenance and improvement of county roads and bridges will be an initial key focus, with the nearly impossible task of meeting road improvement needs with limited revenues. The CCRC already has taken numerous steps toward this end, and has many tools to reference, including a Service Request Procedure and on-line database tracking system, an inventory of recommended work needed on many of the 87 bridges, Pavement Surface Evaluation and Ratings and calculated preventative maintenance and reconstruction costs for more than 1,300 miles of county roads, a seven-year Primary Road Sealcoat Plan (2011-2017) and annual patching plans by township.

County Funding

The County currently provides no General Fund appropriation to support the operations of the CCRC. If the duties and responsibilities are absorbed into a County Roads Department, the Board of Commissioners would make it clear in the resolution that the County does not intend to provide any General Fund support. The Board will also direct the Administrator/Controller to ensure that all unfunded pension and post employment benefit obligations are tracked separately from the County's and paid for out of road funds, so that such obligations do not become liabilities of the County's General Fund.

The resolution transferring power will also indicate the Board of Commissioners intent to maximize funding for transportation priorities by reducing administrative and operational costs, by considering ways to enhance revenues, and by implementing long term budgeting processes. The resolution will also state that the Board will comply with Article IX Section 9 of the Michigan Constitution, requiring that transportation related fees and tax revenues must be used exclusively for transportation purposes and not for other general operations of the County. This commitment to ensuring road funding is spent only on transportation related activities and not other County operations does not, however, preclude the County from allocating direct and indirect service related charges consistent with the treatment of other County departments according to our Cost Allocation Plan.

APPENDIX 49

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR INGHAM COUNTY

THE COUNTIES OF INGHAM,
JACKSON, and CALHOUN, Municipal
corporations and bodies politic and corporate,

Plaintiffs,

Case No. 15-432-NZ

-v-

Hon. Rosemarie E. Aquilina

Plaintiffs' Motion for Partial
Summary Disposition as to
Liability

THE MICHIGAN COUNTY ROAD COMMISSION
SELF-INSURANCE POOL, an unincorporated voluntary
Association,

Defendant.

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**PLAINTIFFS' MOTION FOR PARTIAL
SUMMARY DISPOSITION AS TO LIABILITY**

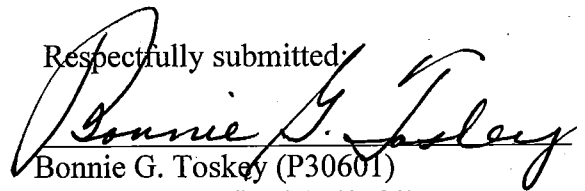
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MOTION FOR PARTIAL
SUMMARY DISPOSITION AS TO LIABILITY

Plaintiffs, the Counties of Ingham, Jackson and Calhoun, respectfully move for partial summary disposition under MCR 21.116(C)(9) and (10) as to the issue of liability for reasons more particularly detailed in the accompanying Brief in Support of Motion for Summary Disposition.

Dated: April 13, 2016

Respectfully submitted,



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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR INGHAM COUNTY

**THE COUNTIES OF INGHAM,
JACKSON, and CALHOUN,** Municipal
corporations and bodies politic and corporate,

Plaintiffs,

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Hon. Rosemarie E. Aquilina

-v-

**Brief in Support of Motion for
Partial Summary Disposition as
to Liability**

**THE MICHIGAN COUNTY ROAD COMMISSION
SELF-INSURANCE POOL,** an unincorporated voluntary
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Defendant.

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BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY DISPOSITION

AS TO LIABILITY

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Factual Summary

[**Note:** The following iteration is based on allegations of the Complaint admitted in the Answer. Where the Answer admits an allegation in part, every effort has been made to limit the summary to the aspects of the Complaint that are admitted, or to clarify whatever is disputed.]

Defendant MCRCSIP is a statutory association¹ of Michigan county road commissions formed in 1983 and governed by contract (Declaration of Trust dated April 1, 1984—Complaint Ex. 1), which provides pooled self-insurance coverage *inter alia* for General Liability, Auto Liability, Road Liability, Trunkline Automobile Liability, Property & Physical Damage. The MCRCSIP is governed by a board of directors (*id.*, ¶5) elected by the members at large.

Each Plaintiff County's respective Road Commission became a member of MCRCSIP by executing an Interlocal Agreement and Trust Agreement, by which they accepted the Declaration of Trust: Jackson County Road Commission (JCRC) on March 7, 1984; Ingham County Road Commission (ICRC) on June 10, 1985; Calhoun County Road Commission (CCRC) in 1984 or 1985 (*id.*, ¶6). However, on February 14, 2012, while HB 5125 and HB 5146 were pending in the Michigan legislature, MCRCSIP, through its Administrator (Complaint Ex. 2), notified the Ingham County Road Commission that, in the event Ingham County transferred the functions of the ICRC in house to the Ingham County Board of

¹ Plaintiffs' Complaint alleges that MCRCSIP is a "voluntary, unincorporated" association and where it "subsists by virtue of contract"; in its answer, without explanation contrary to MCR 2.111(D), MCRCSIP disputes the precise nature of its structure and the basis for its existence. Because the outcome of this lawsuit is not dependent on MCRCSIP's organizational properties—it admits it is a juristic "person" per MCL 8.31 and MCR 2.201(C)(3) capable of suing and being sued, and that the Declaration of Trust governs its operations—Plaintiffs see no reason to get distracted by this immaterial dispute.

Commissioners (ICBC), MCRCSIP would continue to provide only Road Liability Coverage and Physical Damage coverage for road vehicles, but would not continue to provide Auto Liability or Trunkline Automobile Liability coverage.

On February 21, 2012, the Legislature adopted, and the Governor signed into law, both HB 5125 and HB 5126, as 2012 PA 14 (now MCL 224.6) and 15 (now MCL 46.11) respectively, each statute was given immediate effect. On February 28, 2012, MCRCSIP through its Administrator (Complaint Ex. 3), notified the ICRC that on February 23, 2012, the MCRCSIP Board of Directors approved apportionment of the April 1, 2012 contribution. The ICRC was provided a breakdown of its proposed invoice for the cost of insurance coverage for April 1, 2012 – March 13, 2013. Defendant's Administrator clarified that should the Ingham County Board of Commissioners (ICBC) avail itself of its authority under MCL 224.6(7) and MCL 46.11(s) by transferring to itself the functions of the ICRC, MCRCSIP would not offer EPLI/Public Officials D&O (directors', officers' and public officials' liability) coverage, nor Crime/Employee Dishonesty coverage as it had previously done. However, the Administrator stated MCRCSIP would continue to make available General Liability, Auto Liability and Excess Umbrella coverages to Ingham County for road operations only.

MCRCSIP, through its Administrator, then made the following statement of intent regarding refunds to the ICRC on February 28, 2012:

My last comment is with respect to the right to be included in MCRCSIP Refunds. Our Board currently has a policy that states that any Member leaving the Pool loses their right to participate in future refunds. We currently have open years for liability beginning in 2002. **However, our Board has said that it is their intent to transfer the Road Commission's right to refunds to the County if their Membership in the Pool is uninterrupted.** (emphasis added) (see Complaint Ex. 3)

ICRC was assessed a final premium for the fiscal year April 1, 2012-March 31, 2013 to MCRCSIP, which the ICRC paid in full on April 13, 2012, via check # 98827, in the amount of \$400,716.00 in reliance on the MCRCSIP Administrator's February 28, 2012 letter.

On April 24, 2012, the ICBC, proceeding under MCL 224.6(7) and MCL 46.11(s)—and in reliance on the MCRCSIP Administrator's February 14 and 28, 2012 communication (Complaint Exs. 2 and 3)—after the requisite two (2) public hearings under MCL 224.6(9) adopted Resolution #12-23 (Complaint Ex. 4a) dissolving the appointed ICRC, and transferring all powers, duties and functions of the road commission to the ICBC. The Calhoun County Board of Commissioners followed suit with respect to the CCRC on September 20, 2012 and the Jackson County Board of Commissioners did likewise with respect to the JCRC on January 15, 2013.

On May 29, 2012, the MCRCSIP Board of Directors, through its Board Chairman, sent a letter to the Members of MCRCSIP outlining his concerns resulting from the loss of members from the insurance pool if County Commissioners were to exercise their newly created statutory authority under MCL 224.6(7) and MCL 46.11(s) to transfer the powers and duties of appointed county road commissions to county boards of commissioners (Complaint Ex. 5). In that letter, MCRCSIP's Board Chairman stated, "...your Board of Directors unanimously passed a motion at its November 10, 2011 meeting to recommend that our Members allow counties with road responsibilities to become Members of MCRCSIP." *Id.*, ¶14. Attached to the Chairman's letter were two resolutions for consideration by the Members to vote on at their upcoming annual meeting on July 19, 2012, including Resolution "B" providing for amendment to the MCRCSIP Declaration of Trust and By-Laws to allow "counties that have assumed the powers and duties provided by law to county road commissions" to be members of

our Pool. All three Plaintiff Counties were misled into believing the right to excess premium refunds and continued membership in the Insurance Pool were not in jeopardy².

On May 29, 2012, MCRCSIP, through its Administrator, sent the ICRC an e-mail with two documents attached: "Agreement for Cancellation of Insurance" and "Agreement for Withdrawal From Michigan County Road Commission Self-Insurance Pool." (Complaint Ex. 6) (*id.*, ¶16). MCRCSIP notified the Ingham County Finance Director that it would not refund the balance of the April 13, 2012 premium paid in full (\$400,716.00) for the 2012/2013 Insurance Policy covering the one full year period of April 1, 2012 – March 31, 2013, unless both Agreements as submitted by MCRCSIP on May 29, 2012 were executed. In order to avoid losing \$400,716 and to get its refund, ICRC then executed both Agreements under protest on May 31, 2012 (Complaint Ex. 7a). The Calhoun and Jackson County Road Commissions were also pressured by MCRCSIP to sign identical agreements, on October 23, 2012 and January 16, 2013, respectively (Complaint, Exs. 7b and 7c). All three of the "Agreements for Withdrawal From Michigan County Road Commission Self-Insurance Pool" included the following critical provision in the final paragraph:

Limited Purpose of this Agreement. The sole purpose of this Agreement is to effectuate the termination of the Commission's membership from MCRCSIP as of 12:01 a.m. on June 1, 2012 [Ingham] [January 16, 2013 – Jackson] [November 1, 2012 – Calhoun], **and not to affect or impact in any way any other terms or conditions contained in the Declaration of Trust – Inter-Local Agreement, or By-Laws.** [*emphasis added*]

On June 1, 2012, Ingham County, through its County Finance Director, protested the action of MCRCSIP to disallow continued membership in the Insurance Pool (Complaint Ex.

² In its answer, MCRCSIP denies this allegation "in the manner and form alleged", but, again in violation of MCR 2.111(D), fails to state what it contends is correct in "manner and form". As a dispute over form is not a dispute over truth, this point is considered admitted. MCR 2.11(E)(1).

8), but MCRCSIP steadfastly refused to alter its decision. Then, on June 25, 2012, MCRCSIP through its Administrator (Complaint Ex. 9), reversed its stated intent of February 28, 2012, “to transfer the Road Commission’s right to refunds to the County if their Membership in the Pool is uninterrupted...” (see Complaint Ex. 3) and notified Ingham County as follows (*id.*, ¶24):

However, MCRCSIP’s Board confirms its prior advice that no refund of surplus equity that otherwise might have been afforded to the former ICRC will be made available to any entity, including Ingham County. Pursuant to its long-standing policy, **the Board does not refund surplus attributable to any Member that has withdrawn from the Pool.** [*emphasis added*]

At the Annual Membership Meeting on July 19, 2012, not surprisingly, the Members of MCRCSIP, who stood to gain financially by the outcome of the vote, rejected its Board of Directors’ recommendation from May 29, 2012, to “allow counties with road commission responsibilities to become Members of MCRCSIP”. (see Complaint Ex. 5) (*id.*, ¶25). MCRCSIP subsequently concluded that, by statutorily abolishing their respective road commissions, the Counties of Ingham, Jackson, and Calhoun effectively withdrew their respective road commissions from membership and participation in the MCRCSIP, and in so doing, “forfeited” any entitlement to the ten years of refund of surplus equity going back to the 2002-2003 year (*id.*, ¶26).

This new position stood in marked contrast to the situation as of February 28, 2012, at which point MCRCSIP had “open years for liability beginning with 2002”, which meant that members had in fact overpaid assessments for all such years and were in a position to participate in and benefit from the calculation of refunds of excess assessments as each such insurance year’s potential liability was actuarially closed (see Complaint Ex. 3). Up through February 28, 2012, MCRCSIP had a longstanding pattern and practice of refunding excess assessments to all Members, based on unused excess reserves remaining at the actuarial closing

of an insurance fiscal year, which was refunded or paid back ten years later (*id.*, ¶28). For many years, MCRCSIP had calculated refunds of unused reserves for each closed actuarial year by paying a pro rated amount to each Member, based on a fraction consisting of a numerator of the assessment paid by a county and a denominator of total assessments paid by all Member multiplied by the surplus or unused reserve for each such particular insurance year.

On July 17, 2014, through counsel, each of the Counties of Ingham, Jackson, and Calhoun formally demanded that the MCRCSIP pay to the respective Boards of Commissioners of Ingham, Jackson and Calhoun counties their respective former Road Commission's aliquot share of any premium surplus then held by MCRCSIP, or improperly distributed to the remaining Members of the MCRCSIP for the actuarial years going back to 2002-2003 and recognized by MCRCSIP as being funds paid in excess of reserve requirements imposed by MCL 124.7a (Complaint Ex. 10). Thereafter, MCRCSIP refused to pay any of the Plaintiffs any part of their respective former road commission's aliquot shares of surplus assessment, whether as existing on the effective date of "termination from pool", June 1, 2012, or the date of the various resolutions abolishing each county's road commission, or any other date going back to the 2002-2003 year for which surplus premium refunds had not already been paid (*id.*, ¶32). MCRCSIP thereafter distributed its surplus of assessments paid, including the respective surplus in assessments paid by each Plaintiff's former appointed road commission, to the remaining Members as each actuarial year was closed, each member thereby receiving the excess funds that Plaintiffs' former road commissions had paid as assessment surpluses, amounting to far in excess of \$25,000.00.

Plaintiffs, through their respective legal representatives, continued communications with MCRCSIP and its attorneys in an effort to reach a settlement of differences, but without

success. Plaintiffs have exhausted whatever internal remedies are available within MCRCSI (MCRCSIP actually cleverly contends that plaintiffs never had any internal remedies, because only the dissolved road commissions, and not the counties, were ever members).

After each former road commission signed its respective "Agreement in Recognition of Termination from Pool" (Complaint Exs. 7a, b, and c) in order to receive the refund of the the current year's premium paid (having been involuntarily ejected or terminated from membership when each county legally transferred its road commission's functions to its Board of Commissioners) MCRCSIP refused to pay any of the Plaintiffs their respective predecessor interest's aliquod share of surplus assessments for actuarial years from 2002 through 2011. Because Plaintiff Counties did not voluntarily or otherwise "withdraw" from membership in MCRCSIP, ¶9 of the Declaration of Trust dated April 1, 1984 has no proper application to them.

ARGUMENT

Governing Legal Principles

"Summary disposition under MCR 2.116(C)(9) is proper if a defendant fails to plead a valid defense to a claim." *Village of Dimondale v Grable*, 240 Mich App 553, 564, 618 NW2d 23 (2000). When deciding a motion under MCR 2.116(C)(9), which tests the sufficiency of a defendant's pleadings, the trial court must accept as true all well-pleaded allegations and properly grants summary disposition where a defendant fails to plead a valid defense to a claim. *Id.* "Summary disposition under MCR 2.116(C)(9) is proper when the defendant's pleadings are so clearly untenable that as a matter of law no factual development could possibly deny the plaintiff's right to recovery." *Id.* at 425-426.

Whether a state statutory scheme preempts a decision by an unincorporated private association is a question of statutory interpretation and, thus, a question of law. *Ter Beek v City of Wyoming*, 297 Mich App 446, 452, 823 NW2d 864 (2012)

If material outside the pleadings is considered, MCR 2.116(C)(10) is the appropriate basis for summary disposition. *Silberstein v Pro-Golf of America, Inc*, 278 Mich App 446, 457, 750 NW2d 615 (2008) (“Where a motion for summary disposition is brought under both MCR 2.116(C)(8) and (C)(10), but the parties and the trial court relied on matters outside the pleadings, . . . MCR 2.116(C)(10) is the appropriate basis for review.”). When reviewing a motion under MCR 2.116(C)(10), the Court considers the pleadings, affidavits, deposition admissions, and any other documentary evidence submitted by the parties in a light most favorable to the nonmoving party. *The Cadle Co v City of Kentwood*, 285 Mich App 240, 247; 776 NW2d 145 (2009). A motion for summary disposition under MCR 2.116(C)(10) may be granted where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Campbell v Dep’t of Human Servs*, 286 Mich App 230, 235; 780 NW2d 586 (2009).

A (C)(10) motion must be supported by evidentiarily admissible materials outside the pleadings. MCR 2.116(G)(3), (5) and (6); *Spiek v Dep’t of Transp*, 456 Mich 331, 338; 572 NW2d 201 (1998).

Issue I: Plaintiff Counties of Ingham, Jackson and Calhoun are, as a matter of law, also the Road Commissions of Ingham, Jackson and Calhoun Counties.

Fundamentally, this entire dispute arises because MCRCSIP takes the position that its “former” members, the Road Commissions of Ingham, Jackson and Calhoun Counties, ceased to exist when each of the respective county boards voted to dissolve its appointed road commission and assume the powers and duties thereof in accordance with MCL 46.11 and

224.6(7). Plaintiffs, however, take the position that such action simply resulted in the rights and interests of each respective appointed road commission being absorbed into the County Board, and otherwise continuing unaffected and unchanged.

Two statutes occupy a central place in this controversy. MCL 224.6(7) now provides:

(7) Except as otherwise provided under subsection (5) and subject to the requirement provided in subsection (9), before January 1, 2015, **the powers, duties, and functions that are otherwise provided by law for an appointed board of county road commissioners may be transferred to the county board of commissioners by a resolution** as allowed under section 11 of 1951 PA 156, MCL 46.11. The appointed board of county road commissioners of that county is **dissolved** on the date specified in the resolution adopted under this subsection, and **the county board of commissioners is authorized to receive and expend funds as allowed under 1951 PA 51, MCL 247.651 to 247.675.** *[emphasis added]*

And MCL 46.11(s) now provides:

(s) Before January 1, 2015, by majority vote of the members of the county board of commissioners elected and serving in a county with an appointed board of county road commissioners, pass a resolution that transfers the powers, duties, and functions that are otherwise provided by law for the appointed board of county road commissioners of that county to the county board of commissioners. The resolution is subject to the requirement in section 6(9) of chapter IV of 1909 PA 283, MCL 224.6. The appointed board of county road commissioners of that county is dissolved on the date specified in the resolution adopted under this subdivision, and **the county board of commissioners is authorized to receive and expend funds as allowed under 1951 PA 51, MCL 247.651 to 247.675.** * * * *[emphasis added]*

The Legislature crafted these provisions artfully. Contrary to MCRCSIP's position, the Legislature nowhere provided for the abolition of county road commissions in this situation; it very specifically stated that an "appointed county road commission" would be "dissolved" on the effective date of such a resolution. The reason for this precise distinction is important—County Boards are necessarily elected, not appointed, so when a County Board functions as a county road commission, it cannot be described as an "appointed road commission."

But the Legislature was careful NOT to provide that **any** "road commission" was dissolved, only "the appointed road commission." Immediately, within the same sentence, the

Legislature provided that following such dissolution of “the appointed road commission”, “the county board of commissioners is authorized to receive and expend funds as allowed under 1951 PA 51”, where the Legislature provided *inter alia* for a system of county primary roads. MCL 247.652 and .655, and also other county roads “under the jurisdiction of the board of county road commissioners in each of the several counties of the state”, MCL 247.654. Thus, where a county board of commissioners has absorbed both the duties and powers of an appointed road commission, the county board of commissioners is now the “board of county road commissioners”.

This analysis is consistent with “the fundamental rule” of statutory construction that “every word of a statute should be given meaning and no word should be treated as surplusage or rendered nugatory if at all possible.” *Pittsfield Charter Twp v Washtenaw Co*, 468 Mich 702, 714; 664 NW2d 193 (2003). The provisions of a statute must be read in the context of the entire statute in the interest of producing an harmonious whole. *Burton v Reed City Hosp Corp*, 471 Mich 745, 757; 691 NW2d 424 (2005).

Thus, Plaintiffs are the successors to not only the powers and duties, but the ownership (on behalf of the citizens of the county) and control of highways and all other assets of their former appointed road commissions, as MCL 224.6(7) and MCL 46.11(s) provide. Moreover, this would have been true even before 2012 PAs 14 and 15, as demonstrated by *Loyer Education Trust v Wayne Co Rd Comm’n*, 168 Mich App 587; 425 NW2d 189 (1988), where the Court of Appeals’ caption identifies the defendant, in full³, as “WAYNE COUNTY ROAD COMMISSION, the Board of Wayne County Road Commissioners, Grace R. Hampton,

³ As shown on the Court of Appeals docket entries, available on the internet at: http://courts.mi.gov/opinions_orders/case_search/pages/default.aspx?SearchType=1&CaseNumber=93959&CourtType_CaseNumber=2

Claude Dukes, and Harold H. Bondy, individually, jointly and severally, now County of Wayne, its successor in interest, Defendants-Appellees”, and where the defendant was represented by Wayne County Corporation Counsel, 168 Mich App at 588. The former appointed ICRC, JCRC, and CCRC were not abolished, but absorbed; their assets were not extinguished but, rather, were transferred to their successors in interest, the Boards of Commissioners of Plaintiff Counties.

Were this not so, existing county roads would have suddenly been without a responsible agency to maintain and repair them—something the Legislature was at pains to avoid by expressly referencing 1951 PA 51. Similarly, but for the Counties becoming the successors of their appointed road commissions, existing road construction contracts would have been unconstitutionally impaired, US Const, art 1, §10; Const 1963, art 1, §10, because a key contracting party ceased to exist, and the taxpayers of the affected counties would have ceased, as a body politic, to own all assets of their respective former road commissions, contrary to MCL 45.3, which provides that each organized county shall “purchase and hold real estate for the use of the county, and also MCL 45.4, which provides (boldfaced emphasis added):

All real and personal estate, heretofore conveyed by any form of conveyance to the inhabitants of any county, or to the county treasurer, or the governor of the late territory of Michigan, or to any committee, trustees, or other persons, for the use and benefit of such county, shall be deemed to be the property of such county; and all such conveyances shall have the same force and effect as if they had been made to the inhabitants of such counties by their respective corporate names.

All rights of property belonging to Plaintiffs’ former appointed road commissions thus devolved upon the respective county boards, for the benefit of the inhabitants of each Plaintiff County. The MCRCSIP’s notion that, somehow, the dissolution of the Plaintiff Counties’ appointed road commissions had the effect of leaving no one possessed of those commissions’ former property rights is thus seen as delusional and unsustainable as a matter of law.

Nor does anything suggests the Legislature intended that such an abandonment of property rights flow from its authorization to County Boards to absorb their appointed road commissions if they saw fit to do so. And all such untoward consequences are avoided by recognizing that the Plaintiff County Boards of Commissioners simply succeeded in all respects to the status of road commissions, albeit not appointed road commissions. Appointed or elected, each Plaintiff County Board is its respective county's road commission, is the successor to all rights of its former appointed road commission, and had the same right to become a member

In fact, until 2012 PAs 14 and 15, MCL 224.7 prohibited a member of a County Board of Commissioners from holding the office of road commissioner ("No member of the board of supervisors shall be eligible to the office of county road commissioner, and such offices shall not be held by the same person at the same time."). However, once the Legislature made provision in MCL 224.6(7) and MCL 46.11(s) for County Boards to absorb the functions and duties of their appointed road commissions, that proscription necessarily changed; the clear intent of the Legislature was that County Commissioners may now also function as road commissioners. See *Ridenour v Bay Co*, 366 Mich 225, 246-247; 114 NW2d 172 (1962). Again, any other reading of the statutes would mean that Plaintiff Counties are without lawful authority to perform the functions of county road commissions.

Defendant argues, however, that "the Pool's Bylaws limit membership to Road Commissions." What Defendant fails to acknowledge is that each Plaintiff County Board of Commissioners IS for all legal purposes now [also] a "Road Commission".⁴ As such, each is

⁴ One is reminded of an episode of "The Andy Griffith Show", where Deputy Barney Fife has taken into custody a motorist caught speeding through Mayberry. On being brought to the Sheriff's Office, the motorist meets Sheriff Andy, who refuses to overrule his deputy. The

entitled to join—or continue as a member of—Defendant MCRC SIP, or any other association that limits membership to “Michigan County Road Commissions”.

Moreover, Defendant is not the final authority on how its Bylaws are construed. When called upon to construe a bylaw or internal regulation of a voluntary association, the principles applicable to statutory construction properly obtain—meaning that the association is not the sole judge of the meaning or interpretation of its own rules. Thus, in *Slatterly v Madiol*, 257 Mich App 242, 250; 668 NW2d 154 (2003) the Court held (boldfaced emphasis added):

Bylaws are generally construed in accordance with the same rules used for statutory construction.^{FN9} Under these rules, “ ‘statutes are presumed to operate prospectively unless the contrary intent is clearly manifested.’ ”^{FN10} In this case, the language of the amendment contains no manifestation of intent to effect retroactive application. Moreover, the applicable provision of the amendment states that no barrier to a driveway or parking space “shall be erected” without the board’s permission, and “[t]he word ‘shall’ in a statute indicates a prospective operation unless accompanied by other words indicating a contrary intention.”^{FN11} There are no words indicating a contrary intention in the amended Article 26. Therefore, we conclude that the trial court erred in applying the amended Article 26 retroactively to the Madiols’ erection of a barrier in the disputed area of lot 56.^{FN12}

^{FN9} 8 Fletcher, Cyclopaedia Corporations, §4195, p. 792.

^{FN10} *Franks v White Pine Copper Div*, 422 Mich 636, 671; 375 NW2d 715 (1985), quoting *Selk v Detroit Plastic Products*, 419 Mich 1, 9; 345 NW2d 184 (1984).

^{FN11} *People v Lowell*, 250 Mich. 349, 364–365, 230 N.W. 202 (1930).

^{FN12} Even if the amended Article 26 had been applicable retroactively, **we note that the trial court erred in finding it reasonable as a matter of law.** Under MCL 455.12, the stockholders have the power to enact bylaws to regulate the management of the property, and this provision specifically permits bylaws that “prohibit and abate all nuisances” and “regulate the erection of buildings on the lots assigned and leased to the stockholders.” However, MCL 455.12 also requires the bylaws to be reasonable. In our view, the Madiols raised a valid question respecting the underlying propriety of the board’s actions, particularly

motorist demands to speak to the Mayor; Andy calmly turns over the sign on his desk reading “Sheriff”, and on the new side it reads “Mayor.” Frustrated, the motorist demands to be taken before a justice of the peace; again, Andy, with cool aplomb, flips the sign yet again to reveal “Justice of the Peace.” The Ingham, Jackson, and Calhoun County Boards of Commissioners are in all legal respects, the Ingham, Jackson, and Calhoun County Road Commissions.

in light of its close relationship with Robert and Thomas Slatterly. We reach this conclusion because **the “sole discretion” language of Article 26, as amended, is quite draconian.** While the Madiols’ claim that a finding in Shorewood’s favor could lead to future encroachments, such as the designation of their entire lot as a parking lot, is somewhat specious, they do raise a question of fact regarding whether the enactment of the amendment was reasonable. Accordingly, regardless of whether the amended Article 26 applied retroactively, remand would have been necessary to allow the finder of fact to make this determination. See *Highland Park Ass’n v Boseker*, 169 Mich 4, 9; 135 NW 106 (1912) (reasonableness of bylaws is a question of fact).

Here, in any event, neither the MCRCSIP Bylaws nor its Declaration of Trust purports to provide a definition of “county road commission” distinct from that in the Michigan Compiled Laws; it was assumed and understood that whatever statutory definition existed was being borrowed for the purposes of the Pool. Article II of the Pool’s Bylaws recites that “municipal corporations” is defined to include “road commissions” by PA 1951, No 35, and then provides that “these By-laws govern a road commission self-insurance pool”. Article III then adds that “The Pool shall be comprised of county road commissions of the State of Michigan which are authorized and approved under Section 1 of Act 138, PA 1982, as amended (MCL 124.1; MSA 54081), to enter into an agreement to pool their loss exposures and which have executed the Pool Trust Agreement..” Because Plaintiff County Boards of Commissioners are now authorized by MCL 46.11 and 224.6(7) to do whatever an elected or appointed road commission may do under MCL 124.1, Plaintiff Counties were (and are) not barred from either becoming or remaining members of MCRCSIP or receiving refunds of the overpayments made by their predecessors in interest.

This analysis also shows why Defendant’s further contention, that Plaintiff Counties’ former appointed road commissions did not assign their contract rights (whether as against Defendant or any other person or entity), is flatly wrong and misplaced. No formal or informal

contractual “assignment” was necessary; each Plaintiff County Board of Commissioner succeeded, *by law*, to all “powers, duties and functions” of their former road commissions, MCL 224.6(8); MCL 46.11(s). For identical reasons, Plaintiffs are not proceeding on any third party beneficiary theory, so any argument attacking that “straw man” is equally misdirected.

Previously, Defendant contended that for Plaintiff Counties’ Boards of Commissioners to succeed to the rights of their former appointed road commissions would “impair the obligation of contracts” in violation of Const 1963, art 1, §10. Quite the contrary. The Legislature expressly provided that the County Board of Commissioners would thereby assume “the powers, duties and functions that are otherwise provided by law for the appointed board of road commissioners of that county”, MCL 46.11(s). That simply replaces the former appointed road commissions with their respective County Boards of Commissioners, and does not impair the obligation of any contract with a former appointed road commission, since the County Board must, by statute, now fulfill all such obligations. Correlatively, Plaintiff County Boards also succeeded to all contract rights of their former appointed road commissions.

In *Graham v Folsom*, 200 US 248; 26 S Ct 245; 50 L Ed 464 (1906), Abbeville County South Carolina’s Township 96 had issued bonds, the validity of which was previously upheld in *Folsom v Township Ninety Six*, 159 US 611; 16 S Ct 174; 40 L Ed 278 (1895). The South Carolina legislature then abolished Township 96, and reassigned its territory to Greenwood County, which refused to raise funds to pay the bonds. The bondholders sued, and the Supreme Court held that, although South Carolina was at liberty to create or abolish municipalities as in its judgment seemed appropriate, Greenwood County, as successor in interest to Township 96, was bound to honor the bonds and impose taxes to pay them:

The power of the state to alter or destroy its corporations is not greater than the power of the state to repeal its legislation. Exercise of the latter power has been repeatedly held to be ineffectual to impair the obligation of a contract. The repeal of a law may be more readily undertaken than the abolition of townships, or the change of their boundaries or the boundaries of counties. The latter may put on the form of a different purpose than the violation of a contract. But courts cannot permit themselves to be deceived. They will not inquire too closely into the motives of the state, but they will not ignore the effect of its action. The cases illustrate this. There may, indeed, be a limitation upon the power of the court. This was seen and expressed in *Heine v. Levee Comrs.* 19 Wall. 655, 22 L. ed. 223, and *Meriweather v. Garrett*, 102 U. S. 498, 26 L. ed. 197. There is no limitation in the case at bar. A tax has been provided for and there are officers whose duty it is to assess and collect it. A court is within the line of its duty and power when it directs those officers to the performance of their duty; and their objects upon which the tax can be laid. It is the property within the boundaries of the territory that constituted Township Ninety-six. [200 US at 253.]

So, by recognizing Plaintiff Counties, like Township 96, as “successors in interest” to their former appointed road commissions, no contractual obligation is impaired. Were this Court to hold that Plaintiff Counties have not so succeeded, then the constitutional proscription against impairment of contracts would be contravened.

Here, a familiar principle of constitutional law leads to easy resolution of any difficulty: if one interpretation of a statute leads to grave constitutional difficulties, and another creates no such problems, then the latter interpretation is correct. *Evans Products Co v State Bd. of Escheats*, 307 Mich 506, 533–535; 12 NW2d 448 (1943). “In cases of [constitutional] doubt, every possible presumption, not clearly inconsistent with the language and the subject matter, is to be made in favor of the constitutionality of the act.” *Sears v Cottrell*, 5 Mich 251, 259 (1858). “The rule is too well settled to require citation of authority that if a statute may reasonably be so construed as to avoid constitutional objections, it is the duty of the court to adopt such construction.” *Shapero v State Dept. of Revenue*, 322 Mich 124, 137; 33 NW2d 729 (1948) “ ‘Statutes will be construed in the most beneficial way which their language will

permit to prevent absurdity, hardship or injustice; to favor public convenience and to oppose all prejudice to public interests.' 2 Laws' Sutherland Statutory Const. (2d Ed.) § 490." *Id.*, 322 Mich at 139. Plaintiffs construction of MCL 224.6(7) and MCL 46.11(s) to make themselves successors to their former appointed road commissions for all purposes is therefore the proper one.

Issue II: Defendant's distribution of excess premiums paid by Plaintiffs' predecessors in interest to and among MCRCSIP's other members, including funds that, following MCRCSIP's standard pro rata methodology, would have gone to a Plaintiff County's former appointed road commissions, as a matter of law contravenes Const 1963, Art 9, §18 and is a breach of contract, and requires such shares be paid to Plaintiffs.

By converting Plaintiffs' aliquod shares of surplus premiums for its remaining Members, Defendant has breached Const 1963, art 9, §18 by using the credit of Ingham, Jackson, and Calhoun counties to aid and supplement the financial interests of the other Members of MCRCSIP.

The Michigan Constitution of 1963, art 9, §18, provides that "[t]he credit of the state shall not be granted to, nor in aid of any person, association or corporation, public or private, except as authorized in this constitution." The prohibition against the lending of credit applies to counties as political subdivisions and instrumentalities of the state. *Advisory Opinion on Constitutionality of 1986 PA 281*, 430 Mich 93; 422 NW2d 186 (1988); *Oakland Co Drain Comm'r v Royal Oak*, 306 Mich 124, 142; 10 NW2d 435 (1943). The purpose of this section is to assure that the state and its political subdivisions, which generally cannot borrow, do not accumulate unauthorized debts by guaranteeing the debts of others. *Advisory Opinion re Constitutionality of 1966 PA 346*, 380 Mich 554, 564; 158 NW2d 416 (1968).

Our Supreme Court has held that where the state acquires or transfers something of value, Const 1963, art 9, § 18 is not violated. *Alan v Wayne County*, 388 Mich 210, 325; 200

NW2d 628 (1972). Const 1963, art 9, § 18 is violated only when the state creates an obligation legally enforceable against it for the benefit of another. *Sprick v Regents of the Univ of Mich*, 43 Mich App 178, 190-191; 204 NW2d 62 (1972); *Petrus v Dickinson Co Bd of Comm'rs*, 184 Mich App 282, 297; 457 NW2d 359 (1990).

But aside from directly lending its credit, where a municipality transfers property, there must generally be a fair exchange of value for value. *Alan v Wayne Co*, 388 Mich. 210, 325, 330; 200 NW2d 628 (1972)⁵. A transfer of property by a governmental body that is not supported with adequate consideration may violate art 9, § 18:

There is another means by which tax increment bonds might be found outside the definition of a loan of credit, as contemplated in art 9, § 18. If the state or a municipality receives value in return for what it gives away, there is no loan of credit under the constitution. We articulated this rule in *Alan, supra*, p 325:

“Michigan case law interpreting Const 1963, art 9 § 18 is neither ample nor precise. It is clear the state or its subdivision the county cannot give anything away without consideration. (Citations omitted.) Note that the constitution as far as the state and county are concerned makes no difference between a public and a private purpose in this regard. * * *”

Normally, “the Legislature or Executive Branch is the judge of what is fair value in matters in which it is concerned.... Their judgment, however, is subject to judicial review for abuse of judgment.” *Id.*, p 330.

Advisory Opinion of 1986 PA 281, supra at 126-127. As this passage indicates, it is for the legislative and executive branches of government to determine if value was obtained, but courts will intervene if an abuse of discretion is shown.

Here, the legislative branch—the Boards of Commissioners of Ingham, Jackson and

⁵ In prior arguments, Defendant has completely ignored this alternative aspect of Const 1963, art 9, §18, and acted as though Const 1963, art 9, §18 deals solely with lending of credit. Plaintiffs have not framed their claim as involving the “creation of legally enforceable obligations against them for the benefit of another” so lending credit is not at issue. It is the failure of Plaintiffs to receive valuable consideration in exchange for putative agreements to forfeit their successor rights to refunds for actuarial years 2002-2012 that is the quiddity of Count I of the Complaint.

Calhoun Counties—has concluded that value was not obtained. Obviously, if a county were to make a valuable grant for next to no consideration, the courts would be *forced* to regard that not as an exercise of discretion, but an abuse of discretion. *Alan, supra* at 326-327. In exchange for signing the two termination agreements, none of Plaintiff Counties' former appointed road commissions received any consideration, still less valuable consideration⁶. Yet as a result, MCRCSIP and its members used these invalid agreements as pretext to steal for themselves money paid by and belonging to the former road commissions of Plaintiff Counties, to which refund rights each Plaintiff County Board of Commissioners legally succeeded under the provisions of MCL 224.6(7) and MCL 46.11(s).

Furthermore, MCL 124.5 *et seq.*, the statute forming the source of authority for and the basis for MCRCSIP's creation and continued existence, does not permit retention of such excess funds. To the contrary, MCL 124.7(a)(ii) requires that the intergovernmental contract specify "the amount of cash reserves to be set aside for the payment of claims", and likewise, in subsection (a)(iv), requires the intergovernmental contract to detail "the amount of aggregate excess insurance coverage to be maintained or the amount of the deposit of unimpaired surplus to be maintained with the state treasurer." Because the Pool could not exist without this

⁶ MCRCSIP may contend that each of the former appointed road commissions, in exchange for signing the termination agreements (Complaint, Exs. 7a, b and c), was given a refund of unused premiums for the year of termination, 2012-2013 for Ingham and Calhoun Counties, 2013-2014 for Jackson County. But Plaintiffs' predecessors were each entitled to a refund of prepaid premiums for insurance coverage that was no longer being provided—MCRCSIP could hardly terminate insurance coverage for which payment had been tendered in advance and yet retain the unused portion of the premiums. Thus, MCRCSIP's agreement to refund *unused* premiums for the final year of membership was not consideration for any contractual agreement, because MCRCSIP had a prior legal obligation to restore such funds to Plaintiffs at any rate. 46th *Circuit Trial Court v Crawford Co*, 476 Mich 131, 158; 719 NW2d 553 (2006) ("Under the preexisting duty rule, it is well settled that doing what one is legally bound to do is not consideration for a new promise." *Id.* at 740-741. Such a contract would appear to fail for lack of consideration. *Puett v Walker*, 332 Mich 117, 122; 50 NW2d 740 (1952).").

statutory authorization, the statute, being in derogation of common law, must be strictly construed, *School Dist of City of Lansing v City of Lansing*, 260 Mich 405, 419; 245 NW 449 (1932), and **therefore the Pool cannot maintain any surplus or excess funds beyond what is identified in its Declaration of Trust.**

Moreover, the very structure of the Pool, even though in this respect ostensibly permitted by MCL 124.7(b)(ii) (which allows the intergovernmental contract to provide for “levying and collecting assessments for deficiencies”), makes each member potentially liable for the debts of other members, and that is a further infringement of Const 1963, art 9, ¶18. In *City of Tyler v Texas Employers’ Insurance Ass’n*, 288 SW 409 (Tex Comm’n App, 1926, judgm’t adopted), the Texas Commission of Appeals considered whether an incorporated municipality might subscribe to the Texas Employers’ Insurance Association (TEIA) to cover possible workers’ compensation liabilities under VTCS art. 8308, §7 (authorizing any employer may be subject to workers’ compensation laws to subscribe to TEIA). The court noted that the TEIA—like MCL 124.7(b)(ii), required its members to pay a proportionate share of any assessment the TEIA levied to cover its losses and expenses. 388 SW at 411-412.

The *Tyler* court cited two reasons the Texas Constitution, article III, section 52(a)⁷—indistinguishable from Mich Const 1963, art 9, §18 in its substantive effect—prohibited

⁷ Texas Constitution, Article III, §52(a) provides:

Except as otherwise provided by this section, the Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company. However, this section does not prohibit the use of public funds or credit for the payment of assessments on nonassessable life, health, or accident insurance policies and annuity contracts issued by a mutual insurance company authorized to do business in this State.

municipalities from subscribing to such an association. The second reason was that a subscriber to the TEIA was obligated to pay assessments to cover the TEIA's losses, and thus any municipality that subscribed to the TEIA was lending its credit in violation of article III, section 52. *Id.* In *Lewis v Independent School District*, 161 SW2d 450, 452 (Tex, 1942), the Texas Supreme Court reaffirmed the conclusions reached in *City of Tyler*.

Because Plaintiff Counties succeeded to all rights of their former appointed road commissions, Plaintiffs have a right to the *aliquod* shares of excess or surplus funds that MCRCSIP annually distributes for prior years (usually from surplus collected over a decade previously, thus in 2015 Defendant distributed surplus from the 2002-2003 premium year).

Defendant's central argument is that "the Pool never had any of the Counties' money, and the Counties do not 'own' the potential refunds they now seek. See *A&D Development v Michigan Commercial Insurance Mut (After Remand)*, 2014 WL 7338871 (Mich App, December 23, 2014) (summary disposition of multiple claims, including conversion, proper where participants in a self-insured fund did not own surplus premiums as a matter of law)." Plaintiffs have made no claim that they own any part of surplus reserves while funds remain part of reserves for any year of continuing liability exposure.

However, from the time Plaintiff Counties' predecessors in interest (ICRC, JCRC, and CCRC) joined the Pool, MCRCSIP's Board of Directors, upon the closing of all risk for an actuarial year, distributed the surplus or excess reserves from that year to the members in proportion to the premiums each had paid for that year. MCRCSIP has continued to distribute surplus reserves according to the same pattern as each actuarial year closes, except it has

Texas Constitution, Article III, §§60 and 61 are substantially identical, with section 60 pertaining to "counties and other political subdivisions," and section 61 to "cities, towns, and villages."

excluded Plaintiffs from receiving their predecessors-in-interest's shares of such distributions, and MCRCSIP has instead divvied up those predecessors' shares among road commissions whose counties did not exercise their rights under MCL 224.6(7) and MCL 46.11(s).

And that is why the *A&D Case*—an unpublished decision having no precedential value, MCR 7.215(C)(1)—has no application here. Plaintiffs are not claiming a right to a share of MCRCSIP's surplus reserves, but rather are claiming a right to the refund of excess reserves whenever the MCRCSIP Board of Directors closes an actuarial year to which the ICRC, JCRC, or CCRC contributed assessments or payments for insurance coverage and defendant declares a distribution of surplus reserves. At the point where the MCRCSIP Board of Directors determines there is an excess of reserves and determines to distribute (and not before), the money in dispute ceases to be property of the MCRCSIP or part of its reserves, and becomes a fund to be distributed among those who contributed to its creation (that is, those whose contributions form any part of the surplus for the closed actuarial year at issue).

In the *A&D Case*, no such distribution had been declared by the self-insurance pool's board of directors, so the funds remained part of the pool's reserves. The money having been paid into the pool voluntarily, there could be no conversion, because the party paying the premium had no right to a refund unless and until a distribution of surplus reserves might be declared, which never happened in that case.

Moreover, the habitual declaration of distributions of excess reserves from closed actuarial years by MCRCSIP's Board of Directors was, pursuant to Article XII of MCRCSIP's Bylaws, necessarily reflective of an established policy. Article XII of Defendant's own Bylaws, provides that "The Pool Board shall develop procedures for addressing accumulated equity, if any * * *." Distributing surplus reserves from closed actuarial years among those

whose premiums contributed to the surplus was and remains the MCRCSIP's Policy, but it has now deviated so as to deny Plaintiff Counties their predecessors' in interest shares of such distributions. *Ad hoc* determinations, made by remaining members for their own aggrandizement, are antithetical to the by-laws, as well as tainted by conflict of interest.

Where there has been conflict of interest, as well as bad faith, oppression, or other unfair conduct, the association and its members cannot hide behind the finality of any internal process to whitewash themselves of all their sins. In *Dietz v American Dental Ass'n*, 479 F Supp 554, 557 (ED Mich, 1979), the Court held:

Generally, courts are reluctant to interfere with the internal workings of a private association, but if justice and equity require, courts will review the decision of a private association. See *McCreery Angus Farms v. American Angus Association*, 379 F Supp 1008, 1019 (SD Ill, 1974), summarily aff'd, 506 F2d 1404 (CA 7, 1974); *Falcone v. Middlesex County Medical Society*, 34 NJ 582; 170 A2d 791, 796 (1961).

* * * The association must exercise its powers according to its by-laws and constitution; it cannot decide to exclude or expel a member or deny rights of membership for arbitrary, capricious, or discriminatory reasons. See *Hatley v. American Quarter Horse Association*, 552 F.2d 646, 655-56 (5th Cir. 1977) (refusal to register member's horse); *Marjorie Webster Junior College, Inc. v. Middle States Association of Colleges and Secondary Schools*, 139 U.S.App.D.C. 217, 432 F.2d 650, 655-57 (D.C. Cir. 1970), Cert. denied, 400 U.S. 965, 91 S.Ct. 367, 27 L.Ed.2d 384; *McCreery Angus Farms, supra*, 379 F.Supp. at 1010; *Pinsker, supra*, 526 P.2d at 255; *Blende v. Maricopa County Medical Society*, 96 Ariz. 240, 393 P.2d 926, 929 (1964); *Virgin v. American College of Surgeons*, 42 Ill.App.2d 352, 192 N.E.2d 414, 423 (1963); *Falcone, supra*, 170 A.2d at 799; *Kurk v. Medical Society of County of Queens, Inc.*, 46 Misc.2d 790, 260 N.Y.S.2d 520, 525 (1965); *Davidson v. Youngstown Hospital Association*, 19 Ohio App.2d 246, 250, 250 N.E.2d 892, 48 Ohio Op.2d 371 (1969); *Woodard v. Porter Hospital, Inc.*, 125 Vt. 419, 217 A.2d 37, 40 (1966). But see *Elizabeth Hospital, Inc. v. Richardson*, 269 F.2d 167 (8th Cir. 1959), cert. denied, 361 U.S. 884, 80 S.Ct. 155, 4 L.Ed.2d 120 (no cause of action under Arkansas law for denial of membership).

A conflict of interest is a key factor in judicial review to determine whether the association has acted arbitrarily or capriciously or abused its discretion. In *Firestone Tire & Rubber Co v Bruch*, 489 US 101; 109 S Ct 948; 103 L Ed 2d 80 (1989), the US Supreme Court

held that, when evaluating challenges to denials of benefits in actions brought under 29 USC §1132(a)(1)(B), district courts are to review the plan administrator's decision under a de novo standard of review, unless the plan grants discretionary authority to the administrator or fiduciary to determine eligibility for benefits or interpret the terms of the plan. The Court recognized that "if a benefit plan gives discretion to an administrator or fiduciary who is operating under a conflict of interest, that conflict must be weighed as a factor in determining whether there is an abuse of discretion." *Firestone*, 489 US at 115 (internal quotation omitted).

Subsequently, in *Metropolitan Life Insurance Co v Glenn*, 554 US 105; 128 S Ct 2343; 171 L Ed 2d 299 (2008), SCOTUS interpreted the relevant language in *Firestone*, holding that courts should continue to apply a deferential abuse-of-discretion standard of review in cases where a conflict of interest is present, but that courts should take the conflict into account not in formulating the standard of review, but in determining whether the administrator or fiduciary abused its discretion:

We do not believe that *Firestone*'s statement implies a change in the standard of review, say, from deferential to de novo review. Trust law continues to apply a deferential standard of review to the discretionary decisionmaking of a conflicted trustee, while at the same time requiring the reviewing judge to take account of the conflict when determining whether the trustee, substantively or procedurally, has abused his discretion. We see no reason to forsake *Firestone*'s reliance upon trust law in this respect.

Glenn, 554 US at 115-116 (emphasis in original) (internal citations omitted). The Court held that it was not "necessary or desirable" for courts to create special procedural, evidentiary, or burden-of-proof rules to account for conflicts of interest, and that "conflicts are but one factor among many that a reviewing judge must take into account." *Id.* at 116-117.

In this instance, the MCRSIP did not apply any pre-existing internal rule or policy, but allowed its Board of Directors—consisting of county representatives each of whom stood to

gain a direct financial benefit from a decision to refuse refunds or distributions to "former" members such as Ingham, Jackson and Calhoun Counties, thereby ensuring a larger distribution to the very counties whose agents made the challenged decision (by including the funds thus embezzled from each Plaintiff County *inter alia*)—to make an *ad hoc* determination rife with conflict of interest. Such pecuniary advantage to the decision makers—each of whom was a government representative, operating within an association of government agencies—suffices to establish a violation of fundamental due process principles. *Aetna Life Ins Co v Lavoie*, 475 US 813, 822 ff; 106 S Ct 1580; 89 L Ed 2d 823 (1986). Even considering MCRSIP as a private rather than governmental organization, the lack of fundamental fairness becomes so paramount and obvious as to irredeemably taint the Board's decision with respect to distributions of surplus and to warrant judicial intervention.

Granting that MCRSIP might from time to time amend its internal rules or policies, it could not do so if the new rule is unreasonable, OR (as here) the new rule divests former members of rights *already vested*, such as the right to a share of any surplus upon withdrawal. *Parish v New York Produce Exchange*, 169 NY 34, 49-51; 61 NE 977, 981-982 (1901).

Indeed, what MCRCSIP and its members have done is nearly indistinguishable from what was attempted by a faction in *Russian Orthodox All Saints Church v Darin*, 222 Mich 35; 192 NW 697 (1923), but prohibited as unjust, oppressive, and invalid by our Supreme Court, which opined, 222 Mich at 55:

Measuring the legal rights and obligations of members belonging to this voluntary association by civil laws, or even its own by-laws and rules, the proceedings under which the minority members assumed to transfer themselves into a majority in order to control its temporal affairs cannot be recognized as of any legal validity. The majority members first took legal steps in the society's name and as its successor to, and did, comply with the provisions of the statute authorizing incorporation of unincorporated voluntary religious societies. There could be but one valid incorporation of the society. As we view the rift between the two factions, there was no actual secession on doctrine

or other grounds by either faction, from the church or society, but a contest for supremacy within it amongst its members, for control of its temporalities. The incorporation by the majority was a valid incorporation by the majority of and for the entire voluntary association, including both factions. **It thereby succeeded to the temporalities of the society, but in trust for the religious purposes and uses for which they had been procured and dedicated by that society, and and in which each member has a beneficial interest. The majority have not, and could not because of this factional dispute for control, read out of the association those belonging to the opposing faction, if valid members at the time of the division, any more than could the minority.** The faithful exercise by plaintiff of this trust, by whomsoever controlled, remains a subject of equity cognizance. So long as that trust is not violated, the unquestioned right of control is with the majority.

And therein lies the rub in the present case—neither Defendant nor its remaining members could, while holding funds in trust for the entire original group, hijack Pool assets for their own accounts, or “read out of the association those belonging to the opposing faction, who were valid members at the time of the division [or discriminate between those who exercised their rights under MCL 224.6(7) and MCL 46.11(s) and those who did not]”.

Furthermore, because the Legislature has left it to the discretion of county boards of commissioners whether to abolish separate county road commissions and absorb the functions, rights and duties thereof into the county board itself, for the MCRSIP to require that members forfeit their membership, and also their pro rata share of any determination of surplus, penalizes those counties that avail themselves of this statutory right. To construe the Declaration of Trust or any bylaw to permit this is clearly contrary to the public policy which the Legislature left to the political process—indeed, it is an act of extortion by the MCRSIP. MCL 750.213. As held in *Sands Appliance Services, Inc v Wilson*, 463 Mich 231, 246; 615 NW2d 241 (2000), “because courts have a duty to refuse to enforce a contract that is contrary to public policy. *Manning v Bishop of Marquette*, 345 Mich 130, 133–134; 76 NW2d 75 (1956)^[FN5 omitted], if the contract [of ‘voluntary’ termination’] violated the statute, it violated Michigan public policy.” There is no *de minimis* form of extortion outside the ambit of MCL 750.213.

Although the Declaration of Trust dated April 1, 1984—Complaint Ex. 1—provides in §9 that “The Pool may treat members who withdraw from future Pool Years differently and less favorably than the Pool treats members who continue in the pool for future years”, Plaintiffs did not withdraw, but rather, were ejected or terminated from continued membership in the MCRCSIP. Moreover, to the extent any predecessor appointed road commission—on the eve of its dissolution—signed an “Agreement in Recognition of Termination from Pool”, such execution was without consideration and also the result of duress, *Vyne v Glenn*, 41 Mich 112, 115; 1 NW 997 (1879) rendering such “agreements” invalid and of no legal force or effect.

The contract defense of duress exists when a party, by the unlawful act of another party, is induced to enter into a contract under circumstances that deprived him or her of the exercise of free will. *Apter v Joffo*, 32 Mich App 411, 416; 189 NW2d 7 (1971), quoting *Knight v Brown*, 137 Mich 396, 398; 100 NW 602 (1904). “In order to void a contract on the basis of economic duress, the wrongful act or threat must deprive the victim of his unfettered will.” *Hungerman v McCord Gasket Corp*, 189 Mich App 675, 677; 473 NW2d 720 (1991).

Here, each former appointed road commission purported to agree to withdraw from membership in MCRCSIP (a) hours before being dissolved and (b) in order to obtain a refund of that current year’s unused insurance premiums, to which each was already legally entitled.

The situation is similar to that in *Vyne v Glenn, supra*, where the Supreme Court held:

The defendant informed the plaintiff that he had stopped the payment of certain moneys due the latter from third parties, well knowing plaintiff’s circumstances at the time, and that his failure to get the moneys so due him would result in his financial ruin, and thus compel the plaintiff to settle with the defendant in order that the stoppage might be removed. It is idle to say that such settlement was free and voluntary, and that it should be sustained. To say that the plaintiff had a legal remedy if a wrong had been done him, or that the commencement of garnishee proceedings would not vitiate a settlement thereafter made between the debtor and creditor, may be true generally, but where the wrong done, as in this case, was for the evident purpose of forcing a settlement not in accordance with the legal rights of parties, and where the delays incident to litigation

would but work the ruin which the plaintiff dreaded, to hold that because he had a legal remedy for the wrong, and did not avail himself thereof, would not meet the difficulties in a case like the present. The choice offered him was financial ruin or immediate settlement. If this was not obtaining a settlement under duress, it would be difficult to conceive what would be.

While predecessor appointed road commissions were, admittedly, not on the brink of "financial ruin", they were about to be absorbed into their respective county boards of commissioners, and had only hours remaining in which to clear up the issue of refunds of unused premiums paid in advance. It may also be that the appointed road commissioners shared feelings of enmity toward the county commissioners who supplanted them and were only too happy to conspire with their "old buddies" at the MCRCSIP to stick a knife in their successors' backs. The situations, albeit not identical, are sufficiently similar.

In any event, the termination agreements did not waive any rights to share in distributions of surplus. **Paragraph 5 of each termination agreement (Complaint, Exs. 7a, b and c) provides that "the sole purpose of this Agreement is to effectuate termination of the Commission's membership from the MCRCSIP * * * and not to affect or impact in any way any other terms or conditions contained in the Declaration of Trust-Interlocal Agreement, or By-Laws."** So Plaintiff Counties, as successors to all rights of their appointed road commissions, step into the shoes of their road commissions and retain all rights to share surplus distributions for the actuarial plan years during which those appointed road commissions contributed to the surplus premium paid.

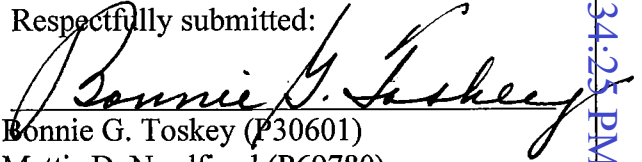
The only issue for trial is the amount of such liability for actuarial years closed after such terminations and a declaratory judgment of liability for all future years.

RELIEF REQUESTED

Plaintiffs respectfully request that Defendant be held liable for the aliquod shares of all surplus payments that would have been made to Plaintiffs' former appointed road commissions for actuarial years 2002 through 2012, with liquidation of such liability for actuarial years closed subsequent to 2012 by the Court and a declaratory judgment as to actuarial years closed in the future.

Dated: April 13, 2016

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IN THE SUPREME COURT

On Appeal from the Michigan Court of Appeals
O'Brien, PJ, and Gleicher and Stephens, JJ

THE COUNTIES OF INGHAM, JACKSON, and
CALHOUN, Municipal corporations and bodies politic
and corporate,

Plaintiffs-Appellees,

v

THE MICHIGAN COUNTY ROAD COMMISSION
SELF-INSURANCE POOL, an unincorporated
voluntary association,

Defendant-Appellant.

Supreme Court Docket No. 160186

Court of Appeals Docket No. 334077

Ingham County Circuit Court
Case No. 15-432-NZ

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DEFENDANT-APPELLANT'S APPENDIX TO SUPPLEMENTAL BRIEF

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Dated: November 4, 2020

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APPENDIX 50

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

THE COUNTIES OF INGHAM, JACKSON, and
CALHOUN, Municipal corporations and bodies politic and
corporate,

CASE NO. 15-432-NZ

Plaintiffs,

HON. ROSEMARIE E. AQUILINA

v

THE MICHIGAN COUNTY ROAD COMMISSION
SELF-INSURANCE POOL, an unincorporated voluntary
association,

Defendant.

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DEFENDANT MICHIGAN COUNTY ROAD COMMISSION
SELF-INSURANCE POOL'S RESPONSE TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY
DISPOSITION AS TO LIABILITY AND COUNTER-REQUEST FOR SUMMARY DISPOSITION
PURSUANT TO MCR 2.116(D)(2)

INTRODUCTION

This case is not nearly as complex as Plaintiff Counties would like this Court to believe. It is simple. Former Road Commissions were part of a self-insurance pool for which they received benefits. Only road commissions can be members of that pool. For reasons entirely unrelated to the Pool, the Counties dissolved their Road Commissions. This ended Road Commissions' membership in the Pool, and precluded their ability to recover any future surplus equity distribution which surplus is and was owned by the Pool. The Counties never were members of the Pool. Even if they were to "step into the shoes" of the former Road Commissions, those Road Commissions are entitled to nothing. The only thing that changed since the Pool's initial Motion for Summary Disposition (which is, along with the Brief hereby incorporated by reference, **Ex. 1**) is that the Counties have produced many other documents that support dismissal of these claims. Therefore, the Pool not only requests that the Counties' Motion be denied, but that summary disposition be granted in its favor. See MCR 2.116(I)(2).

COUNTER-STATEMENT OF FACTS¹

I. The Michigan County Road Commission Self-Insurance Pool

The Pool is just that – an insurance pool. See MCL 124.5(1). The Pool, and its relationship with its members, is governed by (i) a Declaration of Trust, (ii) Bylaws, and (iii) Interlocal Agreements signed by each member. **Exs. 2 - 4**, respectively. Every member executed the Trust and Inter-Local Agreement or "otherwise agree[d] to become bound by and comply[] with the By-Laws, rules and regulations of the Pool." (**Ex. 4** at 2, ¶1). And, every member agreed to make "contributions" each year that were set aside by the Pool for the payment of claims, operating and administrative expenses, and other enumerated things. (**Ex. 4** at 2-4).

The Declaration of Trust "created" the Pool, and vested the Directors of the Pool with authority to supervise and operate the Pool, and to "conduct the business and activities of the [Pool] in accordance with [the]... Trust, the By-Laws... rules and regulations adopted by the Trustees," and applicable laws. (**Ex. 2**). Among other things, the Trust authorized the Pool Directors to adopt By-Laws that govern "the operation and administration of the [Pool]" (**Ex. 2**, Trust at 3, Article IV,

¹ For the Court's convenience, attached at **Appendix B** is a timeline with the key events on which the Pool relies.

Pool Directors to adopt By-Laws that govern “the operation and administration of the [Pool]” (Ex. 2, Trust at 3, Article Sec. 1) and gave the Directors broad discretion in distributing refunds, including treating former members differently. (Ex. Trust at 5, Article VI, Sec. 9(f)).²

The By-Laws also addressed issues relating to “contributions and refunds” (Ex. 3, By-Laws at 14, Article Specifically, the Board is authorized to “develop procedures for addressing accumulated equity, if any, or [any] accumulated funding deficiency[ies].” (Ex. 3, By-Laws at 15, Article XII).³ Like the By-Laws, the Inter-Local Agreement also addresses the subject of refunds, and members specifically agreed that the Board had broad discretion to distribute equity payment in any manner it deemed equitable. (Ex. 4 at 3-4, ¶3H).⁴ Importantly, distribution is only available to current members and is not guaranteed. (Exs. 2-4). Each County was aware of these rules.

² The relevant portion of the Declaration of Trust (Art. VI, §9, Ex. 2) reads:

The Board of Directors shall set aside from the premiums collected during each fiscal year a reasonable sum for the operating expenses or administrative expenses of the Trust for that year. All remaining funds coming into its possession or under its control with respect to that fiscal year of the Trust shall be set aside and should be used only for the following purposes:

* * *

(f) distribution among the members during that fiscal year in such manner as the Members of the Board of Directors shall deem to be equitable...*The Board of Directors may treat members who withdraw from future Trust Years differently and less favorably than they treat members who continue in the trust for future years.*

³ By-Laws (Article XII)(Ex. 3):

Any Member may withdraw from the Pool by giving at least sixty days written notice to the Pool Board of its desire to so withdraw. *The Pool Board shall develop procedures for addressing accumulated equity, if any, or accumulated funding deficiency.* The Pool Board shall determine the short rate cancellation penalty for terminating prior to the annual renewal date. A Member may be terminated from membership by a two-thirds vote of the Members present at an annual or special meeting of the Members... (emphasis supplied).

⁴ Inter-Local Agreement (paragraph 3H)(Ex. 4):

The Member agrees to pay contributions which shall be calculated according to the method determined by the Pool Board. ...The Pool shall set aside from the premiums collected during each fiscal year a reasonable sum for the operating expenses or administrative expenses of the Pool for that year. All remaining funds coming into the possession of the Pool with respect to that fiscal year of the Pool shall be set aside and shall be used only for the following purposes:

* * *

H. Distribution among the members during that fiscal year in such manner as the Pool shall deem to be equitable, of any excess monies remaining after payment of all claims and expenses and after provision has been made for open claims and outstanding reserves and a reserve for claims incurred but not reported; provided, however, that no such distribution shall be made earlier than twelve (12) months after the end of each Pool Year; and provided, further, that undistributed excess funds from previous Pool Years may be distributed at any time if not required for loss funding and if approved for distribution by applicable boards and authorities. *The Pool may treat members who withdraw from future Pool Years differently and less favorably than the Pool treats members who continue in the Pool for future years.* (Emphasis supplied).

II. Ingham County

A. Ingham County Dissolves its Road Commission.

As early as December 12, 2011, Ingham County planned to dissolve its Road Commission if the legislation then pending passed. (Ex. 5). The reasons had nothing to do with future refunds from the Pool. Rather, as explained in Resolution, it was due to a history of problems between the County and the Road Commission. (Ex. 5). Ingham County examined its insurance options if it dissolved its Road Commission, and knew it would not be able to continue as a Pool member without a bylaw amendment. (Exs. 6, 4, 3, Ex. 7, p6). It continued evaluating throughout the Winter of 2011 (Exs. 8 – 10). As of Spring, the County planned to insure with MMRMA, the County's general insurer, and inquired about their surplus equity distributions. (Exs. 11, 12, 13, 14). As early as April 2012, Ingham County knew that if the Ingham County Road Commission was not a member of the Pool, "[it would] not receive any refunds for previous years which the pool may close out in the future with savings refunds distributed back to the members," Ex. 15. Notwithstanding, on April 24, 2012, Ingham County passed a resolution that dissolved⁵ its Road Commission effective June 1, 2012. (Ex. 16). A second resolution passed on that same date authorized the County Board to "take whatever steps are prudent and necessary to withdraw from the existing ICRC insurance carrier, the Michigan Road Commission Self Insurance Fund [sic]." (Ex. 17).

B. The Ingham County Road Commission Withdraws From the Pool.

On Friday, May 25, 2012, the Pool's Administrator, Gayle Pratt, advised William Conklin, the Ingham County Road Commission's Managing Director, that the Pool would not insure the County after June 1 (which did not harm the County since it had already secured coverage through MMRMA).⁶ Ms. Pratt forwarded insurance Cancellation and Termination Agreements that, in Ingham County's⁷ own words, "basically spell[ed] out the reimbursement of pre-paid

⁵ Plaintiffs admitted that each Road Commission was dissolved. See Complaint, ¶12.

⁶ Perhaps anticipating more dissolutions, on May 29, 2012, the Pool sent a letter to its Members stating that the Board unanimously recommended allowing counties with road responsibilities to become members of MCRCSIP. Ex. 18. The MCRCSIP Board sent Supplemental Information to its members, including (i) the impact of attrition, (ii) the impact on the development of the law, (iii) cost of doing business, (iv) increased competition (including a specific reference to MMRMA providing a competitive rate to Ingham County). *Id.*, Supplemental Information.

⁷ When the Road Commission was dissolved, Mr. Conklin became the head of the new County Road Department.

premium and continuation of handling currently open claims.” (Ex. 19). Ingham County forwarded the Agreements to the attorneys, the same ones who represent them in this lawsuit, stating: **“We added the Department of Transportation and Roads to our MMRMA policy effective June 1, 2012 a few weeks ago and confirmed again today we are covered”** (Ex. 20).

Bonnie Toskey, lead attorney here, negotiated the language of the Cancellation and Termination Agreements with the Pool,⁸ and approved them for signature. (Ex. 20). During the negotiations, Toskey double-checked with MMRMA to confirm that the changes still required the Pool to cover claims occurring prior to June 1, 2012. (Ex. 21). Both Pratt and Toskey agreed that Conklin should sign the Agreements. (Ex. 22).

At some point before 3:16 pm on May 31, 2012, Pratt and Toskey had a conversation regarding withdrawing members.⁹ In follow up, Pratt sent Toskey a letter that confirmed the following: **“A withdrawing Member forfeits any and all rights to dividend, credits and/or accumulated interest that is to be paid or shall become payable after the effective date of the Member’s withdrawal from the Pool”** (Ex. 23.) After receiving that information, Toskey forwarded the Agreements to Conklin for signature. (Ex. 24, 25, 26).

The Cancellation Agreement specifically noted that **“[b]ecause, as of June 1, 2012, the Commission being non-existent will no longer be a member of the [Pool] or a road commission within the meaning of the applicable By-Laws and the Inter-Local Agreement that govern membership in the [Pool], the [Pool] will not be able to issue insurance coverage to the Commission after it is dissolved.”** *Id.* It also specified that the purpose of the Agreement was to effectuate termination of insurance immediately after dissolution even though the notice period would be violated. *Id.* The

⁸ The changes to the Termination Agreement included (i) specifying that the Road Commission would be dissolved, and “by operation of law” “is not eligible” to be a Member of the MCRCSIP, (ii) the Commission and MCRCSIP agree that the Commission “is not eligible to participate” as a member as of June 1, 2012, (iii) termination would be “concurrent with the termination of the Ingham County Road Commission” as of June 1, 2012; (iv) MCRCSIP would service claims arising from incidents or events prior to June 1, 2012, and (v) “The exception shall be the Employment Practices & Public Officials Errors and Omissions Liability Agreement which is a claims made policy / coverage only.” *Id.* at Termination Agreement. Toskey proposed these changes to the Cancellation Agreement: (i) specification that the Commission would be “non-existent” as of June 1, 2012; (ii) insurance coverage would be “terminated concurrent with the termination of the Ingham County Road Commission” on June 1, 2012; (iii) MCRCSIP would service claims arising from incidents or events prior to June 1, 2012 and (iv) “The exception shall be the Employment Practices & Public Officials Errors and Omissions Liability Agreement which is a claims made policy / coverage only.” (Ex. 20 at Cancellation Agreement). Ultimately, all but the last change was incorporated into the final agreements. (Exs. 25, 26).

⁹ This is an example of a potentially relevant issue on which additional discovery would be conducted by the Pool.

parties also exchanged the following documents too: (i) mutual waiver of the notice period and associated release; agreement of cancellation date; (iii) date of contribution adjustment; and (iv) handling of existing claims.

C. Ingham County Demands a Refund of Insurance Premiums and Surplus Equity Payments. The Surplus Equity Request is denied.

Wasting no time, on June 1, 2012, Jill Rhode, Director of Financial Services at Ingham County wrote Ms. P. requesting a refund of insurance “premiums,” (Ex. 27), and in a separate letter,¹⁰ (Ex. 28) requested surplus equity payme. The Pool rejected those requests, noting that the “authorization by the County to withdraw from [the Pool] preceded inquiry into the possible availability of Membership in the Pool...” (Ex. 29.)

III. Jackson County

A. Jackson County thoroughly analyzes whether to transfer Road Commission Powers.

As early as March 2012, Jackson County was evaluating whether it should assume the power of the Jackson County Road Commission. (Ex. 30). Insurance coverage was an issue from the beginning. *Id.* In August 2012 (after the by-law amendment was rejected), an ad hoc committee analyzed the benefits of transferring power from the Road Commission to the Board of County Commissioners. (Ex. 31). In October, Jackson County also analyzed the value of future equity distributions. (Ex. 32). Throughout the Fall, the Ad Hoc Committee held a series of hearings, during which the committee members conducted interviews, received public comment, and discussed the pros and cons of transferring power. (Ex. 33). The Committee also gathered survey data too. *Id.*

The Pool assisted Jackson County with its analysis by providing information about the Pool. (Ex. 34). Jackson County was also conducted its own investigation into available insurance. (Ex. 35). It was also aware that if the Pool's bylaws were not amended, it would not be eligible for membership in the Pool. (Ex. 36, p 6). It knew that ending a relationship with the Pool meant walking away from approximately nine years of potential future surplus equity distributions. (Ex. 36, p 6; Ex. 37, p 2 (“The Administrator / Controller confirmed that we would lose it from the Road Commissions current insurance carrier. The new insurer would also have a year-end dividend.”)). In October 2012, Jackson County

¹⁰ It is unclear whether this was sent because it is not on letter head. This is another example of an area for relevant discovery.

shared the Road Commission's current insurance policy with MMRMA, requesting a quote. *Id.* In response, MMRMA compared the two policies, identifying the differences to the County. (Exs. 38, 39).

On December 6, 2012, the final version of a "Feasibility Study for County Operation of Jackson County Road Commission" was sent to the County Administrator. (Ex. 40). This document describes various reasons for the County transferring the powers of the County Road Commission, including (i) savings on personnel costs;¹¹ (ii) savings on insurance premiums;¹² (iii) increased insurance rebate;¹³ (iv) centralized decision making¹⁴; (v) single point of service;¹⁵ (vi) internal conflict among staff;¹⁶ and (vii) improved communication.¹⁷ (Ex. 40, Report p 14).¹⁸ The Report also confirms that Jackson County was aware of the Pool members' decision not to allow Counties to participate in the Pool or receive equity distributions. (Ex. 40, Report p 7). See also, Ex. 41.

B. Jackson County Transfers Power.

Jackson County held the requisite public hearings regarding the proposed transfer on Jan. 4, 2013 and Jan. 18, 2013. (Ex. 43). After the first hearing, the County Administrator / Controller prepared a memorandum to the Board of County Commissioners requesting that the "resolution to assume the powers and duties of the Jackson County Road Commission" proceed to ballot at the next public hearing. (Ex. 44). In doing so, Jackson County was aware that it would need to immediately change insurance carriers. (Ex. 45). The County Administrator had already decided to insure through MMRMA (and did) if the Jackson County Road Commission was dissolved. (Exs. 46-48).

C. Jackson County Road Commission withdraws from the Pool.

The same day power was transferred, Pratt forwarded Cancellation and Termination Agreements to the Jackson County Road Commission. (Ex. 49). Both Agreements were "between the Michigan County Road Commission Self-Insurance Pool ("MCRCSIP") and the Board of County Road Commissioners of the County of Jackson ("the

¹¹ The Report estimates \$50,000 in recurrent savings. Ex. 40, Report p 5.

¹² The Report estimates \$130,000 annual savings by switching from the Pool to MMRMA. *Id.* Report p 7.

¹³ The MMRMA rebate was approximately \$200,000 compared to \$160,000 from MCRCSIP. *Id.*

¹⁴ *Id.*, Report p 9-10.

¹⁵ *Id.*, Report p 11.

¹⁶ *Id.*, Report p 12.

¹⁷ *Id.*

¹⁸ See also, letter of John Brennan (Ex. 42) (identifying various concerns about the Jackson County Road Commission).

Commissioner”).” *Id.*, Both the Cancellation and Termination Agreements specified that the Road Commission “dissolved” as a result of the Jackson County Board of Commissioners’ Resolution, and no longer existed as a statutory or corporate. *Id.* 1.¹⁹

IV. Calhoun County²⁰

As early as April 2012, Calhoun County was considering dissolving the Calhoun County Road Commission. (Ex. 50, Appendix C, Ex. 51). It assembled a task force that completed a thorough investigation, including a comprehensive financial analysis, which included a comparison of available insurance. *Id.*, Appendix D, E., Ex. 50. The analysis confirms that Calhoun was aware that future equity distributions would only be given to Pool members, and the County would not be eligible for membership without a bylaw change. (Ex. 50, Appendix E, 6.8.12 letter, p 3).

Part of the reason for the transfer was financial savings. (Ex. 50). Other reasons included poor road conditions and management issues. *Id.*, Appendix H. After it completed its investigation, on July 24, 2012, the Task Force unanimously voted to recommend dissolution of the Road Commission. (Ex. 50, Appendix I). By August 31, 2012, a Transition Plan was drafted. (Ex. 51). In preparing that Plan, liability insurance was considered, and MMRMA represented that it would transfer coverage to the County’s policy. *Id.*, p 7.

During the second requisite public hearing, a resolution passed that “dissolved” the Calhoun County Road Commission effective November 1, 2012. (Ex. 50). A separate resolution was passed to establish the Calhoun County Road Department. (Ex. 50, Appendix I, p 2). And a third resolution passed whereby the County *specifically agreed* to undertake certain contractual obligations of the Road Commission, and *chose not to* assume other contractual obligations, negating the idea that the County simply “stepped into the shoes” of the Road Commission. (Ex. 50, Appendix I, p 4, 5).

¹⁹ There is no record evidence Jackson County or Jackson County Road Commission signed this Agreement.

²⁰ At the time of drafting, Calhoun County had not yet responded to certain document production requests. See Motion to Compel Answers to Defendants’ Second Set of Written Discovery to Calhoun County, filed April 29, 2016; Motion to Compel Answers to Defendants’ Third Set of Written Discovery Requests, filed April 29, 2016; and Motion to Compel Release for Rehmann Robson File, filed April 29, 2016. These Motions are scheduled for hearing on June 15, 2016.

V. The Counties File this Litigation.

Counsel for the Counties wrote Ms. Pratt on July 17, 2014, advising she represented Ingham, Calhoun and Jack Counties, and demanded a “refund of the surplus equity” and threatened suit. (Ex. 52). Despite the above facts, Plain (banding together to increase odds of success (Ex. 53)) advanced the following causes of action: (I) Violation of Mich. Cc 1963, Art. 9, §18; (II) Extortion; (III) Conversion / Embezzlement; (IV) Breach of Contract. Apparently, the premise each of these claims is that the Counties are the rightful owners of future equity distributions because they are successor interest to their respective Road Commissions. That premise is wrong, but even if it is correct, none of them are entitled to any distributions because their respective Road Commissions would not have been either.

STANDARD OF REVIEW

Here, the Plaintiffs are moving for summary disposition under MCR 2.116(C)(9)²¹ (despite previously representing to this Court that the issues in this case could *not* be decided as a matter of law) and (C)(10)²² (despite discovery being open and motions to compel pending against them). Plaintiffs’ Motion for Summary disposition is, at best, premature. More importantly, documents produced by the Plaintiffs during discovery unequivocally establish that: (i) each County and each former Road Commission had actual knowledge that it would not be entitled to a refund of any surplus equity if it withdrew, (ii) none of the Counties intended to use the Pool even if they were eligible, (iii) the withdrawal and termination agreements were not signed under duress, (iv) and had no effect on the ability to receive future distributions anyway. For these reasons,

²¹ A motion for summary disposition based upon MCR 2.116(C)(9), which alleges the failure to state a valid defense, is tested solely by reference to the pleadings. *Fancy v Egrin*, 177 Mich App 714, 724; 442 NW2d 765 (1988). Where, as here, a material allegation of the Complaint is categorically denied, summary disposition under this ground is improper. *Pontiac School District v Bloomfield Township*, 417 Mich 579, 585; 339 NW2d 465 (1983).

²² The Court views all evidence in a light most favorable to the non-moving party in evaluating a (C)(10) motion. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A genuine issue of material fact exists whenever the record, giving the benefit of every reasonable doubt to the non-moving party, leaves open an issue upon which reasonable minds might differ. *West v GMC*, 469 Mich 177, 183; 665 NW2d 468 (2003). A motion for summary disposition under MCR 2.116 (C)(10) is premature if granted before discovery on a disputed issue is complete. *State Treasurer v Sheko*, 218 Mich App 185, 190; 553 NW2d 654 (1996). Under those circumstances, summary disposition is only appropriate if there is no reasonable chance that further discovery will result in factual support for the non-moving party. *Kortas v Thunderbowl & Lounge*, 120 Mich App 84, 87; 327 NW2d 401 (1982).

the relevant standard of review entitles the Pool to summary disposition in its favor and that relief is specifically requested pursuant to MCR 2.116 (I)(2).²³

ARGUMENT

I. The plaintiff counties are not the same entities as the former road commissions.

A. The plain language of the statute transfers (i) powers, (ii) duties, and (iii) functions; it does not allow a County to be the same entity as the former Road Commission.

Contrary to Plaintiffs' argument, nothing suggests that the former Road Commissions were "absorbed" by Counties, and they are not "successors in interest."²⁴ The relevant statutes do not say the former Road Commissions were "absorbed" – they say they would be "dissolved."²⁵ See MCL 224.6(7), MCL 46.11. Something that is "dissolved" no longer exists. It cannot be "absorbed." The entities do not merge. Rather, what used to be the job of the Road Commissions became the job of the County Board. The purpose of the amendment was "to define the powers and duties of the county boards of commissioners..., and to confer upon them certain local, administrative and legislative powers...." (Ex. 55, Enrolled House Bill NO. 5126). The statute did that by allowing the Counties to expend and receive funds in the same manner as the State for the roads it maintains. See MCL 46.11(s), MCL 247.651 – 247.675. This section does not support the notion that the former Road Commissions still exist, nor does it support the argument that the Counties are entitled to be members of the Pool, or receive future equity distributions. It does nothing more than define powers and duties. This was necessary because counties only have the "powers and immunities provided by law." Mich. Const. 1963, Art. VII, §1. "Counties have delegated powers only." *Wright v Bartz*, 339 Mich 55, 60; 62 NW2d 458 (1954). "A county...possesses

²³ This Court can grant summary disposition at this stage in the proceedings in the Pool's under MCR 2.116(I)(2). "[S]ummary disposition is proper under MCR 2.116(I)(2) if the court determines that the opposing party, rather than the moving party, is entitled to judgment as a matter of law." *Rataj v Romulus*, 306 Mich App 735, 747; 858 NW2d 116 (2014) (citations and quotations omitted).

²⁴ Plaintiffs' argument that a single case caption referencing Wayne County as the "successor" to the Wayne County Road Commission fails for several reasons. The manner in which a party labels a caption is irrelevant and gives no indication about whether a comprehensive and correct legal analysis was conducted. See *Stamp v Mill Street Inn*, 152 Mich App 290, 296; 393 NW2d 614 (1986) ("The question of caption of the case is not particularly important...."). Also, Wayne County did not dissolve its Road Commission pursuant to this statute. Rather, it "assumed" its Road Commission after adoption of the County Charter. (Ex. 54). Even if Plaintiffs are "successors in interest" to the Road Commissions, at best, they have only the rights the Road Commissions would have had – that does not include a right to refunds. This is explored further below, but is important to keep in mind for this portion of Plaintiff's argument.

²⁵ Plaintiffs premise their argument that only "appointed" road commissions are dissolved. However, "elected" road commissions are also dissolved, just in separate subsection. See MCL 46.11(t).

only those powers which have been conferred upon it by the Constitution and statutes.” *Mosier v Wayne Cty Bd of Audit* 295 Mich 27, 29; 294 NW 85 (1940).

The transfer of power and duties also ensured that road maintenance and construction projects would continue despite dissolution of the Road Commissions. County Road Commissions did not have to be “absorbed” for the County to maintain the roads, or continue construction projects. In fact, Road Commissions do not have taxing authority, and receive at least some of their funds directly from the Counties and the State Transportation Fund. (Ex. 56, “Road Commission Funding” and CRAM article, Ex. 57) (“The Commission does not maintain proprietary funds.”) Allowing the County to transfer powers and to directly receive funds from the Transportation Fund vitiates Plaintiffs’ argument that becoming a “successor in interest” was necessary to continue road maintenance and construction projects.

Similarly, the Plaintiffs cite MCL 45.3 and 45.4, but neither of those provisions have anything to do with becoming a successor in interest. Rather, they simply provide that any property owned by the County must be used by the County for the benefit of the inhabitants. Nothing in those provisions transferred any property interest of the Road Commission to the County (and the former Road Commissions had nothing to give anyway).

To determine whether property rights of the Road Commissions became property interests of the Counties, one need look no further than the statute authorizing transfer. It allowed three things to be transferred: (i) powers, (ii) duties, and (iii) functions. MCL 46.11(s). The statute said nothing about transferring property interests or rights, and since the power of a County is limited to that expressly authorized, those things were not transferred. For this reason, the Pool is entitled to judgment as a matter of law on this issue pursuant to MCR 2.116(I)(2).

B. The Counties cannot ignore or rewrite the Pool's by-laws.

Bylaws constitute a binding contract. *Allied Supermarkets v Grocer's Dairy Co.*, 45 Mich App 310, 315; 206 NW2d 490 (1973). In the context of insurance coverage, “[w]here, as in the present case, the charter and bylaws prescribe the conditions precedent to membership, compliance is essential to establish a binding contract of insurance between the company and the applicant.” *Equitable Trust Co. v Eastern Michigan Farmers' Mut. Fire Ins. Co.*, 296 Mich 392, 397; 296

NW 301 (1941). Membership "cannot be acquired by estoppel." *Id.*²⁶ The Road Commissions met the members criteria and the Counties do not.²⁷

The Pool's by-laws and other operating documents limit distributions to "members," and "members" can only County Road Commissions. While the Counties may now have the same "powers, duties, and functions" as a "Road Commission," they are not "Road Commissions" – they are "Counties." A road commission is a separate legal entity from county. A county is a geographic and political subdivision of the State. MCL 45.1, 45.3. At the turn of the last century, Legislature passed the County Road Law in an effort to create a more coordinated system of roads. 1909 PA 283; M 224.1, *et seq.* That law allowed counties to put to the voters the issue of whether to adopt a county road system. MCL 22 In the event a county road system was adopted, a board of road commissioners needed to be elected or appointed. M 224.6. That Road Commission is a separate corporate body from a County. MCL 45.3, MCL 224.9. Simply having the same powers, duties, and functions as a Road Commission does mean those corporations merged, on the contrary, the Road Commissions were "dissolved").

Plaintiffs' attempted manipulation of the definitions of "road commission" in the by-laws does not change this result. Article II of the by-laws set forth the purpose and objectives of the Pool – i.e., to create a road commission self-insurance pool. Article III did not define "county road commission" as any municipal corporation that was "authorized and approved...to enter into an agreement to pool their loss exposure," as Plaintiff claims. Here is the actual language:

The Pool shall be comprised of county road commissions of the State of Michigan **which** are authorized and approved under Section 1 of Act 138, PA 1982, as amended (MCL 124.1; MSA 5.4081), to enter into an agreement to pool their loss exposures and which have executed the Pool Trust Agreement. [Ex. 3]

²⁶ Citing *Kinne v Farmers' Mut. Fire Ins. Co.*, 241 Mich 637, 217 NW 755 (1928) and *Engel v State Mutual Rodded Fire Ins. Co.*, 281 Mich 520, 275 NW 231 (1937).

²⁷ Plaintiffs are attempting to force the Pool to contract with entities with whom it does not want to contract. And while Plaintiffs mention impairment of contract without any actual analysis (Plaintiffs' Brief at 11), it is actually the Pool's constitutional rights that would be impaired. See US Const, Art. 1, § 10; Const 1963, Art. 1, § 10. "It has been said that the purpose of the Contract Clause is to protect bargains reached by parties by prohibiting states from enacting laws that interfere with preexisting contractual arrangements." *Wells Fargo Bank, NA v Cherryland Mall LP*, 300 Mich App 361, 371-72; 835 NW2d 593 (2013). Changing the nature and identity of the contracting parties certainly interferes with preexisting contractual arrangements.

The plain language of this controlling provision,²⁸ requires every member of the Pool to be a “county road commission.” But that is not all. To be a member, each county road commission must also (i) be “authorized and approved to enter into a pool agreement *and* (ii) must execute the Pool trust agreement. The Counties did neither of those things.

Contrary to Plaintiffs’ argument, it does not matter that counties are also municipal corporations that are allowed to enter into pooled self-insurance agreements.²⁹ They are different entities. The definition of “municipal corporation” separately identifies “county” from “county road commission,” further supporting the conclusion that these are two separate and distinct entities. MCL 24.1(a). See also, Article IV, Sec. 1: “A Member county road commission. . .shall be a county road commission. . . .” A “County” is not a “County Road Commission,” and therefore, is not eligible for membership. See also, Ex. 3, Bylaws, Art. XII.

C. Plaintiffs cannot use the contract clause to force the Pool to contract with them.

Even if eligible, the Counties cannot force the Pool to provide insurance to them or otherwise accept them into its membership. That is axiomatic. (See also, Ex. 3, By-laws, Art. IV, Sec. 1.) The Contracts Clause does not change that. Plaintiff relies on *Graham v Folson*, 200 US 248, 26 S Ct 245, 50 L Ed 464 (1906) to argue that the Counties are, as a matter of law, “successors in interest” and thus able to pretend they are road commissions. That case is inapplicable here both because the issue and procedural posture are different, but more importantly the statutory language applicable to our case transfers “duties,” which avoids the contracts clause violation found in *Graham*.³⁰

²⁸ “[B]y-laws are interpreted according to the rules governing the interpretation of a contract. “ *Tuscany Grove, Ass’n v Peraino*, 311 Mich Ap 389, 393; 875 NW2d 234 (2015) (citations omitted). This begins with examining the language of the bylaws, and interpreting words according to their plain and ordinary meaning. *Id.* citations omitted. “Ultimately, we enforce clear and unambiguous language as written.” *Id.* (citation omitted).

²⁹ Under that logic, the Pool would be required to extend membership to *any* “township, charter township, city, village, school district, intermediate school district, community college district, metropolitan district, court district, public authority, or drainage district. . .or any other local governmental authority or local agency with the power to enter into contractual undertakings” because those are all “municipal corporations” that may contract to form a group self-insurance pool. MCL 124.1(a).

³⁰ *Graham* was a mandamus action in which a bondholder had previously obtained a money judgment against a township, and the county in which the township was located refused to assess and collect taxes to satisfy the judgment. *Id.* at 250. The issue in that case had nothing to do with being a “successor in interest,” although the township no longer existed. In fact, the county did not challenge the decision that it was responsible for the township’s contractual obligations. *Id.* Rather, it argued that it lacked authority to raise the money to pay the judgment. *Id.* at 251-252. The issue was whether the contractual obligation was destroyed, which of course it was not for constitutional reasons. *Id.* at 253-254. The statute in our case also requires the Counties to transfer the *duties* of the road commissions, avoiding these constitutional infirmities.

In this case, the Road Commissions did not owe any continuing obligations to the Pool. The contract was canceled as soon as the Road Commissions were dissolved. As such, interpreting the by-laws in the manner suggested by the language of the document does *not* result in any constitutional violation and reading it in the manner suggested by Plaintiff (i.e., requiring the Pool to extend membership and contract with parties it does not want to) does result in a constitutional violation. Technically, this rule of construction does not apply because the by-laws are unambiguous, but if it did, interpretation would be in favor of the Pool.

II. Even if the Counties were “successors in interest” to the Road Commissions, they get no more than that which the Road Commissions would have been entitled – nothing.

A. Neither the Counties nor the former Road Commissions gave property or lent credit to the Pool.

Defendant has already exhaustively briefed the reasons why – as a matter of law – there was no violation of Mich. Const. 1963, Art. 9, § 18. (Ex. 1, Defendant’s prior Motion for Summary Disposition, p 8-9). In response, the Plaintiffs have altered their argument, now alleging that they gave up property without a fair exchange, and claiming that there was no consideration provided in exchange for “forfeit[ing] their successor rights to refunds,” which seems to be based on the withdrawal and cancellation agreements. (Plaintiffs’ Brief, p 18). Plaintiffs also argue that the Pool structure violates Art. 9, § 18 because it requires members to contribute additional funds to cover losses (although Plaintiffs do not explain how this would entitle them to relief). Neither of these positions are correct.

1. The Counties had no “successor rights,” and no property was given without consideration.

Consideration is a bargained-for exchange. *GMC v Department of Treasury*, 466 Mich 231, 238; 644 NW2d 734 (2002). Courts do not inquire into the sufficiency of consideration. *Harris v Bond & Mtg Corp.*, 329 Mich 136, 145; 45 NW2d 5 (1950). “[A] cent or a peppercorn, in legal estimation, would constitute a valuable consideration.” *GMC*, 466 Mich at 239 (2002) (quotation omitted). It is only when the record establishes that the consideration given was “so grossly inadequate as to shock the conscience” that courts will intervene. *Hake v Youngs*, 254 Mich 545, 550; 236 NW 858 (1931).

The annual contributions made by the Road Commissions were supported by consideration. In exchange for the contributions, the Road Commissions received insurance coverage and claims administration. As for the Termination and

Cancellation Agreements, neither Jackson County Road Commission nor Jackson County ever signed the Agreements. This essentially takes Jackson County out of the picture. The Jackson County Road Commission's membership automatically terminated because it no longer existed. As to Ingham County, the Agreements were signed by the Ingham County Road Commission *before* it was dissolved and with the blessing of counsel. Calhoun County signed after resolution dissolving the Calhoun County Road Commission passed, but also well after it knew membership in the Pool was an impossibility. On account of the failed attempt to amend the Pool's by-laws.

Next we need to look at what the agreements do and what they do not do. Ingham County **conveniently fail to mention that the resolutions it passed required withdrawal from the Pool. Ex. 17.** And this was long before it knew it would not be eligible for participation in the Pool. To say it was forced to withdraw is disingenuous and, frankly, a violation of the verification requirements found in MCR 2.114.

The Agreements acknowledged that the Road Commissions could not be members of the Pool once they were dissolved, and set forth the dates and times that coverage would cease. This, of course, benefitted both the Counties and the Road Commissions. The original policy period was a year. The Counties could not have – and did not want – Pool coverage after the effective date of dissolution. But, there were certain notice requirements associated with withdrawal and termination. (Exs. 2, 3).³¹ Through these Agreements, the parties **mutually released** each other from the Withdrawal Notice provisions. See ¶1. This mutual exchange of promises was sufficient consideration to support the agreement. *Skillman Lumber Co. v Love*, 214 Mich 399, 407; (1921) (“[T]he mutual release of the rights of the parties under the contract...is regarded as a sufficient consideration for the agreements.”)(citation omitted).

The Agreements also clarified how claims would be handled going forward (and actually refers to the Counties not as successors in “interest” but successors in “function”). See ¶4. In fact, this provision was important to Plaintiffs’ counsel who specifically negotiated the language to ensure that there was no lapse in coverage. (Exs. 20 & 21). That too is sufficient consideration. Neither the former Road Commissions nor Counties gave up anything without getting something in return.

³¹ This is important for both the Pool and the insured. The Pool's stability is at risk as membership decreases. And the insured, if it is going to be terminated, needs time to obtain additional coverage.

The Withdrawal and Cancellation Agreements were supported by adequate consideration, and the Pool did not “steal” anything. (Plaintiffs’ Brief, 19).

2. The Pool can constitutionally require Members to make additional contributions if there is a shortfall.

Plaintiffs’ argument here fails for at least three reasons. First, they never identify the relief they seek or how relief is applicable, and as such, no relief can be granted. Second, they never suffered an injury because they never contributed funds, and there is no allegation the Road Commissions contributed anything to cover a shortfall; thus, they have no injury to compensate. Finally, requiring contributions to cover shortfalls is not unconstitutional.

On this last point, Plaintiffs’ reliance on *City of Tyler v Texas Employers’ Ins. Ass’n*, 288 SW 409 (Tex. Com. App. 1926) is misplaced, and the case actually demonstrates why the Pool’s shortfall contribution requirement is constitutional. In *City of Tyler*, a municipal employee sought worker’s compensation benefits; the issue was whether municipal corporations were subject to the Workmen’s Compensation Act. *Id.* at 409, 411. The insurer held that inclusion would be unconstitutional and the Court agreed. However, the reasoning of the Court is key – the insurer was a *mutual insurance association*; members were stockholders. The Texas constitution in effect at the time³² prohibited municipalities from owning stock. *Id.* at 411-412. The association was not an insurance *pool*. So if there was a shortfall, additional contributions were not required, but rather, the municipalities’ segregated stock had to be surrendered. This is the key difference: With mutual fund insurance, the municipality owned stock; in that respect, the funds remained segregated. When one participant used their allocation, others had to donate their stock to cover. The case is wholly inapplicable to a self-insurance pool because later contributions to cover a shortfall is no different than if the initial contribution was simply higher.³³ With an insurance pool, the funds are never segregated. All money is pooled, and if that pool of money is not enough to cover all liabilities during a period, more money is contributed to the pool.

³² Texas has since amended its constitution to allow municipal insurance pools. See *Boswell v Sweetwater*, 341 SW2d 664, 665-666 (TX 1960). Plaintiffs quote the current version of the Constitution, neglecting to inform the Court that this was not the version under which the case was decided.

³³ It should also be noted that under Plaintiffs’ theory, the entire statutory scheme would be unconstitutional because every insurance pool operates in this manner. Michigan’s Constitution allows municipalities to loan credit for public purposes,

Plaintiffs' argument also ignores Michigan's Constitution. Art. 9, § 18, states: "The credit of the state shall not granted to, nor in aid of any person, association or corporation, public or private, **except as authorized in this constitution**." Art. 7, § 28, is one of those exceptions and allows the legislature to enact legislation to allow intergovernmental agreements that include (i) undertakings or agreements for the joint administration of any of the functions or powers which each would have the power to perform separately; (ii) share the costs and responsibilities of functions and services; (iii) transfer functions and responsibilities to each other; (iv) cooperate with each other, and, most importantly, (v) "**lend their credit to another** or any obligation thereof as provided by law in connection with any authorized publicly owned undertaking." They also have powers "fairly implied" by that provision. Mich. Const. 1963, Art. 8, § 34. And, of course, Constitutional provisions and laws are always "liberally construed" in favor of the municipal corporation. *Id.* The statute authorizing municipalities to form self-insurance pools is legislation permitted under Art. 7, § 28.

B. The Pool is allowed to maintain appropriate reserves to pay anticipated future claims and to collect any deficiencies from members.

Plaintiffs next seem to argue that the Pool's structure violates MCL 124.7, although it is unclear how that would entitle Plaintiffs to the relief they seek here. Obviously, the Pool can maintain a reserve fund to pay anticipated future claims. See MCL 124.7a(4) ("A group self-insurance pool shall set aside cash reserves that are adequate for the payment of claims.").

III. The pool owns the equity and summary disposition in the Pool's favor is warranted.

Plaintiffs' claims all hinge on their faulty premise that they own future surplus Pool equity. That simply is not true. Plaintiffs do not articulate any legal basis for asserting an ownership interest. Rather, all they do is say that the Pool's position is not correct because they "are not claiming a right to a share of [the Pool's] surplus reserves, but rather are claiming a right to the refund of excess reserves whenever...defendant declares a distribution of surplus reserves." (Plaintiffs' Brief, 22). The

which would include shared risk insurance contributions. See Mich. Const. 1963, Art. 7, § 26. See also, Mich. Const. 1963, Art. 9, § 26; Mich. Const. 1963, Art. 7, § 34;

³⁴ This limitation on public endeavors is why intergovernmental agreements are limited to "group self-insurance pools to provide for joint or cooperative action relative to their financial and administrative resources" and are not "insurance companies" or "insurers."

Plaintiffs have never clarified the distinction they make between “surplus” and “excess,” but whatever it is, it is a distinct without a difference.

The Pool is a separate legal entity from its members. (Ex. 4, Interlocal Agreement, ¶1.) The monies received contributions are not kept separate for each member. Rather, the contributions are “pooled,” and the Board has authority invest and otherwise administer the funds in compliance with the operating documents. See, for example, Ex. 4, Interlocal Agreement, ¶1, 3, 4. Once that contribution is made, the funds contributed no longer belong to the contributing member. They belong to the pool. *A&D Development v Michigan Commercial Insurance Mut.*, unpublished opinion per curiam of the Michigan Court of Appeals, Dec. 23, 2014 (Ex. 58), is directly on point. Plaintiffs’ attempt to distinguish this case based on their request not being effectuated until some future date is no different than in facts of *A&D*. The issue is the same – when more money is in the pool than required, the excess is owned by the Pool. See also, *Dallas Sch. Dist. v Northeast Penn. Sch. Dist.*, 67 A3d 102 (Penn. 2013) (former trust contributors not entitled to any surplus equity after withdrawal).

Plaintiff is incorrect that somehow ownership of the equity changes hands after a decision is made that there is a surplus but before the actual money changes hands. Nothing in the operating documents transfers ownership from the Pool to contributors. The by-laws contemplate that former members will *not* be eligible for distributions. Rather, they *might* be awarded equity that has already accumulated. This is in-line with the Trust and Inter-local Agreements limiting distributions to current members, but allowing the Board to treat withdrawing members “less favorably.” In other words, former members may never receive a distribution. But when a member gives notice of withdrawal or when membership is terminated, *if* there is accumulated equity (i.e., if the Board decided to make a distribution), the Board *could* (but is not required to) award a portion of that already-accumulated equity to the member. Nothing has changed since the Counties began considering dissolution. Former members have never been eligible for a refund after withdrawal or termination. Further, *no one* – members or former members – can have any sort of entitlement to *potential* future equity distributions because it is not known whether there will be any distributions. For the same reasons, Plaintiffs’ “conflict of interest” / “due

process” argument fails. Their own authority only applies when the association **fails to follow its bylaws**. (See Plaintiffs’ Brief, 23: “The association must exercise its powers according to its by-laws...”).³⁵

It also does not matter that *potentially* in the future there may be larger shares distributed to remaining members. There might not be a distribution at all.³⁶ But even if there is a future financial benefit to members, that does not mean Plaintiffs’ are entitled to future payouts. The former road commissions agreed to be bound to the operating documents. Some minor amount of potential perceived unfairness is part of the bargain.³⁷ That perceived unfairness must be weighed with the harm to the Pool from the lower future contributions.³⁸

IV. The Pool is not guilty of extortion.

The Pool explained in their initial Motion for Summary Disposition why Plaintiffs’ extortion claim fails. See Exhibit 1, p 9 – 11. Added to that, the decisions to dissolve the road commissions were made for reasons unrelated to whether the Counties would be eligible members of the Pool. Just because there is a “con” on the pros and cons list does not mean that extortion was committed.³⁹ As explained above, former members were never entitled to payments of surplus equity.

Finally, the Plaintiffs’ “coercion” argument is wrong factually and legally. First, it does not appear that each Road Commission signed the withdrawal agreements “hours before being dissolved” or just to receive a portion of that year’s premium. (Plaintiffs’ Brief, 27, Exs. 7b and 7c to Complaint). Aside from the lack of signatures “hours before being dissolved” from Jackson or Calhoun, Plaintiffs’ counsel negotiated the agreements and gave her blessing. (Exs. 20 & 21).

Under Michigan law, “[C]oercion, however, must be illegal in nature, manifestly unjust, or purposely oppressive.” *Stott Realty Co. v Detroit Savings Bank*, 274 Mich 80, 84; 264 NW 297 (1936). More importantly, a claim of duress or

³⁵ Plaintiffs’ other authority is also distinguishable. *Firestone Tire & Rubber Co. v Bruch*, 489 US 101 (1989) and *Metropolitan Life Ins. Co. v Glenn*, 554 US 105 (2008) are ERISA cases and have no application outside of that context. *Aetna Life Ins. Co. v Lavoie*, 475 US 813 (1986) was a bad faith denial case where one of the state supreme court justices did not recuse himself despite having two bad faith cases pending. Judicial recusal issues raise ethical, not contractual, concerns. It is not applicable here, where the former road commissions were part of a self-governing association and agreed to be bound by certain terms. *Russian Orthodox All Saints Church v Darin*, 222 Mich 35; 192 NW 697 (1923) involved an issue about which faction of a former church owned property that was purchased by the unincorporated church, and involved interpretation and application of ecclesiastical laws and rules.

³⁶ It is unlikely that the Counties would enthusiastically pay any shortfall contribution required.

³⁷ It is inherent in self-governing pools that each governing member has a personal interest.

³⁸ While claims payments might also be reduced, operating expenses and other administrative expenses remain.

³⁹ And at least Jackson County admitted this was not a “con.”

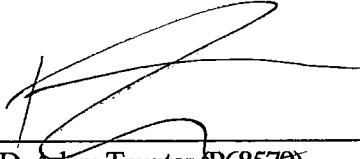
coercion “will not prevail to invalidate a contract entered into with full knowledge of all the facts, with ample time : opportunity for investigation, consideration, consultation, and reflection.” *Payne v Cavanaugh*, 292 Mich 305, 308; 290 N 807 (1940); *Apter v Joffo*, 32 Mich App 411, 416; 189 NW2d 27 (1971) (same holding).

Hence, where, as here, a party is represented by counsel during negotiations the party cannot claim duress coercion. See *Hungerman v McCord Gasket Corp.*, 189 Mich App 675, 677; 473 NW2d 720 (1991) (“Plaintiff was free to refuse to sign the release. Further, plaintiff consulted an attorney before signing. As a matter of law, we hold that plaintiff’s claim is barred by his release.”). Moreover, if Plaintiffs’ did not sign (and Jackson did not), they would be in the same position they are in now – former members not entitled to future distributions.

CONCLUSION AND RELIEF REQUESTED

The Counties want a different bargain than the former Road Commissions signed up for – and they can’t change the parties’ contract. The operating agreements (i) did not allow the counties to be part of the Pool and (ii) did not give members an ownership interest in potential future equity distributions. There was no constitutional violation. There was no extortion, conversion or embezzlement either, nor was there any breach of contract. Therefore, the Pool requests not only that this Court deny Plaintiffs’ Motion for Summary Disposition, but instead, that it grant summary disposition to the Pool for all of the reasons set forth above, and in its previous motion for summary disposition (See Exhibit 1).

DATED: May 4, 2016



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APPENDIX 51

STATE OF MICHIGAN

IN THE 30TH CIRCUIT COURT FOR THE COUNTY OF INGHAM

THE COUNTIES OF INGHAM,
JACKSON, and CALHOUN, Municipal
Corporation and bodies politic and corporate,

Plaintiffs,

v

THE MICHIGAN COUNTY ROAD
COMMISSION SELF-INSURANCE POOL, an
Unincorporated voluntary Association,

Defendant.

OPINION AND ORDER

HON. ROSEMARIE E AQUILINA

Docket No: 15-432-NZ

At a session of said Court held in the City of
Lansing, County of Ingham, State of Michigan,
this 27th day of July, 2016.

**PRESENT: The Honorable Rosemarie E. Aquilina
30th Judicial Circuit Court Judge**

This matter comes before this Honorable Court on the Counties of Ingham, Jackson, and Calhoun's ("Plaintiffs") *Motion for Partial Summary Disposition as to Liability*, pursuant to MCR 2.116(C)(9) and (C)(10), and the Michigan County Road Commission Self-Insurance Pool's ("Defendant") *Counter-request for Summary Disposition*, pursuant to MCR 2.116(I)(2).

BACKGROUND FACTS

Plaintiffs filed this suit against Defendant asserting that they are owed surplus equity dividends from contributions Plaintiffs' respective former road commissions made to Defendant from 2002 through 2012. In its Complaint, Plaintiffs allege that Defendant 1) violated Article 9, § 18 of the Michigan Constitution (Count 1), 2) committed extortion (Count 2), 3) perpetrated statutory conversion/embezzlement (Count 3), and 4) are in breach of contract (Count 4).

Defendant was formed in the early 1980's and provides a variety of property and casualty coverage, including auto liability and road liability.¹ Plaintiffs' respective former road commissions had individually been insured through Defendant since 1985.

On February 21, 2012, the Michigan Legislature adopted and signed into law two pieces of legislation: MCL 224.6 and MCL 46.11. Essentially, the foregoing legislation permitted a county, through resolution, to dissolve its respective road commission as well as transfer its respective road commission's powers, duties, and functions to its county board of commissioners.

Following the passage of MCL 224.6 and MCL 46.11, Plaintiffs' respective former road commissions either withdrew or were withdrawn as members of Defendant.² On April 24, 2012, Plaintiff Ingham County ("Plaintiff Ingham") passed Resolution #12-123, which dissolved its road commission ("ICRC") effective June 1, 2016.³ On the same date, Plaintiff Ingham requested a refund of surplus equity associated with the ICRC's contributions to the Defendant's insurance pool.⁴ On July 19, 2012, Defendant's members rejected the recommendation to allow the respective county board of commissioners to become members of Defendant.⁵ Ultimately, the ICRC, with the consent of counsel, signed an Agreement for Cancellation of Insurance and Agreement for Withdrawal from Defendant.⁶

¹ Defendant is governed by 1) a Trust Agreement, 2) a set of by-laws, and 3) an inter-local agreement signed by each member. See Def's Response to Plaintiff's Motion for Partial Summary Disposition, Ex. 2-4, 18.

² Notably, on February 28, 2012, Defendant sent correspondence to Plaintiffs through email stating that it would take into consideration whether or not a County Board of Commissioners could be given the right to refunds that belonged to its previously existing road commission. Such a decision would require that membership in Defendant's insurance pool be "uninterrupted." A change to Defendant's by-laws, however, would have had to occur in order for such a transfer to be granted. See Pls' Complaint, Ex. 3. The change never occurred.

³ See Def's Response, *supra* at Ex. 17.

⁴ See *id.* at Ex. 27-28.

⁵ See Pls' Brief in Support of Motion for Partial Summary Disposition, at p. 5.

⁶ See Def's Response, *supra* at Ex. 19-24.

Through the fall of 2012, Plaintiff Jackson County's ("Plaintiff Jackson") Ad Hoc Committee held meetings in which it weighed the pros and cons of transferring power from road commission to County Board, including the financial ramifications of possible decisions.⁷ On January 16, 2013, Defendant sent JCRC a Cancellation and Termination Agreement.⁸ The contents of the Cancellation and Termination Agreement indicated to Plaintiff Jackson that resolutions passed by the Jackson County Board of Commissioners on January 15, 2013, effectively withdrew the JCRC's membership from Defendant's insurance pool as of January 16, 2013.⁹

Similar to Plaintiff Ingham and Plaintiff Jackson, Plaintiff Calhoun County ("Plaintiff Calhoun") also passed a resolution to dissolve its former road commission ("CCRC"), which was to become effective on November 1, 2012. After the dissolution of the CCRC, Plaintiff Calhoun County passed an additional resolution that created and established the Calhoun County Road Department, a separate body from the original CCRC.¹⁰ In addition, following dissolution, Plaintiff Calhoun signed Defendant's Termination and Cancellation Agreements.

On June 17, 2014, following the dissolution of Plaintiffs' respective road commissions, Plaintiffs sought through counsel to collect any refund of surplus equity associated with the

⁷ See *id.* at Ex. 33.

⁸ See *id.* at Ex. 49. The record does not show that Jackson County or JCRC ever signed the cancellation agreement.

⁹ The cancellation agreement states in relevant part that "[t]he Jackson County Board of Commissioners has, by Resolution Dissolving the Board of Road Commissioners and Transferring All of Its Powers, Duties and Functions to the Jackson County Board of Commissioners; Creating a Department of Transportation and Roads, and adopting a 2012 Budget for the Department--Resolution 01-13.8, dated January 15, 2013, dissolved the Commission as of January 16, 2013 and determined that the power, duties and functions of the Commission will be transferred to Jackson County. As such, the Commission will no longer exist as statutory body corporate after January 16, 2013. Steps will be taken to effectuate the Commission's withdrawal from membership in the MCRCSIP." *Id.*

¹⁰ See *id.* at Ex. 50, Appendix I, p. 2.

contributions made during their respective road commission's participation in Defendant's insurance pool. Defendant, however, denied Plaintiff's request.¹¹

Plaintiffs are ultimately seeking that this Court hold Defendant liable for all shares of surplus payments and dividends that would have been paid to Plaintiff's respective road commissions for the years ranging from 2002 to 2012, and a declaratory judgment as to actuarial years closed in the future.

On May 11, 2016, oral arguments on Plaintiff's *Motion for Partial Summary Disposition as to Liability* and Defendant's *Counter-request for Summary Disposition* were heard before this Court. Ultimately, this Court did not render a decision from the bench, finding that it needed more time to review the issues.¹²

PLAINTIFFS' ARGUMENT

Plaintiffs provide two primary reasons why their *Motion for Partial Summary Disposition as to Liability* should be granted, pursuant to MCR 2.116(C)(9) and (C)(10). First, Plaintiffs argue that they are, as a matter of law, the same entities as the former road commissions ICRC, JCRC, and CCRC. Second, Plaintiffs argue that Defendant's distribution of excess premiums, paid by the former road commissions, to other members of Defendant, not only violates the Michigan Constitution—specifically Art. 9, § 18—but is also a breach of contract.

As previously mentioned, Plaintiffs first argue that they are, as a matter of law, the same entities as the former road commissions. Plaintiffs provide that both MCL 46.11(s) and MCL

¹¹ Section 3, subsection H of Defendant's Inter-local agreement with the ICRC states in relevant part to this case that "[t]he Pool may treat members who withdraw from future Pool Years differently and less favorable than the Pool treats members who continue in the Pool for future years." *Id.* at Ex. 4, p. 4; see also Ex. 2(9)(f), p.5. Moreover, pursuant a Memorandum distributed to Defendant's Members on July 19, 1990: "A withdrawing member forfeits any and all rights to dividend, credits, and/or accumulated interest that is to be paid or shall become payable after the effective date of the Member's withdrawal from the Pool." *Id.* at Ex. 23.

¹² See Motion for Partial Summary Disposition Hearing Transcript, 55:12-24, May 11, 2016.

224.6(7) support this assertion.¹³ In accordance with these provisions, Plaintiffs argue that the respective County Board absorbed the duties and powers of the former road commissions.¹⁴ Therefore, Plaintiffs assert that they are entitled to all assets of the former road commissions, including the right to excess funds in the Pool, because they are successors in interest to the former road commissions.¹⁵ Plaintiffs argue that if they are not found to be successors in interest

¹³ MCL 224.6(7) provides: “Except as otherwise provided under subsection (5) and subject to the requirement provided in subsection (9), before January 1, 2020, the powers, duties, and functions that are otherwise provided by law for an appointed board of county road commissioners may be transferred to the county board of commissioners by a resolution as allowed under section 11 of 1851 PA 156, MCL 46.11. The appointed board of county road commissioners of that county is dissolved on the date specified in the resolution adopted under this subsection, and the county board of commissioners is authorized to receive and expend funds as allowed under 1951 PA 51, MCL 247.651 to 247.675.” MCL 46.11(s) states in pertinent part to Plaintiffs’ argument that: “Before January 1, 2020, by majority vote of the members of the county board of commissioners elected and serving in a county with an appointed board of county road commissioners, pass a resolution that transfers the powers, duties, and functions that are otherwise provided by law for the appointed board of county road commissioners of that county to the county board of commissioners. The resolution is subject to the requirement in section 6(9) of chapter IV of 1909 PA 283, MCL 224.6. The appointed board of county road commissioners of that county is dissolved on the date specified in the resolution adopted under this subdivision, and the county board of commissioners is authorized to receive and expend funds as allowed under 1951 PA 51, MCL 247.651 to 247.675.”

¹⁴ Plaintiffs argue it is significant the legislature used the term “appointed” and not “elected” when referring to the county road commission in both MCL 224.6(7) and MCL 46.11(s) because county boards are elected, not appointed. As such, Plaintiff asserts that when the County Board acts as a county road commission, it is not appointed, and therefore is not dissolved. Plaintiffs also argue that “where a county board of commissioners had absorbed both the duties and powers of an appointed road commission, the county board of commissioners is now the ‘board of county road commissioners.’” See Plts’ Brief in Support of Motion for Partial Summary Disposition, at p. 10.

¹⁵ Plaintiffs point to the caption in *Loyer Education Trust v Wayne Co Rd Comm’n*, 168 Mich App 587; 425 NW2d 189 (1998), to support the proposition that counties are successors in interest to road commissions. Further, Plaintiffs argue the name of the entity is not relevant in determining its function, but rather the function should be determined based on how the entity operates. *Nash v Duncan Park Comm’n*, 304 Mich App 599, 634-35; 848 NW2d 435 (2014), vacated on other grounds 497 Mich 1016; 862 NW2d 417 (2015). Plaintiffs further argue that 1951 PA 51 supports their argument because if not included, no party would be responsible for maintaining roads when the former road commissions were ended. In addition, Plaintiffs cite to *Graham v Folsom*, 200 US 248; 26 S Ct 245; 50 L Ed 464 (1906) to provide authority that entities re-assigned to obligations from an abolished Township are successors in interest so that no contractual obligations of the abolished party are impaired.

to the former road commissions 1) no one would be responsible to maintain existing county roads, 2) all contracts that the former road commissions were party to would become unconstitutionally impaired,¹⁶ and 3) the former road commissions' property would have no rightful owner.¹⁷ Furthermore, Plaintiffs argue that Defendant fails to acknowledge that each Plaintiff County Board of Commissions is now legally a road commission and entitled to join or continue membership with Defendant.¹⁸

Plaintiffs next argue that Defendant violated Mich. Const. 1963, Art. 9, § 18.¹⁹ Essentially, Plaintiffs argument rests upon the assertion that Defendant is using Plaintiffs' credit to benefit Defendant's other members.²⁰ Specifically, Plaintiffs contend that Defendant's failure to share funds proportionally with those who previously contributed to the Pool necessarily constitutes the lending of credit. In addition, Plaintiffs contend that in exchange for signing two termination agreements, the former road commissions did not receive any consideration.²¹

Plaintiffs further argue that the structure of the Pool violates Art. 9, § 18. Specifically, Plaintiffs assert that the structure necessarily makes each member liable for the debts of other

¹⁶ In support, Plaintiffs cite US Const, art 1, § 10; Const 1963, art 1, § 10.

¹⁷ In support, Plaintiffs cite to MCL 45.3 and MCL 45.4.

¹⁸ Additionally, Plaintiffs state that Defendant's by-laws do not provide a distinct definition of "county road commission." Furthermore, Plaintiffs insist that Defendant is not the final authority in how its by-laws are to be read. In support of this latter assertion, Plaintiffs cite to *Slatterly v Madiol*, 257 Mich App 242; 668 NW2d 154 (2003).

¹⁹ Mich. Const. 1963, Art. 9, § 18 states that "[t]he credit of the state shall not be granted to, nor in aid of any person, association or corporation, public or private, except as authorized in this constitution."

²⁰ Plaintiffs cite to *In re Advisory Opinion on Constitutionality of 1986 PA 281*, 430 Mich 93; 422 NW2d 186 (1988), and *Oakland Co Drain Comm'r v Royal Oak*, 306 Mich 124; 10 NW2d 435 (1943) to support the proposition that "the prohibition against the lending of credit applies to counties as political subdivisions and instrumentalities of the state." See Pls' Brief, *supra* at 17.

²¹ Plaintiffs state that Defendant and its members are using the agreements to steal monies belonging to the former road commissions. Furthermore, Plaintiffs argue that, pursuant to statute, Defendant should not be allowed to maintain any amount of monies in excess of what is identified in its Declaration of Trust.

members.²² Moreover, Plaintiffs contend that because they are successors in all rights to the former road commissions, they are entitled to shares of surplus funds Defendant distributes annually for prior years.²³

For the above-mentioned reasons, Plaintiffs request that this Court grant their *Motion for Partial Summary Disposition as to Liability*.

DEFENDANT'S ARGUMENT

Defendant has set forth four main arguments in opposition to Plaintiffs' Motion for Partial Summary Disposition, and in support of its counter-request for summary disposition, pursuant to MCR 2.116(I)(2). First, Defendant argues that Plaintiffs are neither the same entities as the former road commissions ICRC, JCRC, and CCRC, nor are they the road commissions' "successors in interest." Second, Defendant contends that even if Plaintiffs are found to be successors in interest to the former road commissions, they would still not be entitled to anything. Third, Defendant maintains that it owns its future surplus equity, and that Plaintiffs' claim of ownership in future surplus Pool equity is baseless. Last, Defendant asserts that Plaintiff's allegations of extortion and coercion are wholly and entirely without merit.

In support of Defendant's first argument, Defendant states that the former road commissions were dissolved—not absorbed by Plaintiffs—when the former road commissions' powers, duties, and functions were transferred to their particular county board of commissioners. Defendant maintains that the foregoing assertion is consistent with the plain language of MCL

²² In support, Plaintiffs cite to *City of Tyler v Texas Employers' Insurance Ass'n*, 288 SW 409 (1926). Additionally, Plaintiffs contend that Defendant is not abiding by its own policies and is acting in bad faith in order to gain direct financial benefit by withholding refunds from Plaintiffs.

²³ It should be noted that Plaintiffs further allege that withholding funds that Plaintiffs are entitled to is an act of extortion. In addition, Plaintiffs contend that 1) they did not voluntarily withdraw from as a member of Defendant, but were rather wrongfully ejected; and 2) were induced under duress to withdraw from membership.

224.6(7) and MCL 46.11.²⁴ As such, Defendant maintains that Plaintiffs are distinct and separate entities from the former road commissions, and that no present statutory authority supports the notion that the former road commissions still exist or that Plaintiffs are entitled to either receive future equity refunds or become members of Defendant. Moreover, Defendant stresses that it was not necessary, as Plaintiffs allege, for Plaintiffs to become successors in interest to the former road commissions because the transfer of power and duties from the former road commissions—as well as the direct receipt of funds from the State Transportation Fund—to Plaintiffs, guaranteed that road maintenance and construction projects would continue without issue regardless of the fact that the former road commissions were dissolved.²⁵

In further support of its first argument, Defendant states that its by-laws govern the present case, constitute a binding contract, cannot be ignored, cannot be rewritten by Plaintiffs, and additionally show that Plaintiffs are different entities from county road commissions. Defendant asserts that, as stated in its by-laws, its members can only be county road commissions, and that MCL 45.3, MCL 224.9, and MCL 124.1(a) all support the proposition that county road commissions are separate entities from counties themselves.²⁶

²⁴ Defendant also cites to MCL 46.11(t) to support the proposition that elected road commissions as well as the appointed road commissions are dissolved when their powers, duties, and functions are transferred to the applicable county board of commissioners.

²⁵ Defendant further states that Plaintiffs are incorrect in citing to MCL 45.3 and MCL 45.4 to support their argument that they are successors in interest to the former road commissions because neither provision involves anything about becoming successors in interest, nor do they involve the transferring of the former road commissions' property interests to Plaintiffs. Further, Defendant argues that Plaintiffs reliance on *Graham v Folsom*, 200 US 248, 26 S Ct 245 (1906), to support their contention that they are successors in interest to the former road commissions is misplaced because the issue and procedural posture in *Graham* were different, and because “the statutory language applicable in [this] case transfers ‘duties,’ which avoids the contracts clause violation found in *Graham*.” Def’s Response, *supra* at 12.

²⁶ Defendant also cites to Article III and IV of its by-laws, which it argues further supports the notion that counties are separate entities from county road commissions and that Plaintiffs at no time were members of Defendant or ever eligible for membership. See *id.* at Ex. 3. Even if Plaintiffs were eligible for membership, Defendant asserts that it cannot be forced to extend

With regard to Defendant's second argument, Defendant contends that neither Plaintiffs nor the former road commissions gave property or lent credit to Defendant.²⁷ Further, Defendant maintains that all contributions the former road commissions made to Defendant were supported by consideration, which included insurance coverage and claims administration. In response to Plaintiffs' argument that they gave up property—specifically successor rights to refunds—without a fair exchange and without consideration, which Defendant assumes to be the withdrawal and cancellation agreements, Defendant states that 1) the agreements provided that the former road commissions could not be members of the pool once dissolved; that 2) the agreements mutually released Plaintiffs and Defendant from the withdrawal notice provisions, which in itself Defendant argues constituted consideration; and that 3) the agreements shed light on how claims would be handled in the future.²⁸

membership to Plaintiffs for that would result in a constitutional violation. Defendant maintains that once the former road commissions were dissolved, the contracts between Defendant and the former road commissions were cancelled. As a result, Defendant asserts that the former road commissions did not owe any future obligations to it.

²⁷ In response to Plaintiffs' claim that Defendant violated Mich. Const. 1963, Art. 9, § 18, Defendant still relies on arguments made in its prior Motion for Summary Disposition filed with this Court. See *id.* at Ex. 1.

²⁸ Defendant argues that the agreements refer to Plaintiffs as successor in function not successors in interest and that Plaintiffs' counsel specifically negotiated this language so that Plaintiffs did not experience a lapse in coverage. Defendant asserts that the foregoing also establishes sufficient consideration. Further, with regard to the termination and cancellation agreements, Defendant states 1) that neither Plaintiff Jackson County nor JCRC ever signed the agreements and JCRC's membership with Defendant automatically terminated upon being dissolved, which makes Plaintiffs' argument regarding Jackson County moot; 2) that Plaintiff Ingham County signed the agreements with consent of counsel prior to the dissolution of the ICRC; and 3) that Plaintiff Calhoun County signed the agreements with full knowledge that continued membership with Defendant was impossible. Ultimately, Defendant argues that Plaintiffs' assertion that they was forced to withdraw is baseless and disingenuous, and that neither Plaintiffs' nor the former road commissions gave up anything without consideration.

Additionally, Defendant argues that it is not unconstitutional for it to require members to make additional contributions if there is a shortfall.²⁹ With regard to insurance pools, Defendant states that the funds are never segregated and that in the event the pool of money is insufficient to cover liabilities in a given period, more money is contributed to the pool.³⁰ Defendant maintains that this is an acceptable practice as every insurance pool operates in the manner. Defendant also insists that its structure does not violate MCL 124.7a,³¹ and that the authority allowing road commissions to form self-insurance pools is permissible legislation under Art. 7, § 28 of the Michigan Constitution.

In support of its third argument, Defendant stresses that it is a separate legal entity from its members.³² Further, Defendant asserts that when a road commission contributes monies, the monies are pooled—not kept separately—and no longer belong to the contributing road commission, but rather Defendant.³³ As such, Defendant contends that Plaintiffs' claim that they are entitled to future surplus equity is without merit because Plaintiffs do not have any right of ownership over contributions made to the insurance pool. Further, Defendant argues that the

²⁹ Defendant asserts that Plaintiffs have never suffered an injury because they never contributed funds. Further, Defendant contends that Plaintiffs have failed to make allegations that the former road commissions contributed anything to cover a shortfall.

³⁰ Defendant states that Plaintiffs' reliance on *City of Tyler v Texas Employers' Ins. Ass'n*, 288 SW 409 (1926) to support the proposition that Defendant's shortfall contribution requirement is unconstitutional is improper. Defendant asserts that the insurer in *City of Tyler* was a mutual insurance association, not an insurance pool. Furthermore, Defendant argues that *City of Tyler* is "wholly inapplicable to a self-insurance pool because later contributions to cover a shortfall is no different than if the initial contribution was simply higher." Def's Response, *supra* at 15.

³¹ See MCL 124.7a(4).

³² Defendant cites to Exhibit 4, ¶ 1 of its Response.

³³ In support of the proposition that excess money in an insurance pool is owned by the pool Defendant cites to *A&D Development v Michigan Commercial Insurance Mut*, No 317024, 2014 WL 7338871 (Mich App 2014) and *Dallas Sch Dist v Northeast Penn Sch Dists*, 67 A3d 102 (2013). Defendant also states that once the contributions are pooled, the Board has authority to administer the funds in accordance with the operating documents. Defendant

Trust and Inter-local Agreements clearly provide that former members may be treated less favorably, i.e., without consideration, in the event refunds are distributed.³⁴

Regarding Defendant's last argument, Defendant argues that it is not guilty of extortion because the decisions to dissolve the former road commissions had nothing to do with whether Plaintiffs would be eligible for membership with Defendant. Defendant also argues there is no evidence of coercion because Plaintiffs' respective road commissions did not sign the aforementioned agreements hours before dissolution—Defendant notes that Plaintiff Jackson never signed the agreements and that Plaintiff Calhoun signed the agreements after dissolution—and because Plaintiffs' current counsel approved the agreements after negotiation with Defendant.³⁵ Furthermore, even if Plaintiffs did not sign the agreements, Defendant asserts that Plaintiffs would not be entitled to future refunds for the reason that the former road commissions dissolved and Plaintiffs were never members.

For the foregoing reasons, Defendant requests that this Court deny Plaintiffs' *Motion for Partial Summary Disposition as to Liability*, and grant its *Counter Request for Summary Disposition*.

STANDARD OF REVIEW

Plaintiffs move for summary disposition under MCR 2.116(C)(9) and (C)(10). Summary disposition is warranted, pursuant to MCR 2.116(C)(9), when “[t]he opposing party has failed to state a valid defense to a claim asserted against [it].” A summary disposition motion under MCR 2.116(C)(9) tests the sufficiency of a defendant's pleadings by accepting all well-plead

³⁴ According to Defendant, Defendant's by-laws also consider that former members are not eligible for distributions. In addition, Defendant notes that distributions are not certain and may, on some occasions, not occur. Further, Defendant argues that the former road commissions agreed to be bound by Defendant's operating documents, and some amount of potential unfairness comes with any bargain.

³⁵ Defendant notes in its Response that Jackson never signed the agreements.

allegations as true. *See id.* “If the defenses are so clearly untenable as a matter of law that no factual development could possibly deny plaintiff’s right to recovery, then summary disposition is proper.” *Village of Dimondale v Grable*, 240 Mich App 553, 564; 618 NW2d 23 (2000).

Summary disposition is warranted, pursuant to MCR 2.116(C)(10), where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). The court must review the pleadings, affidavits, depositions, and other documentary evidence submitted in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004).

Defendant is requesting that summary disposition judgment as a matter of law be entered in its favor, pursuant to MCR 2.116(I)(2). MCR 2.116(I)(2) states that “[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party.” Accordingly, MCR 2.116(I)(2) expressly authorizes a court to render summary disposition in favor of the party opposing the motion if it appears that such party is entitled to judgment as a matter of law. *See id.*; see also *Gyarmati v Bielfield*, 245 Mich App 602, 604; 629 NW2d 93 (2001). In deciding whether to grant summary disposition in favor of the opposing party the court may consider all the materials referenced in MCR 2.116(G)(5).

CONCLUSIONS OF LAW

After thorough review, this Court finds that Plaintiffs’ *Motion for Partial Summary Disposition as to Liability* should be denied and that Defendant is entitled to summary disposition, pursuant to MCR 2.116(I)(2). It is in this Court’s opinion that as a matter of law Defendant has not violated Article 9, § 18 of the Michigan Constitution, has not committed

extortion, and has not perpetrated statutory conversion/embezzlement. Additionally, there has not been a breach of contract.

First, Defendant has not violated Article 9, § 18 of the Michigan Constitution. As provided earlier, Article 9, § 18 states that “[t]he credit of the state shall not be granted to, nor in aid of any person, association or corporation, public or private, except as authorized in this constitution.” “Article 9, § 18 states the general rule that the state shall not lend its credit except as provided in the constitution.” *In re Advisory Opinion, supra* at 119. Its purpose ““is to make certain that the State, which itself cannot borrow, except as authorized, does not accumulate unauthorized debts by indorsing or guaranteeing the obligation of others.”” *Id.* (quoting *Advisory Opinion re Constitutionality of 1966 PA 346*, 380 Mich 554, 564; 158 NW2d 416 (1968)). “[A]rticle 9, § 18 applies to local governments as political subdivisions and instrumentalities of the state.” *Id.* (citing *Oakland Co Drain Comm’r v Royal Oak*, 306 Mich 124, 142; 10 NW2d 435 (1943)). In determining whether Article 9, § 18 has been violated, the threshold question to ask is whether a loan of credit took place. *In re Advisory Opinion, supra* at 119. Notably, the Michigan Constitution’s “proscription against State or County grant of credit is not offended by a fair exchange of value for value.” *Alan v Wayne County*, 328 Mich 210, 330; 200 NW2d 628 (1972). Further, Article 9, § 18 “is violated only when the State creates an obligation legally enforceable against it for the benefit of another.” *Sprick v Regents of University of Michigan*, 43 Mich App 178 (1972).

Here, stated simply, neither Plaintiffs nor its former road commission loaned their credit to Defendant. In addition, Plaintiffs former road commissions made contributions to Defendant to obtain insurance coverage—which constituted a fair exchange of value for value—not to accumulate a debt, guarantee an obligation, or loan Defendant monies. Of particular importance

is that neither Plaintiffs nor its former road commission were obligated to Defendant, and additionally neither gave up property as refund distributions from Defendant to its members are not guaranteed.³⁶ Thus, Defendant has not violated Article 9, § 18 of the Michigan Constitution.

Second, Plaintiffs' claim that Defendant committed extortion must also be dismissed. MCL 750.213 governs the criminal act of extortion. MCL 750.213 provides that:

Any person who shall, either orally or by a written or printed communication, maliciously threaten to accuse another of any crime or offense, or shall orally or by any written or printed communication maliciously threaten any injury to the person or property or mother, father, husband, wife or child of another with intent thereby to extort money or any pecuniary advantage whatever, or with intent to compel the person so threatened to do or refrain from doing any act against his will, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 20 years or by a fine of not more than 10,000 dollars.

The Michigan Court of Appeals in *People v Harris*, 495 Mich 120, 128; 845 NW2d 477 (2014), clarified that extortion occurs when defendant:

- (1) either orally or by a written or printed communication, maliciously threatens
- (2) to accuse another of any crime or offense, *or* to injure the person or property or mother, father, spouse or child of another
- (3) with the intent to extort money or any pecuniary advantage whatever, or with the intent to compel the person threatened to do or refrain from doing any act against his or her will.

Further, pursuant to *Harris*, the “Legislature clearly intended the crime of extortion to occur when a defendant maliciously threatens to injure another person with the intent to compel that person to do any act against his will, without regard to the significance or seriousness of the compelled act.” *Id.* at 128. Moreover, the presence of malice is crucial to the commission of

³⁶ It should be noted that this Court does not find Plaintiffs to be the same entities as—or successors in interest to—its respective former road commissions. MCL 46.11(s) and (t) clearly provide that upon passing the resolution to transfer the powers, duties, and functions of the respective road commission to the applicable county board of commissions, the road commission is “dissolved.” As the Michigan Court of Appeals held in *Smith v Ruberg*, 167 Mich App 13, 16; 421 NW2d 557 (1998), “[w]hen statutory language is clear and unambiguous, judicial interpretation to vary the plain meaning of the statute is precluded.” MCL 46.11 is not ambiguous, and the word dissolved should be given its plain meaning, which is not “to absorb.” According to the 10th Ed. of Black’s Law Dictionary (2014), the word “dissolution” means “the act of bringing to an end; termination.”

extortion. See *id.* at 135-36.³⁷ As such, without malicious action on the part of defendant, a claim of extortion would fail upon the merits. See *id.* “Only those threats made with the intent to commit a wrongful act without justice or excuse . . . rise to the level necessary to support an extortion conviction.” *Id.* at 136. Additionally, “[w]hen a defendant is charged with extortion arising out of a compelled action or omission, a conviction may be secured upon the presentation of proof of the existence of a threat of immediate, continuing, or future harm.” *People v Pena*, 224 Mich App 650, 656; 569 NW2d 871 (1997).

Here, Plaintiff’s claim of extortion simply has no merit. First, malicious action or any act of malice on part of Defendant is not evident in this case. Additionally, at no point in its argument before this Court on May 11, 2016, or in its pleadings has Plaintiff substantiated their claim that Defendant has committed extortion. Plaintiff has also neither established nor shown that the actions of Defendant worked in any way to compel Plaintiffs—against their own will—to act or not act in a certain way. To the contrary, this Court believes that the record amply shows that each respective Plaintiff acted under its own sphere of influence. The passage of MCL 224.6 and MCL 46.11 clearly permitted Plaintiffs—of their own free will—through resolution, to dissolve their respective road commission and transfer their road commission’s powers, duties, and functions to their respective county boards of commissioners. Additionally, the record clearly shows that Plaintiffs were aware and fully cognizant of the fact that dissolution of their respective road commissions would result in not being entitled to potential future refunds.³⁸ As members of Defendant for quite some time, the former road commissions were aware or should have been aware of Defendant’s by-laws and Plaintiffs cannot claim that they

³⁷ Malice is defined as “the intent, without justification or excuse, to commit a wrongful act[,] 2) [r]eckless disregard of the law or of a person’s legal rights[, and] 3) [i]ll will [or] wickedness of heart. *Id.* at 136.

³⁸ See Def’s Response, *supra* at Ex. 2, p. 5, Section 9(f); Ex. 4, p. 4, Section 3(H); Ex. 9; Ex. 15; Ex. 23; Ex. 25.

were forced, coerced, or extorted to do anything against their will. Thus, for the foregoing reasons, Plaintiff's claim of extortion is without merit and must be dismissed.

Third, Defendant has not committed conversion/embezzlement. MCL 600.2919a—which governs stealing, embezzling, or converting property, as well as buying, receiving, possessing, concealing, or aiding in concealment of stolen, embezzled, or converted property—states as follows:

- (1) A person damaged as a result of either or both of the following may recover 3 times the amount of actual damages sustained, plus costs and reasonable attorney fees:
 - (a) Another person's stealing or embezzling property or converting property to the other person's own use.
 - (b) Another person's buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property when the person buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property knew that the property was stolen, embezzled, or converted.
- (2) The remedy provided by this section is in addition to any other right or remedy the person may have at law or otherwise.

The Michigan Court of Appeals held in *Check Reporting Services, Inc. v Michigan Nat. Bank-Lansing*, 191 Mich App 614, 626 478 NW2d 893 (1991), that a claim of conversion is established “only if there was an obligation on the defendant’s part to return or deliver the specific money entrusted to it.” See *Garras v Bekiares*, 315 Mich 141, 148; 23 NW2d 239 (1946); see also *Citizens Ins Co of America v Delcamp Truck Center Inc*, 178 Mich App 570, 575; 444 NW2d 210 (1989). The reasoning is simple: something cannot be converted if the claiming party had no right to it in the first place.

In the present case, Plaintiffs ask this Court to consider funds contributed by Plaintiffs’ former road commissions to Defendant’s insurance pool as property belonging to Plaintiffs. This Court, however, does not agree with the foregoing notion, especially when—as previously mentioned—the records shows that Plaintiffs and their former road commissions were fully

cognizant of the fact that dissolution of the former road commissions would result in the forfeiture of future surplus refunds.³⁹ Further, the premiums paid by the former road commissions to Defendant were in exchange for insurance coverage. Moreover, surplus distributions to Defendant's members were not guaranteed. As such, there was a fair exchange between the parties, and Plaintiff's claim that Defendant committed conversion/embezzlement should be dismissed.⁴⁰

Last, Plaintiffs' breach of contract claim should be dismissed. In *Miller–Davis Company v. Ahrens Construction, Inc.*, 495 Mich 161, 178; 848 NW2d 95, 104 (2014), the Supreme Court of Michigan held that “a party asserting a breach of contract must establish by a preponderance of the evidence that (1) that there was a contract (2) which the other party breached (3) thereby resulting in damages to the party claiming breach.” Without the foregoing, a breach of contract claim cannot survive. Further, the Michigan Court of Appeals has clearly held that, unlike other jurisdictions, “Michigan does not recognize a cause of action for breach of the implied covenant of good faith and fair dealing.” *In re Leix Estate*, 289 Mich App 574, 591; 797 NW2d 673 (2010) (quoting *Dykema Gossett PLLC v Ajluni*, 273 Mich App 1, 13; 730 NW2d 29 (2006)).

Plaintiffs' breach of contract claim cannot survive for several reasons: 1) surplus distributions to Defendant's members were not guaranteed; 2) Plaintiffs and their former road commissions were fully cognizant of the fact that dissolution of the former road commissions would result in the forfeiture of future surplus refunds; 3) the record amply shows that each respective Plaintiff acted under its own sphere of influence, especially with regard to signing

³⁹ See Def's Response, *supra* at Ex. 2, p. 5, Section 9(f); Ex. 4, p. 4, Section 3(H); Ex. 9; Ex. 15; Ex. 23; Ex. 25; see also *A&D Development, supra* at *4-5 (affirming the trial's court's determination that plaintiffs failed to demonstrate that they owned surplus premiums of the Michigan Construction Industry Self-Insured Fund).

⁴⁰ See n 36.

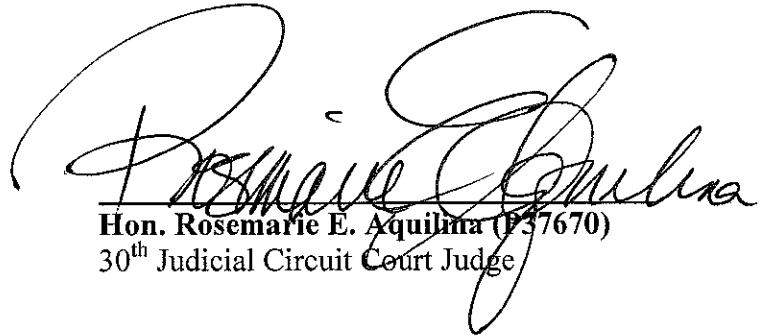
Defendant's Cancellation and Withdrawal Agreements;⁴¹ and 4) Plaintiffs, as a separate entity from its former road commission,⁴² never contracted with Defendant. Thus, Plaintiffs' breach of contract claim must be dismissed.

THEREFORE IT IS ORDERED that Plaintiffs' Motion for Partial Summary Disposition as to Liability, pursuant to MCR 2.116(C)(9) and (C)(10), is hereby **DENIED**.

FURTHER IT IS ORDERED that Defendant's *Counter-request for Summary Disposition*, pursuant to MCR 2.116(I)(2), is hereby **GRANTED**.

FURTHER IT IS ORDERED that, pursuant to MCR 2.602(A)(3), this Order resolves the last pending claim and closes the case.

IT IS SO ORDERED.



Hon. Rosemarie E. Aquilina (P37670)
30th Judicial Circuit Court Judge

⁴¹ Plaintiff Jackson never signed the above-mentioned agreements.

⁴² See n 36.

APPENDIX 52

STATE OF MICHIGAN
COURT OF APPEALS

COUNTY OF INGHAM, COUNTY OF
JACKSON, and COUNTY OF CALHOUN,

Plaintiffs-Appellants,

v

MICHIGAN COUNTY ROAD COMMISSION
SELF-INSURANCE POOL,

Defendant-Appellee.

FOR PUBLICATION
October 10, 2017
9:05 a.m.

No. 334077
Ingham Circuit Court
LC No. 15-000432-NZ

Advance Sheets Version

Before: TALBOT, C.J., and O'CONNELL and O'BRIEN, JJ.

O'CONNELL, J.

Plaintiffs, Ingham County, Jackson County, and Calhoun County (collectively, the counties), appeal as of right the trial court's order granting summary disposition in favor of defendant, the Michigan County Road Commission Self-Insurance Pool (the Pool), under MCR 2.116(I)(2) (opposing party, rather than moving party, entitled to judgment). Because we agree with the counties that they are successors in interest to their respective counties' former road commissions, we reverse and remand.

I. FACTUAL AND PROCEDURAL BACKGROUND

A Declaration of Trust created the Pool in April 1984. The Pool's bylaws limit membership to county road commissions located in the state of Michigan and require each member to sign an inter-local agreement. The appointed road commissions for Ingham County, Jackson County, and Calhoun County joined the Pool soon after its formation.

Members of the Pool made annual premium contributions to cover the payment of claims and the Pool's operating and administrative expenses. The Pool's bylaws and the inter-local agreements permitted the refund of surplus funds more than one year after payment of a member's premium contribution. The counties alleged that the Pool had a longstanding practice of refunding excess contributions to members out of unused reserves in proportion to premiums paid, typically calculated and refunded several years later.

In February 2012, the Legislature amended MCL 224.6 to permit transfer of "the powers, duties, and functions that are otherwise provided by law for an appointed board of county road commissioners . . . to the county board of commissioners by resolution as allowed under . . .

MCL 46.11.” MCL 224.6(7), as amended by 2012 PA 14. At the same time, the Legislature amended MCL 46.11 to give a county board of commissioners the authority to pass a resolution dissolving an appointed road commission and transferring the road commission’s “powers, duties, and functions” to the county board of commissioners. MCL 46.11(s), as amended by 2012 PA 15. Pursuant to these amendments, the Ingham County, Jackson County, and Calhoun County Boards of Commissioners adopted resolutions to dissolve their county road commissions and take over their roles.

Ingham County adopted the dissolution resolution on April 24, 2012, effective June 1, 2012. About two weeks before adopting the resolution, Ingham County paid its contribution to the Pool for the fiscal year beginning April 1, 2012, apparently with the understanding that the Pool intended to amend its rules to permit the county successors to the dissolved road commissions to participate in the Pool. Ingham County maintained that it only learned later in May that the Pool would not allow the county to remain a member of the Pool. On May 30 and 31, 2012, the Ingham County road commission signed two agreements—one to withdraw from the Pool and one to cancel insurance through the Pool—effective June 1, 2012.

Calhoun County signed a similar withdrawal agreement on October 23, 2012, effective November 1, 2012. It appears that Jackson County did not sign a withdrawal agreement.

At Ingham County’s request, the Pool agreed to refund the unused pro rata portion of the former road commission’s annual contribution for the 2012–2013 fiscal year. The Pool declined, however, to refund surplus equity flowing from prior-year contributions because of the road commission’s withdrawal from membership in the Pool.

The counties brought a four-count complaint against the Pool. The counties alleged that they were eligible for 10 years’ worth of refunds because the Pool was still refunding contributions from 2002 premiums. The Pool refused to issue those refunds to the counties. Consequently, the counties maintained that the Pool’s refusal reflected (1) unconstitutional lending under Const 1963, art 9, § 18; (2) extortion; (3) conversion; and (4) breach of contract. The Pool denied the counties’ allegations and disputed their claims.

The counties filed a partial motion for summary disposition as to liability under MCR 2.116(C)(9) and (10). The Pool filed a cross-motion for summary disposition under MCR 2.116(I)(2). The trial court granted summary disposition under MCR 2.116(I)(2) in favor of the Pool, rejecting all of the counties’ arguments.

II. STANDARD OF REVIEW

This Court reviews de novo a trial court’s decision to grant or deny a motion for summary disposition. *Village of Dimondale v Grable*, 240 Mich App 553, 563; 618 NW2d 23 (2000). We also review de novo legal questions, *In re Jude*, 228 Mich App 667, 670; 578 NW2d 704 (1998), including issues of statutory interpretation, *Slater v Ann Arbor Pub Sch Bd of Ed*, 250 Mich App 419, 426; 648 NW2d 205 (2002), and contract interpretation, *Rossow v Brentwood Farms Dev, Inc*, 251 Mich App 652, 658; 651 NW2d 458 (2002).

Summary disposition under MCR 2.116(C)(9) is appropriate when a defendant fails to plead a valid defense and no factual development could defeat the plaintiff’s claim. *Village of*

Dimondale, 240 Mich App at 564. A motion for summary disposition under MCR 2.116(C)(9) “tests the sufficiency of a defendant’s pleadings, [and] the trial court must accept as true all well-pleaded allegations” *Slater*, 250 Mich App at 425. To decide a motion for summary disposition under MCR 2.116(C)(9), the trial court may only consider the pleadings, which include complaints, answers, and replies, but do not include the motion for summary disposition itself. *Village of Dimondale*, 240 Mich App at 565; MCR 2.110(A).

Summary disposition is proper when there is no genuine issue of material fact. MCR 2.116(C)(10). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Spiek v Dep’t of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998). This Court considers the affidavits, pleadings, depositions, admissions, and other evidence submitted in the light most favorable to the nonmoving party. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

Finally, a trial court properly grants summary disposition to the opposing party under MCR 2.116(I)(2) if it determines that the opposing party, “rather than the moving party, is entitled to judgment.” *Sharper Image Corp v Dep’t of Treasury*, 216 Mich App 698, 701; 550 NW2d 596 (1996).

III. ANALYSIS

A. SUCCESSORS IN INTEREST

MCL 224.1 permits a county to put to a vote the question of adopting the county road system. When a county has elected to adopt the county road system, the county is required to elect a board of county road commissioners, subject to four exceptions. MCL 224.6(1). The first exception permits the county board of commissioners to appoint a road commission, instead of holding an election, if the county “contains all or part of 12 surveyed townships” MCL 224.6(4). The second exception permits charter counties with a population of 750,000 or more to reorganize the powers and duties of a board of county road commissioners by amending the county charter. MCL 224.6(5). The third exception—at issue in this case—permits a county board of commissioners to dissolve an appointed board of county road commissioners and transfer its powers, duties, and functions to the county board of commissioners. MCL 224.6(7). The fourth and final exception, similar to the third exception but for a county road commission whose members were elected, permits the county’s electorate to decide on the question of dissolution of the county road commission and the transfer of its role to the county board of commissioners. MCL 224.6(8).

When the Ingham County, Jackson County, and Calhoun County Boards of Commissioners dissolved their counties’ road commissions pursuant to MCL 46.11(s) and MCL 224.6(7), the powers, duties, and functions of the dissolved county road commissions passed to the respective counties’ boards of commissioners. The parties dispute the meaning of the word “dissolved” in MCL 46.11(s) and MCL 224.6(7). The counties argue that the counties’ boards of commissioners absorbed the rights and interests of the road commissions. The Pool counters that the road commissions ceased to exist when the counties dissolved them, so the counties could not absorb their powers, duties, and functions. The trial court agreed with the Pool, ruling that the counties were not successors in interest to their former road commissions

because the statutes' references to dissolution signified the end of the road commissions' existence.

We disagree with the trial court. Reading MCL 224.6 as a whole shows that a county that has adopted the county road system must have a board of county road commissioners. The general rule in MCL 224.6(1) and its four exceptions make clear that a county that has adopted the county road system must have a road commission that is elected, MCL 224.6(1), appointed, MCL 224.6(4), reorganized by amendment to a county charter, MCL 224.6(5), or dissolved for its role to be transferred to the county board of commissioners, MCL 224.6(7) (appointed road commission) and (8) (elected road Commission).¹ Therefore, when a county dissolves its road commission, the county board of commissioners becomes the successor in interest to the former road commission.

The Pool argues that the counties are not successors in interest to their dissolved road commissions because the statute provides for the transfer of only the "powers, duties, and functions" of the former road commissions but not their property rights or interests. The Pool contends that because the counties have only the powers expressly authorized by statute, the dissolved road commissions' property rights and interests did not transfer to the counties. We reject this stilted reading of the statute.

Counties derive their authority from the Michigan Constitution and state statutes. *Mich Muni Liability & Prop Pool v Muskegon Co Bd of Co Rd Comm'rs*, 235 Mich App 183, 190; 597 NW2d 187 (1999). Local governments have only those powers expressly conferred by the Michigan Constitution or by statute, and they have the implicit authority to implement their express powers. *Id.* at 190-191.

Pertinent to the Pool's argument, road commissions have the authority to hold title or an interest in land and to sell or convey land that is not part of or necessary "for a public street, highway, or park." MCL 224.9(3). A typical county road commission would own a fleet of road maintenance vehicles, such as snowplows and salt trucks, in addition to a garage facility to house those vehicles along with road maintenance materials and supplies, including salt. Applying the Pool's argument, these facilities and equipment would become ownerless once a county board of commissioners dissolved its county's road commission and assumed its powers.

The counties further disagree with the Pool's narrow reading of the statute because it would unconstitutionally impair contracts for road construction and maintenance that involved the former road commissions. See US Const, art 1, § 10; Const 1963, art 1, § 10. Rather, the counties argue, the former road commissions' contractual rights transferred to the respective counties.

¹ The counties argue that the Legislature provided for the dissolution, not the abolition, of an appointed road commission to allow an *elected* county board of commissioners to take the place of an *appointed* road commission. This argument ignores the distinct provisions for the dissolution of both types of road commissions, appointed or elected. See MCL 224.6(7) and (8), respectively.

We agree. Whenever possible, courts must interpret a statute to avoid the conclusion that it is unconstitutional or that there are doubts about its constitutionality. *People v Nyx*, 479 Mich 112, 124; 734 NW2d 548 (2007) (opinion by TAYLOR, C.J.). Similarly, courts must read statutes as a whole. *Robinson v Lansing*, 486 Mich 1, 15; 782 NW2d 171 (2010). A statute that substantially impairs a contractual relationship is unconstitutional unless the statutory impairment serves “a significant and legitimate public purpose and . . . the means adopted to implement the legislation are reasonably related to the public purpose.” *Health Care Ass’n Workers Compensation Fund v Dir of the Bureau of Worker’s Compensation, Dep’t of Consumer & Indus Servs*, 265 Mich App 236, 241; 694 NW2d 761 (2005). The Pool’s narrow reading of “powers, duties, and functions” would result in the unconstitutional impairment of the former road commissions’ contracts, rendering the statutory provisions permitting dissolution of the road commissions unconstitutional. We avoid this result by interpreting the statutory provisions more comprehensively. Thus, we conclude that the counties became the successors in interest to their former road commissions when they exercised their statutory right to dissolve the road commissions. As successors in interest, the counties took on all statutory rights and responsibilities given to road commissions.

B. POOL MEMBERSHIP

The parties dispute whether the counties could be members of the Pool and thereby be eligible for surplus refunds of prior-year contributions. The Pool contends that the counties are not qualified for membership because the Pool’s bylaws only permit road commissions to be members. This Court construes bylaws using the same rules applied to contract interpretation. *Tuscany Grove Ass’n v Peraino*, 311 Mich App 389, 393; 875 NW2d 234 (2015). We begin with the plain language of the bylaws and apply that plain language if it is clear and unambiguous. *Rossow*, 251 Mich App at 658.

The Pool’s bylaws limit membership to county road commissions, but the bylaws do not define a county road commission. Instead, the bylaws refer to the statutory authority of county road commissions. Because we conclude that the counties were successors in interest to their dissolved road commissions as a matter of statutory interpretation, we likewise conclude that the successor counties are eligible for Pool membership by virtue of the statutory reference to county road commissions in the Pool’s bylaws.

The Pool further argues that the counties are not entitled to refunds even if deemed successors in interest because they withdrew from the Pool. We examine the language of the withdrawal agreements to determine their scope. See *Rossow*, 251 Mich App at 658.

First, the record contains no evidence that the Jackson County road commission signed a withdrawal agreement, and the Pool agrees that it did not. Thus, the Jackson County road commission did not withdraw from the Pool. Likewise, Jackson County’s dissolution of its road commission did not automatically result in withdrawal from the Pool. Rather, Jackson County succeeded its dissolved road commission, so Jackson County is eligible for refunds from prior-year contributions made by its road commission.

Ingham County’s and Calhoun County’s road commissions each signed an agreement to withdraw from the Pool. These withdrawal agreements began by stating that the counties

dissolved their road commissions pursuant to statute. The agreements made withdrawal from the Pool effective on the date the road commissions were dissolved. Further, the agreements contained a provision limiting their scope to withdrawal of membership without affecting “any other terms or conditions” of the Declaration of Trust, the inter-local agreement, or the bylaws. The Pool also agreed to administer claims arising from events occurring before the date of dissolution of the road commissions. Accordingly, reading the withdrawal agreements as a whole and in light of the limitation on their scope, the withdrawal agreements did not alter eligibility for the refund of surplus premiums from prior-year contributions. Having determined that the counties are successors in interest to their former road commissions, we conclude that the counties are entitled to refunds of surplus premiums reflecting their former road commissions’ prior-year contributions through the date listed in each withdrawal agreement.

In conclusion, the trial court erred by granting summary disposition in favor of the Pool because the counties are successors in interest to their dissolved road commissions. As successors in interest, the counties are eligible for membership in the Pool. Additionally, Jackson County did not sign a withdrawal agreement, and the withdrawal agreements that Ingham County and Jackson County signed did not affect their entitlement to refunds. Thus, the counties are entitled to receive refunds of surplus premiums from prior-year contributions made by the former road commissions.²

We reverse and remand. We do not retain jurisdiction.

/s/ Peter D. O’Connell
/s/ Michael J. Talbot
/s/ Colleen A. O’Brien

² Accordingly, we do not address the counties’ remaining arguments.

APPENDIX 53

Order

Appendix 53 - Ingham II

Michigan Supreme Court
Lansing, Michigan

Stephen J. Markman,
Chief Justice

Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Kurtis T. Wilder
Elizabeth T. Clement,
Justices

December 5, 2018

156980

COUNTY OF INGHAM, COUNTY OF
JACKSON, and COUNTY OF CALHOUN,
Plaintiffs-Appellees,

v

SC: 156980
COA: 334077
Ingham CC: 15-000432-NZ

MICHIGAN COUNTY ROAD COMMISSION
SELF-INSURANCE POOL,
Defendant-Appellant.

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On order of the Court, the application for leave to appeal the October 10, 2017 judgment of the Court of Appeals is considered. Pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REMAND this case to the Court of Appeals for consideration of the issue raised by the defendant but not addressed by that court during its initial review of this case: Whether, even if the plaintiff counties are successors in interest to their road commissions, the defendant Michigan County Road Commission Self-Insurance Pool nevertheless may, in accordance with its governing documents, decline to issue to the counties refunds of surplus premiums from prior-year contributions. In addressing this question, the Court of Appeals shall consider, among other things, the following documents: the Declaration of Trust, By-Laws, Inter-Local Agreements, MCRCSIP Refund Overview, and the July 19, 1990 memorandum to the Pool members. The court shall address whether these documents are binding on the parties, and, if so, what effect they have on the plaintiffs' entitlement to refunds.

We do not retain jurisdiction.



s1128

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 5, 2018

Clerk

0665a

APPENDIX 54

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STATE OF MICHIGAN
COURT OF APPEALS

COUNTY OF INGHAM, COUNTY OF JACKSON, and COUNTY OF CALHOUN,

Plaintiffs-Appellants,

v

MICHIGAN COUNTY ROAD COMMISSION
SELF-INSURANCE POOL,

Defendant-Appellee.

FOR PUBLICATION

July 25, 2019

9:20 a.m.

No. 334077

Ingham Circuit Court

LC No. 15-000432-NZ

Advance Sheets Version

ON REMAND

Before: O’BRIEN, P.J., and GLEICHER and STEPHENS, JJ.

PER CURIAM.

This case returns to this Court on remand from the Michigan Supreme Court. *Ingham Co v Mich Co Rd Comm Self-Ins Pool*, 503 Mich 917 (2018) (*Ingham Co II*). For the reasons explained in this opinion, we continue to hold that plaintiffs—Ingham County, Jackson County, and Calhoun County (collectively, the counties)—are entitled to refunds of their surplus premiums from prior-year contributions made by the counties’ former road commissions to defendant, the Michigan County Road Commission Self-Insurance Pool (the Pool).

I. BACKGROUND

The facts of this case were outlined in this Court’s previous opinion as follows:

A Declaration of Trust created the Pool in April 1984. The Pool’s bylaws limit membership to county road commissions located in the state of Michigan and require each member to sign an interlocal agreement. The appointed road commissions for Ingham County, Jackson County, and Calhoun County joined the Pool soon after its formation.

Members of the Pool made annual premium contributions to cover the payment of claims and the Pool’s operating and administrative expenses. The

Pool's bylaws and the interlocal agreements permitted the refund of surplus funds more than one year after payment of a member's premium contribution. The counties alleged that the Pool had a longstanding practice of refunding excess contributions to members out of unused reserves in proportion to premiums paid, typically calculated and refunded several years later.

In February 2012, the Legislature amended MCL 224.6 to permit transfer of "the powers, duties, and functions that are otherwise provided by law for an appointed board of county road commissioners . . . to the county board of commissioners by resolution as allowed under . . . MCL 46.11." MCL 224.6(7), as amended by 2012 PA 14. At the same time, the Legislature amended MCL 46.11 to give a county board of commissioners the authority to pass a resolution dissolving an appointed road commission and transferring the road commission's "powers, duties, and functions" to the county board of commissioners. MCL 46.11(s), as amended by 2012 PA 15. Pursuant to these amendments, the Ingham County, Jackson County, and Calhoun County Boards of Commissioners adopted resolutions to dissolve their county road commissions and take over their roles.

Ingham County adopted the dissolution resolution on April 24, 2012, effective June 1, 2012. About two weeks before adopting the resolution, Ingham County paid its contribution to the Pool for the fiscal year beginning April 1, 2012, apparently with the understanding that the Pool intended to amend its rules to permit the county successors to the dissolved road commissions to participate in the Pool. Ingham County maintained that it only learned later in May that the Pool would not allow the county to remain a member of the Pool. On May 30 and 31, 2012, the Ingham County road commission signed two agreements—one to withdraw from the Pool and one to cancel insurance through the Pool—effective June 1, 2012.

Calhoun County signed a similar withdrawal agreement on October 23, 2012, effective November 1, 2012. It appears that Jackson County did not sign a withdrawal agreement.

At Ingham County's request, the Pool agreed to refund the unused pro rata portion of the former road commission's annual contribution for the 2012–2013 fiscal year. The Pool declined, however, to refund surplus equity flowing from prior-year contributions because of the road commission's withdrawal from membership in the Pool. [*Ingham Co v Mich Co Rd Comm Self-Ins Pool*, 321 Mich App 574, 577-578; 909 NW2d 533 (2017) (*Ingham Co I*).]

The counties brought suit against the Pool, alleging that they were eligible for 10 years' worth of refunds because the Pool was still refunding contributions from 2002 premiums. The parties filed cross-motions for summary disposition, and the trial court granted summary disposition to the Pool and rejected the counties' claims. The trial court reasoned that the counties were not entitled to refunds possibly owed to their former road commissions because the counties were not successors in interest to their former road commissions.

On appeal, this Court disagreed and held that the counties were successors in interest to their former road commissions. *Id.* at 580-584. This Court then addressed “whether the counties could be members of the Pool and thereby be eligible for surplus refunds of prior-year contributions” and concluded “that the successor counties are eligible for Pool membership” *Id.* at 584.

This Court lastly addressed whether the counties were entitled to refunds because even though they were successors in interest, they withdrew from the Pool. *Id.* The Court first acknowledged that Jackson County was situated differently from the other counties because it did not sign a withdrawal agreement with the Pool. *Id.* at 585. This Court concluded that without a withdrawal agreement, Jackson County “did not withdraw from the Pool.” *Id.* This Court also concluded that Jackson County’s “dissolution of its road commission did not automatically result in withdrawal from the Pool.” *Id.* This Court then held that because Jackson County (1) did not withdraw from the Pool and (2) “succeeded its dissolved road commission,” it was “eligible for refunds from prior-year contributions made by its road commission.” *Id.*

Turning to the other counties that *did* sign withdrawal agreements with the Pool, this Court looked to the language of the withdrawal agreements to determine their scopes. After reviewing the agreements’ relevant language, this Court concluded:

Accordingly, reading the withdrawal agreements as a whole and in light of the limitation on their scope, the withdrawal agreements did not alter eligibility for the refund of surplus premiums from prior-year contributions. Having determined that the counties are successors in interest to their former road commissions, we conclude that the counties are entitled to refunds of surplus premiums reflecting their former road commissions’ prior-year contributions through the date listed in each withdrawal agreement. [*Id.*]

The Pool appealed this Court’s decision, and our Supreme Court issued the following order:

Pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we remand this case to the Court of Appeals for consideration of the issue raised by the defendant but not addressed by that court during its initial review of this case: Whether, even if the plaintiff counties are successors in interest to their road commissions, the defendant Michigan County Road Commission Self-Insurance Pool nevertheless may, in accordance with its governing documents, decline to issue to the counties refunds of surplus premiums from prior-year contributions. In addressing this question, the Court of Appeals shall consider, among other things, the following documents: the Declaration of Trust, By-Laws, Inter-Local Agreements, MCRC SIP Refund Overview, and the July 19, 1990 memorandum to the Pool members. The court shall address whether these documents are binding on the parties, and, if so, what effect they have on the plaintiffs’ entitlement to refunds. [*Ingham Co II*, 503 Mich at 917.]

II. STANDARD OF REVIEW

A trial court's decision on summary disposition is reviewed de novo. *Heaton v Benton Constr Co*, 286 Mich App 528, 531; 780 NW2d 618 (2009). Because the trial court considered evidence outside the pleadings, we treat the trial court's grant of summary disposition as having been under MCR 2.116(C)(10). See *Sisk-Rathburn v Farm Bureau Gen Ins Co of Mich*, 279 Mich App 425, 427; 760 NW2d 878 (2008).

A motion under MCR 2.116(C)(10) tests the factual support of a plaintiff's claim. Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial. A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ. [*Zaher v Miotke*, 300 Mich App 132, 139-140; 832 NW2d 266 (2013) (quotations marks and citations omitted).]

"Only the substantively admissible evidence actually proffered may be considered." *1300 LaFayette East Coop, Inc v Savoy*, 284 Mich App 522, 525; 773 NW2d 57 (2009) (quotation marks and citation omitted).

III. ANALYSIS

On remand, we are tasked with deciding a single question: "Whether, even if the plaintiff counties are successors in interest to their road commissions, [the Pool] nevertheless may, in accordance with its governing documents, decline to issue to the counties refunds of surplus premiums from prior-year contributions." *Ingham Co II*, 503 Mich at 917. While this directive is relatively straightforward, the parties argue over to what extent, if any, this Court can disregard its earlier opinion. We address this dispute before turning to our task on remand.

A. LAW-OF-THE-CASE DOCTRINE

As explained by this Court,

under the doctrine of the law of the case, if an appellate court has passed on a legal question and remanded the case for further proceedings, the legal question will not be differently determined in a subsequent appeal in the same case where the facts remain materially the same. The primary purpose of the law-of-the-case doctrine is to maintain consistency and avoid reconsideration of matters once decided during the course of a single continuing lawsuit. [*Bennett v Bennett*, 197 Mich App 497, 499-500; 496 NW2d 353 (1992).]

The Pool contends that we are not bound by the law-of-the-case doctrine because that doctrine is discretionary. The Pool is correct that courts have some discretion when applying the law-of-the-case doctrine under certain circumstances. See, e.g., *Locricchio v Evening News*

Ass'n, 438 Mich 84, 109-110; 476 NW2d 112 (1991) (explaining that there are instances in which “the law of the case doctrine must yield to a competing doctrine”); *People v Spinks*, 206 Mich App 488, 491; 522 NW2d 875 (1994) (refusing to apply the law-of-the-case doctrine because there had been an intervening change in the law); *People v Phillips (After Second Remand)*, 227 Mich App 28, 34; 575 NW2d 784 (1997) (“[W]e decline to apply a doctrine designed for judicial convenience in fairly administering the obligation to do justice so as to work an injustice.”). Yet the Pool’s only argument for not applying the law-of-the-case doctrine is that, according to the Pool, our previous decision was wrong. As this Court has explained, such a reason is not sufficient to justify ignoring the law-of-the-case doctrine:

[W]e do not believe that a conclusion that the prior decision was erroneous is sufficient by itself to justify ignoring the law-of-the-case doctrine. To do so would vitiate that doctrine because it would allow this Court to ignore a prior decision in a case merely because one panel concluded that the earlier panel had wrongly decided the matter. It would, therefore, reopen every case to relitigation of every issue previously decided in hopes that a subsequent panel of the Court would decide the issue differently than did the prior panel. Clearly, the law-of-the-case doctrine has no usefulness if it is only applied when a panel of this Court agrees with the decision reached by a prior panel. [*Bennett*, 197 Mich App at 500.]

We therefore conclude that to the extent that our Supreme Court’s remand order left intact this Court’s earlier legal conclusions, we are bound by those conclusions under the doctrine of the law of the case. This includes this Court’s previous holdings that the counties are successors in interest to their former road commissions and that Jackson County did not withdraw from the Pool.

B. DOCUMENTS TO CONSIDER ON REMAND

Our Supreme Court directed us to consider, among other things, five documents on remand: the declaration of trust, bylaws, interlocal agreements, the Pool’s refund overview, and the July 19, 1990 memorandum to the Pool members. *Ingham Co II*, 503 Mich at 917.

1. DECLARATION OF TRUST

The declaration of trust created the Pool in 1984. As relevant here, the declaration of trust provides:

ARTICLE VI

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

* * *

SECTION 9. Use of Funds. The Board of Directors shall set aside from the premiums collected during each fiscal year a reasonable sum for the operating expenses or administrative expenses of the Trust for that year. All remaining funds coming into its possession or under its control with respect to that fiscal

year of the Trust shall be set aside and shall be used only for the following purposes:

* * *

(f) Distribution among the members during that fiscal year in such manner as the Members and the Board of Directors shall deem to be equitable, of any excess monies remaining after payment of claims and claims expenses and after provision has been made for open claims and outstanding reserves and a reserve for claims incurred but not reported; provided, however, that no such distributions shall be made earlier than twelve (12) months after the end of each Trust Year; and provided further, that undistributed funds from previous Trust Years may be distributed at any time if not required for loss funding and if approved for distribution by the Board of Directors. *The Board of Directors may treat members who withdraw from future Trust Years differently and less favorably than they treat members who continue in the Trust for future years.*

* * *

ARTICLE X

MISCELLANEOUS

* * *

SECTION 12. Binding Effect. This Trust shall be binding upon and be fully enforceable as to each Member *and the successors and assigns of each Member*. [Emphasis added.]

2. INTERLOCAL AGREEMENT

All parties that became members of the Pool signed an "Inter-Local Agreement" pursuant to 1982 PA 138 (the intergovernmental contracts act, MCL 124.1 *et seq.*), under which certain governmental bodies are permitted to, among other things, "form a group self-insurance pool." See *Crawford Co v Secretary of State*, 160 Mich App 88, 91; 408 NW2d 112 (1987). These interlocal agreements provided, in relevant part:

This Contract and Inter-Local Agreement is entered into by and between [the Pool] and the undersigned road commission of the State of Michigan (hereinafter "Member") for the purpose of making a self-insurance pooling program available . . . pursuant to Act 138 of 1982 [the intergovernmental contracts act].

* * *

3. Member Contributions to Pool. . . . The Pool shall set aside from the premiums collected during each fiscal year a reasonable sum for the operating expenses or administrative expenses of the Pool for that year. All remaining

funds coming into the possession of the Pool with respect to that fiscal year of the Pool shall be set aside and shall be used only for the following purposes:

* * *

H. Distribution among the members during that fiscal year in such manner as the Pool shall deem to be equitable, of any excess monies remaining after payment of claims and claims expenses and after provision has been made for open claims and outstanding reserves and a reserve for claims incurred but not reported; provided, however, that no such distribution shall be made than [sic] earlier than twelve (12) months after the end of each Pool Year; and provided, further, that undistributed excess funds from previous Pool Years may be distributed at any time if not required for loss funding and if approved for distribution by applicable Boards and authorities. *The Pool may treat members who withdraw from future Pool Years differently and less favorably than the Pool treats members who continue in the Pool for future years.*

* * *

24. Binding Effect. This Agreement is binding upon *the parties hereto, their successors and assigns*. [Emphasis added.]

3. BYLAWS

The Pool's bylaws provide, in relevant part:

ARTICLE VI

POWERS AND DUTIES OF THE BOARD

* * *

13. The Pool Board shall have the general power to make and enter into all contracts, leases, and agreements necessary or convenient to carry out any of the powers granted under the Trust Agreement, these By-laws or any other laws. All such contracts, leases, and agreements, or other legal documents herein authorized shall be approved by resolution of the Pool Board and shall be executed by those individuals designated in such resolution. In the absence of such a designation, all approved contracts shall be executed by the Chairperson or Vice Chairperson.

14. The Pool Board shall carry out all the duties necessary for the proper operation and administration of the Pool on behalf of the Members and to that end shall have all of the power necessary and desirable for the effective administration of the affairs of the Pool.

ARTICLE VIIADMINISTRATION

There shall be an Administrator of the Pool (herein referred to as the "Administrator") to administer the financial and administrative affairs of the Pool. The Administrator shall be an employee of the Pool and shall be appointed by, and serve at the pleasure of the Pool Board. The Administrator shall have the power and authority to implement policy matters set forth by the Pool Board as they relate to the ongoing operation and supervision of the Pool and the provisions of the Trust Agreement establishing the Pool, the By-laws, the Inter-Local Agreement, applicable Federal and/or State statutes, and other applicable governmental rules and regulations.

* * *

ARTICLE XDETERMINATION OF CONTRIBUTIONS BY MEMBERS OR REFUNDS TO MEMBERS

The Pool Board shall determine the amount of contribution to be paid annually by each Member. Such contribution shall be calculated based on past experience, projected future losses, excess and stop loss insurance costs, administrative costs, loss prevention costs, and any other projected expenses to be incurred in the operation and administration of the Pool. Should deficiencies or surpluses occur within the funding of the Pool, the Pool Board shall determine the method of addressing these deficiencies or surpluses through the annual contribution mechanism. . . .

* * *

ARTICLE XIIWITHDRAWAL OR TERMINATION OF MEMBERSHIP

Any Member may withdraw from the Pool by giving at least sixty days written notice to the Pool Board of its desire to so withdraw. The Pool Board shall develop procedures for addressing accumulated equity, if any, or accumulated funding deficiency. The Pool Board shall determine the short rate cancellation penalty for terminating prior to the annual renewal date.

4. REFUND OVERVIEW AND THE JULY 19, 1990 MEMORANDUM

The other two documents that this Court must consider on remand were both evidently drafted by the Pool's agents in 1990. The first is a memorandum from the Pool's administrator dated July 19, 1990 (the 1990 memorandum), informing the Pool's members that the Pool had adopted a new "policy" for the eligibility of withdrawing members to receive excess-contribution

refunds. In relevant part, the 1990 memorandum states, “A withdrawing member forfeits any and all rights to dividend, credits and/or accumulated interest that is to be paid or shall become payable after the effective date of the Member’s withdrawal from the Pool.”

The other document is a refund overview that the Pool says was disseminated to all its members in 1990.¹ The document is unsigned and undated. It provides a detailed explanation of the steps that the Pool’s board of directors uses “to determine the proper allocation of the distribution to the members[.]”

With the content of these documents in mind, we must now decide whether these documents “are binding on the parties, and, if so, what effect they have on the plaintiffs’ entitlement to refunds.” *Ingham Co II*, 503 Mich at 917.

C. PRINCIPLES OF CONTRACT INTERPRETATION

As discussed in *Innovation Ventures v Liquid Mfg*, 499 Mich 491, 507; 885 NW2d 861 (2016):

Absent an ambiguity or internal inconsistency, contractual interpretation begins and ends with the actual words of a written agreement. When interpreting a contract, our primary obligation is to give effect to the parties’ intention at the time they entered into the contract. To do so, we examine the language of the contract according to its plain and ordinary meaning. If the contractual language is unambiguous, courts must interpret and enforce the contract as written [Quotation marks and citations omitted.]

If a contract does not define a word or phrase used in the contract, it is proper to consult a dictionary “to ascertain the plain and ordinary meaning of” the word or phrase. *Auto-Owners Ins Co v Seils*, 310 Mich App 132, 145; 871 NW2d 530 (2015). “[C]ontracts must be read as a whole,” *Kyocera Corp v Hemlock Semiconductor, LLC*, 313 Mich App 437, 447; 886 NW2d 445 (2015), giving “effect to every word, phrase, and clause,” while taking pains to “avoid an interpretation that would render any part of the contract surplusage or nugatory,” *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 468; 663 NW2d 447 (2003).

D. WHAT COMPRISES THE PARTIES’ AGREEMENT?

We must now determine which of the documents listed by our Supreme Court—the declaration of trust, the bylaws, the interlocal agreements, the refund overview, and the 1990 memorandum—are binding on the parties. We conclude that with the exception of the refund overview, all the documents form part of the parties’ agreement.

¹ Aside from a copy of the refund overview, the Pool has presented no evidence that the document was ever provided to plaintiffs—or their former road commissions—in 1990 or any time thereafter.

County road commissions are bodies corporate, and “[l]ike a municipal corporation, [a] road commission’s existence is entirely dependent on the legislation that created it, and the Legislature that may also destroy it.” *Oakland Co Bd of Co Rd Comm’rs v Mich Prop & Cas Guaranty Ass’n*, 456 Mich 590, 609; 575 NW2d 751 (1998). As our Supreme Court recognized in *Wayne Co v Hathcock*, 471 Mich 445, 460; 684 NW2d 765 (2004), “Art 7, § 1 of our 1963 Constitution provides that ‘[e]ach organized county shall be a body corporate with powers and immunities provided by law,’” and legal powers conferred to the counties must be broadly construed in their favor. (Alteration in *Hathcock*.)

Self-insurance pools like the one at issue here are statutorily authorized under the intergovernmental contracts act and may be formed by two or more “municipal corporations.” MCL 124.5; *Grosse Pointe Park v Mich Muni Liability & Prop Pool*, 473 Mich 188, 210 n 5; 702 NW2d 106 (2005) (opinion by YOUNG, J.).² To form such a pool, the contracting municipal corporations must enter into an “intergovernmental contract” that contains certain provisions. MCL 124.5; MCL 124.7. MCL 124.5 provides:

(1) Notwithstanding any other provision of law to the contrary, any 2 or more municipal corporations, by intergovernmental contract, may form a group self-insurance pool to provide for joint or cooperative action relative to their financial and administrative resources for the purpose of providing to the participating municipal corporations risk management and coverage for pool members and employees of pool members, for acts or omissions arising out of the scope of their employment

* * *

(5) In addition to any other powers granted by this act, the power to enter into intergovernmental contracts under this section specifically includes the power to establish the pool as a separate legal or administrative entity for purposes of effectuating group self-insurance pool agreements.

* * *

(7) Two or more municipal corporations shall not form a group self-insurance pool to provide the coverages described in subsection (1) other than pursuant to sections 5 to 12b.

Section 7 of the act, MCL 124.7, further provides:

Any intergovernmental contract entered into under section 5 for the purpose of establishing a group self-insurance pool shall provide:

² For purposes of the act, the term “municipal corporation” is statutorily defined to include “a county, charter county, county road commission, . . . or any other local governmental authority or local agency with power to enter into contractual undertakings.” MCL 124.1(a).

(a) A financial plan

* * *

(b) A plan of management which provides for all of the following:

(i) The means of establishing the governing authority of the pool.

(ii) The responsibility of the governing authority with regard to fixing contributions to the pool, maintaining reserves, levying and collecting assessments for deficiencies, disposing of surpluses, and administering the pool in the event of termination or insolvency.

(iii) The basis upon which new members may be admitted to, and existing members may leave, the pool.

(iv) The identification of funds and reserves by exposure areas.

(v) Other provisions necessary or desirable for the operation of the pool.

(c) For election by pool members of a governing authority, which shall be a board of directors for the pool, a majority of whom shall be elected or appointed officers of pool members.

In this case, the declaration of trust formed the *Pool*—meaning the trust vessel that would hold the members’ pooled self-insurance reserves—but the declaration of trust is seemingly not the “intergovernmental contract” between the members. Rather, the intergovernmental contract seems to be comprised of the interlocal agreements that were signed by each of the Pool’s municipal members, as evidenced by the fact that the preambles of those agreements explicitly refer to the intergovernmental contracts act.

The interlocal agreements, however, refer to the declaration of trust and the bylaws; the agreements state that the members agree “to participate in the formation and/or operation of [the Pool]” and that the “Pool shall be a separate legal entity consisting of a Trust Agreement . . . and such By-Laws, rules and regulations as are from time to time adopted pursuant to the Trust.” The interlocal agreements go on to specify that “[t]he responsibility of the Pool with regard to . . . disposing of surpluses . . . shall be as set forth in the Trust creating the Pool, the Pool By-Laws, rules, regulations, coverage agreements and Inter-Local Agreements entered into between the Pool and participating county road commissions.”

“[W]here one writing refers to another, the two writings are to be construed together, including any modifications agreed to by the parties in *subsequent* writings.” *Smith Living Trust v Erickson Retirement Communities*, 326 Mich App 366, 387; 928 NW2d 227 (2018) (quotation marks and citations omitted). None of the documents at issue here contains merger or integration clauses. We therefore conclude that a proper construction of the parties’ “agreement” must take into consideration the interlocal agreements and all writings referred to in them, including the declaration of trust, the bylaws, and any “rules or regulations” that were later adopted pursuant to the trust agreement.

This raises the question of what “rules or regulations” must be considered binding on the parties under their agreement. We conclude that the refund overview does not qualify as such a rule or regulation, at least for purposes of summary disposition under MCR 2.116(C)(10). The refund overview is neither dated nor signed, and the Pool has presented no substantively admissible evidence indicating that the refund overview was ever approved by the Pool’s board or membership or otherwise properly promulgated pursuant to the declaration of trust or the bylaws. Therefore, the refund overview is not properly considered as part of the parties’ agreement.

We reach the opposite conclusion for the refund policy that the Pool announced in the 1990 memorandum. Appended to the 1990 memorandum is a May 2012 e-mail from the Pool’s administrator, Gayle Pratt, in which she states that the policy summarized in the 1990 memorandum was adopted by the Pool’s board. Assuming that Pratt’s e-mail would not be admissible at trial to prove the truth of its assertions, its contents are *substantively* admissible for purposes of summary disposition because Pratt could be called to testify about those assertions at trial. See MCR 2.116(G)(6) (“Affidavits, depositions, admissions, and documentary evidence offered in support of or in opposition to a motion based on subrule (C)(1) [through] (7) or (10) shall only be considered to the extent that the content or substance would be admissible as evidence to establish or deny the grounds stated in the motion.”); *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999). We therefore consider the policy set forth in the 1990 memorandum to be part of the parties’ agreement.

Having determined that the parties’ agreement includes the declaration of trust, the bylaws, the interlocal agreements, and the 1990 memorandum, we now reach the central question on remand: whether the Pool may, “in accordance with its governing documents, decline to issue to the counties refunds of surplus premiums from prior-year contributions.” *Ingham Co II*, 503 Mich at 917.

E. JACKSON COUNTY

As noted in *Ingham Co I*, Jackson County is situated differently than the other two counties because it did not sign a withdrawal agreement. Relevant to the issue on remand, this Court in *Ingham Co I* held:

[T]he record contains no evidence that the Jackson County road commission signed a withdrawal agreement, and the Pool agrees that it did not. Thus, the Jackson County road commission did not withdraw from the Pool. Likewise, Jackson County’s dissolution of its road commission did not automatically result in withdrawal from the Pool. Rather, Jackson County succeeded its dissolved road commission, so Jackson County is eligible for refunds from prior-year contributions made by its road commission. [*Ingham Co I*, 321 Mich App at 585.]

The Pool argues that Jackson County is not entitled to a refund based on (1) the language from the interlocal agreements and declaration of trust allowing the Pool to “treat members who withdraw from future Pool Years differently and less favorably than the Pool treats members who continue in the Pool for future years” and (2) the policy announced in the 1990 memorandum

(which we will refer to as “the withdrawal policy”) that “[a] withdrawing member forfeits any and all rights to dividend, credits and/or accumulated interest that is to be paid or shall become payable after the effective date of the Member’s withdrawal from the Pool.” We disagree.

Because this Court previously concluded that Jackson County did not withdraw from the Pool, and because our Supreme Court’s remand order in no way disturbed this holding, we are bound by the law-of-the-case doctrine to conclude that Jackson County did not withdraw from the Pool. And because Jackson County did not withdraw from the Pool, the provision that the Pool relies on to deny Jackson County refunds from prior-year contributions—that the Pool can treat members *who withdraw* from future Pool Years differently—is inapplicable. We therefore continue to hold that because Jackson County did not withdraw from the Pool and is the successor in interest to its former road commission, Jackson County is entitled to refunds from prior-year contributions.

F. OTHER COUNTIES

Unlike Jackson County, Ingham County and Calhoun County signed withdrawal agreements. And the withdrawal policy is clear—“[a] withdrawing member forfeits any and all *rights to dividend, credits and/or accumulated interest* that is to be paid or shall become payable after the effective date of the Member’s withdrawal from the Pool.” (Emphasis added.) In the insurance context, the term “dividend” is defined as “a share of surplus allocated to a policyholder in a participating insurance policy[.]” *Merriam-Webster’s Collegiate Dictionary* (11th ed). Therefore, the refunds that the counties seek—refunds of surplus self-insurance premiums—fall within the meaning that should be ascribed to the term “dividend” in the withdrawal policy.

The question then becomes whether the withdrawal policy is enforceable. Absent ambiguity, a contract must generally be enforced as written. *Innovation Ventures*, 499 Mich at 507. “However, contracts founded on acts prohibited by a statute, or contracts in violation of public policy, are void.” *Allard v Allard (On Remand)*, 318 Mich App 583, 598; 899 NW2d 420 (2017) (quotation marks and citation omitted). See also *Krause v Boraks*, 341 Mich 149, 155; 67 NW2d 202 (1954) (explaining that “neither law nor equity will enforce a contract made in violation of . . . a statute or one that is in violation of public policy”) (quotation marks and citation omitted).

The counties argue that the withdrawal policy is unenforceable as a violation of public policy. “In ascertaining the parameters of our public policy, we must look to policies that, in fact, have been adopted by the public through our various legal processes, and are reflected in our state and federal constitutions, our statutes, and the common law.” *Rory v Continental Ins Co*, 473 Mich 457, 471; 703 NW2d 23 (2005) (quotation marks and citation omitted). See also *Terrien v Zwit*, 467 Mich 56, 66; 648 NW2d 602 (2002) (“In defining ‘public policy,’ it is clear to us that this term must be more than a different nomenclature for describing the personal preferences of individual judges, for the proper exercise of the judicial power is to determine from objective legal sources what public policy *is*, and not to simply assert what such policy *ought* to be on the basis of the subjective views of individual judges.”).

As noted earlier, the parties' agreement in this case is governed by the intergovernmental contracts act. In that act, the Legislature explicitly enumerated the public-policy interests that are at stake, providing in MCL 124.5(6):

The legislature hereby finds and determines that insurance protection is essential to the proper functioning of municipal corporations; that the resources of municipal corporations are burdened by the securing of insurance protection through standards carriers; that proper risk management requires spreading risk to minimize fluctuation in insurance needs; and that, therefore, all contributions of financial and administrative resources made by a municipal corporation pursuant to an intergovernmental contract authorized under this act are made for a public and governmental purpose, and that those contributions benefit each contributing municipal corporation.

In light of MCL 124.5(6) and the statutory enactments discussed in *Ingham Co I*, 321 Mich App at 577, we hold that the withdrawal policy is unenforceable under these circumstances as contrary to public policy. See *Allard*, 318 Mich App at 601 (“Although parties have a fundamental right to contract as they see fit, they have no right to do so in direct contravention of this state’s laws and public policy.”). As MCL 124.5(6) makes clear, the Legislature intended governmental self-insurance pools to serve as a force that would *spread*—not concentrate—risk between municipal members and to *minimize*—not accentuate—fluctuations. As recognized in *Ingham Co I*, 321 Mich App at 581-582, “when a county dissolves its road commission, the county board of commissioners becomes the successor in interest to the former road commission,” and “the powers, duties, and functions of the dissolved county road commission[] pass[] to the [county’s] boards of commissioners.” In other words, in such situations, the county is more than merely its road commission’s “successor in interest”; the county is effectively a continuation of the dissolved road commission, responsible for providing the same public services that the road commission formerly provided.

To permit the Pool to enforce the withdrawal policy against the counties would be to permit the Pool to penalize the counties for exercising their rights to dissolve their road commissions under MCL 46.11(s) and MCL 224.6(7). More importantly, the forfeiture called for in the withdrawal policy would directly undermine the public purposes that the Pool is required to serve under MCL 124.5(6), affording the remaining members of the Pool a comparatively small windfall (in the form of each one’s pro rata share of the excess equity payments made by the counties’ former road commissions), while imposing a large, unexpected forfeiture on the three withdrawing counties. This scenario undercuts the basic principles of predictability and stability that the Legislature intended such self-insurance pools to promote.

We find further support for our conclusion that our state’s public policy disfavors self-insurers conditioning refunds of surplus insurance premiums on continued participation in the self-insurance pool in the Uniform Trade Practices Act, MCL 500.2001 *et seq.* MCL 500.2016 provides, in relevant part:

(1) In addition to other provisions of law, the following practices as applied to worker’s compensation insurance including worker’s compensation coverage

provided through a self-insurer's group are defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

(a) As a condition of receiving a dividend for the current or a previous year, requiring an insured to renew or maintain worker's compensation insurance with the insurer beyond the current policy's expiration date or requiring a member to continue participation with a worker's compensation self-insurer group.

While this statute, by its terms, only applies to workers' compensation insurance, we find it telling that our Legislature classified this type of act as "unfair and deceptive . . . practices in the business of insurance[.]" Based on our Legislature's clear condemnation of the Pool's practice—albeit in the context of workers' compensation insurance—combined with the public-policy interests defined in MCL 124.5(6), we conclude that the Pool's withdrawal policy is unenforceable as against public policy.³

G. REMEDY

The next question is what remedy should be applied: do the offending provisions of the parties' agreement render the entire agreement voidable or void *ab initio*? See generally *Epps v 4 Quarters Restoration LLC*, 498 Mich 518, 536-539; 872 NW2d 412 (2015) (observing that a contract that is void *ab initio* is a nullity at the outset and, thus, is unenforceable by any party, whereas a voidable contract is one that may be rescinded or avoided at the option of a specific party). "The difficulty . . . is that courts have been known to be imprecise with their use of the term 'void,' and have on occasion mistakenly employed that term to describe a contract when what is actually meant is that a contract is voidable or otherwise unenforceable, and not that it is void *ab initio*." *Id.* at 543-544.

Like contractual terms, it has long been recognized that contractual *remedies* are subject to the demands of public policy. See, e.g., *Meech v Lee*, 82 Mich 274, 293; 46 NW 383 (1890) ("Even where the contracting parties are *in pari delicto*, the courts may interfere from motives of public policy. Whenever public policy is considered as advanced by allowing either party to sue for relief against the transaction, then relief is given to him.") (quotation marks and citation omitted); *Bazzi v Sentinel Ins Co*, 502 Mich 390, 415; 919 NW2d 20 (2018) (MCCORMACK, J., dissenting) ("Contract remedies like rescission play by those same rules: they cannot be exercised in a manner contrary to law or public policy."). Thus, when deciding whether a contract drafted in contravention of a statute is void *ab initio* or merely subject to avoidance by a specific party, a reviewing court should resolve the issue by deciding what would best serve the statute's underlying legislative intent. *Epps*, 498 Mich at 546 ("[W]ith that overarching purpose

³ For similar reasons that the Pool's withdrawal policy is unenforceable as against public policy, we conclude that the Pool's proposed construction of the "differently and less favorably" language in the interlocal agreements and declaration of trust would render *those* provisions contrary to public policy. If, as the Pool contends, that language should be interpreted as permitting what the withdrawal policy required, it would contravene the public policy set forth by our Legislature in MCL 124.5(6).

in mind, we inquire whether this purpose would be better served by treating contracts between an innocent homeowner and an unlicensed builder as void or voidable.”).

Holding that the parties’ entire agreement here is void *ab initio*, and thus unenforceable by any party, would do *greater* damage to the policies set forth in MCL 124.5(6), effectively upending the entire Pool. That outcome can be avoided by applying the doctrine of severability. An unlawful term in a contract is severable from the whole unless that term is “central to the parties’ agreement.” *Stokes v Millen Roofing Co*, 466 Mich 660, 666; 649 NW2d 371 (2002). Hence, “[t]he failure of a distinct part of a contract does not void valid, severable provisions.” *Prof Rehab Assoc v State Farm Mut Auto Ins Co*, 228 Mich App 167, 174; 577 NW2d 909 (1998). In determining severability, the “primary consideration . . . is the intent of the parties.” *Id.*

As noted, the declaration of trust was incorporated by reference into the intergovernmental contract. Article X, § 11 of the declaration of trust provides:

Severability. Should any provision of this Trust be or become invalid or unenforceable, the remaining provisions shall continue to be fully effective.

Thus, it seems that the parties intended for the terms of their agreement to be severable. Additionally, the withdrawal policy that the Pool seeks to enforce in this action is in no way “central” to the parties’ agreement. It is undisputed that the withdrawal policy was first set forth by the Pool’s board in 1990—years after the Pool was originally formed. We therefore conclude that the offending portions of the parties’ agreement are severed as unenforceable. This, in our opinion, is the best remedy to effectuate the legislative policies announced in MCL 124.5(6). And because the withdrawal-policy portions of the parties’ agreement are severed, the counties, as successors in interest to their former road commissions, are all entitled—under Article X, § 12 of the declaration of trust⁴—to the portion of future refunds of surplus equity to which their respective former road commissions would have been entitled.

IV. CONCLUSION

The Pool’s withdrawal policy does not apply to Jackson County because Jackson County did not withdraw from the Pool. Regardless, the withdrawal policy is unenforceable against any of the counties because it is contrary to public policy. We therefore hold that the trial court erred when it held that the Pool was entitled to judgment as a matter of law.

Reversed and remanded. We do not retain jurisdiction.

/s/ Colleen A. O’Brien
/s/ Elizabeth L. Gleicher
/s/ Cynthia Diane Stephens

⁴ Article X, § 12 of the declaration of trust provides, “This Trust shall be binding upon and be fully enforceable as to each Member *and the successors and assigns of each Member.*” (Emphasis added.)

APPENDIX 55

Order

**Michigan Supreme Court
Lansing, Michigan**

September 23, 2020

Bridget M. McCormack,
Chief Justice

160186

David F. Viviano,
Chief Justice Pro Tem

COUNTY OF INGHAM, COUNTY OF JACKSON, and COUNTY OF CALHOUN,
Plaintiffs-Appellees,

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

v

SC: 160186
COA: 334077
Ingham CC: 15-000432-NZ

MICHIGAN COUNTY ROAD COMMISSION
SELF-INSURANCE POOL,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the July 25, 2019 judgment of the Court of Appeals is considered. We direct the Clerk to schedule oral argument on the application. MCR 7.305(H)(1).

The appellant shall file a supplemental brief within 42 days of the date of this order addressing: (1) whether the Court of Appeals properly held that the plaintiff Counties are successors in interest to their respective road commissions, which were dissolved pursuant to MCL 46.1 *et seq.*, and MCL 224.1 *et seq.*; (2) whether the Court of Appeals properly held that plaintiff Jackson County was a member of defendant Michigan County Road Commission Self-Insurance Pool (Pool) despite having dissolved its road commission; and (3) whether the Court of Appeals properly held that the plaintiff Counties are entitled to refunds of surplus premiums paid to the Pool because the forfeiture provisions in the defendant Pool’s governing documents, which comprise the parties’ binding contractual agreement, are unenforceable as against public policy and must be severed, and whether this issue was properly preserved by the plaintiff Counties. In addition to the brief, the appellant shall electronically file an appendix conforming to MCR 7.312(D)(2). In the brief, citations to the record must provide the appendix page numbers as required by MCR 7.312(B)(1). The appellees shall file a supplemental brief within 21 days of being served with the appellant’s brief. The appellees shall also electronically file an appendix, or in the alternative, stipulate to the use of the appendix filed by the appellant. A reply, if any, must be filed by the appellant within 14 days of

being served with the appellees' brief. The parties should not submit mere restatements of their application papers.

The Boards of County Road Commissioners and the Government Law and Insurance Law Sections of the State Bar of Michigan are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.



s0916

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 23, 2020

A handwritten signature in black ink, appearing to read "Larry S. Royster", written over a horizontal line.

Clerk

APPENDIX 56



July 19, 1990

To: MEMBERS OF THE
MICHIGAN COUNTY ROAD COMMISSION
SELF-INSURANCE POOL

To be in compliance with both the MCRC SIP Bylaws, Sect. XII, and P.A. 36, 1988, your board has been considering proposals for the establishment of a policy that would specify the procedures for members withdrawing from the Pool. The following is the policy adopted by your board:

A Member which has properly given its sixty days written notice of its desire to withdraw from the Pool will be not charged a short rate cancellation penalty. If a Member notifies the Pool of its desire to withdraw from the Pool upon less than sixty days written notice and the Pool permits the withdrawal notwithstanding the lack of proper notice, then the withdrawing Member shall be charged a short rate cancellation penalty using the traditional insurance industry tables.

A withdrawing Member forfeits any and all rights to dividend, credits and/or accumulated interest that is to be paid or shall become payable after the effective date of the Member's withdrawal from the Pool.

A withdrawing Member shall continue to be liable for its share of any funding deficiency of the Pool for any Pool fiscal years during which the withdrawing Member held membership in the Pool.

The Pool shall continue to service any pending claims of a withdrawing Member unless the withdrawing Member, by written agreement with the Pool, specifically assumes the liability for any judgment or settlement amount on the claim and for all legal expenses and other costs of any nature whatsoever relating to the pending claims assumed by the withdrawing Member and otherwise makes provision to indemnify the Pool, in form and substance satisfactory to the Pool, from loss of any nature whatsoever as a result of the withdrawing Member taking over the servicing of the claim from the Pool.

In any event, the withdrawing Member shall reimburse the Pool for all claims expenses (including, but not limited to, judgement and settlement expenses, legal expenses and other costs of any nature whatsoever) incurred by the Pool after the effective date of withdrawal of the Member from the Pool up to the amount of the withdrawing Member's deductible.

The issue of a withdrawing member desiring to return to the Pool has also been considered. It is imperative for the existence of the Pool that members do not leave and return at will.

Many different approaches to discourage this practice have been discussed; however, a final decision has not yet been made.

If you have any questions or comments regarding the above please call the Pool office at your convenience.

Very truly yours,

Thomas Brouwer
Administrator

APPENDIX 57

STATE OF MICHIGAN
IN THE COURT OF APPEALS

**THE COUNTIES OF INGHAM,
JACKSON, and CALHOUN**, Municipal
corporations and bodies politic and corporate,

Plaintiffs/Appellants,

Court of Appeals Docket No. 334077

v

Ingham Circuit Ct No. 15-432-NZ

**THE MICHIGAN COUNTY ROAD COMMISSION
SELF-INSURANCE POOL**, an unincorporated voluntary
Association,

Defendant/Appellee.

PLAINTIFF/APPELLANTS INGHAM, JACKSON, and CALHOUN COUNTIES'

BRIEF ON APPEAL

ORAL ARGUMENT REQUESTED

Submitted by:

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JURISDICTION

This Court has jurisdiction over properly filed appeals from final orders of a circuit court. The Circuit Court denied Appellants' Motion for Summary Disposition as to liability and granted Appellee's Motion for Summary Disposition pursuant to MCR 2.116(I)(2), therefore this Court has jurisdiction of this appeal pursuant to MCR 7.203(A)(1).

QUESTIONS PRESENTED

I. DID THE TRIAL COURT ERR WHEN IT FAILED TO GRANT PLAINTIFFS' MOTION FOR SUMMARY DISPOSITION AS TO LIABILITY AND GRANTED DEFENDANT'S CROSS-MOTION FOR SUMMARY DISPOSITION WHEN IT CONCLUDED THAT PLAINTIFFS ARE NEITHER THE SAME ENTITIES, NOR THE SUCCESSORS IN INTEREST OF THE ROAD COMMISSIONS OF INGHAM, JACKSON, AND CALHOUN COUNTIES?

Plaintiffs/Appellants say: Yes
Defendant/Appellee says: No
Circuit Court said: No

II. DID THE TRIAL COURT ERR WHEN IT FAILED TO GRANT PLAINTIFFS' MOTION FOR SUMMARY DISPOSITION AS TO LIABILITY AND GRANTED DEFENDANT'S CROSS-MOTION FOR SUMMARY DISPOSITION WHEN DEFENDANT'S DISTRIBUTION OF EXCESS PREMIUMS PAID BY PLAINTIFFS' PREDECESSORS IN INTEREST TO AND AMONG MCRC SIP'S OTHER MEMBERS, INCLUDING FUNDS THAT, FOLLOWING MCRC SIP'S STANDARD PRO RATA METHODOLOGY, WOULD HAVE GONE TO A PLAINTIFFS' FORMER APPOINTED ROAD COMMISSIONS, AS A MATTER OF LAW CONTRAVENES CONST 1963, ART 9, §18 AND IS A BREACH OF CONTRACT, AND REQUIRES SUCH SHARES BE PAID TO PLAINTIFFS?

Plaintiffs/Appellants say: Yes
Defendant/Appellee says: No
Circuit Court said: No

III. DID THE TRIAL COURT ERR WHEN IT FAILED TO GRANT PLAINTIFFS' MOTION FOR SUMMARY DISPOSITION AS TO LIABILITY AND GRANTED DEFENDANT'S CROSS-MOTION FOR SUMMARY DISPOSITION OF PLAINTIFFS' EXTORTION CLAIMS WHEN DEFENDANT'S ACTIONS DID CONSTITUTE EXTORTION AS DEFINED BY MCL 750.213 AND CONVERSION AS DEFINED BY MCL 600.2919a ?

Plaintiffs/Appellants say: Yes
Defendant/Appellee says: No
Circuit Court said: No

INTRODUCTION

In many ways this is a complex case involving changes in County governmental structure, contracts, the Michigan Constitution, extortion, conversion, and successors in interest. However, at its heart, this case is about Defendant's utilization of unfair, deceptive, and unconstitutional practices for its own financial gain and at Plaintiffs' expense. As members of Defendant Michigan County Road Commission Self-Insurance Pool (MCRCSIP), Plaintiffs' (Ingham, Jackson, and Calhoun Counties) predecessors in interest (the Road Commissions of Ingham, Jackson, and Calhoun Counties) overpaid money into MCRCSIP's self-insurance pool during past years.

In reliance on statements made by Defendant, Plaintiffs exercised their statutory rights to reorganize and to transfer the functions of their County Road Commissions to their County Boards of Commissioners. Contrary to their earlier assurances that Plaintiffs would be allowed to remain members of MCRCSIP even if they restructured, Defendant kicked Plaintiffs out of the Pool and kept the premium overpayments to which Plaintiffs were entitled. Defendant contends it is entitled to keep the money and distribute it amongst its other road commission members. It is not entitled to keep this money. Michigan's Constitution mandates that this money be returned to Plaintiffs where it can be used for the benefit of the people of Plaintiffs' counties. According to case law and Michigan's Constitution (Const 1963, art 9, §18) it is a violation of Michigan's constitutional prohibition on lending of credit for such funds to be used to aid and supplement the financial interests of other counties. Furthermore, Plaintiffs are entitled to this money as successors in interest of their respective former Road Commissions and Defendants cannot keep funds that they obtained through extortion or conversion.

STATEMENT OF FACTS

In this self-insurance pool case, Plaintiffs appeal as of right from Ingham Circuit Judge Rosemarie E. Aquilina's July 8, 2016 Opinion and Order denying Plaintiffs' Motion for Summary Disposition pursuant to MCR 2.116(C)(9) and MCR 2.116(C)(10), and granting Defendant's Counter-Motion for Summary Disposition pursuant to MCR 2.116(I)(2). Respectfully, this Court should reverse and remand.

Defendant MCRCSIP is a statutory association of Michigan county road commissions formed in 1983 and governed by Trust Agreement (Declaration of Trust dated April 1, 1984—Ex. 1), which provides pooled self-insurance coverage *inter alia* for General Liability, Auto Liability, Road Liability, Trunkline Automobile Liability, Property & Physical Damage. The MCRCSIP is governed by a board of directors (*id.*, ¶5) elected by the members at large.

Each Plaintiff County's respective Road Commission became a member of MCRCSIP by executing an Interlocal Agreement and Trust Agreement, by which they were required to accept the Declaration of Trust: Jackson County Road Commission (JCRC) on March 7, 1984; Ingham County Road Commission (ICRC) on June 10, 1985; Calhoun County Road Commission (CCRC) in 1984 or 1985 (*id.*, ¶6).

Each year Plaintiffs and all the Counties who were members of MCRCSIP were assessed an annual premium, which was paid into the self-insurance pool (the Pool). As insurance claims were made for each year, the money from the Pool was used to pay off these claims. When premiums collected for a specific policy year exceeded the aggregate amount needed to pay all claims and administrative expenses for that year, there were premium excesses. Thus, as time passed and claims against a policy year were made, reserved and ultimately paid, the Pool was able to make an actuarial determination as to the balance needed

to satisfy outstanding claims associated with that premium policy year and that year would be “closed out.” Here, the amount of premium excess was calculated and closed out ten years after the year the premiums were actually paid by the members. The remaining amount is the “surplus premium¹.” The Pool distributes this surplus back to its members. So, for example, if all the member Counties paid a total of \$100 into the Pool in 2002, in 2012, MCRCSIP would add up all the claims and expenses incurred for 2002 (say it is \$80) and subtract that number from the total premiums collected ($\$100 - \$80 = \$20$). This \$20 surplus would then be divided among the individual Pool members and distributed back to them in 2012. The percentage of that \$20 that each member would receive is calculated based on the percentage their premium made up of all the premiums collected from all the members. The money represented by the \$20 in this scenario and what should happen to it, is the gist of this case. The difference is that this case is on a much larger scale and adds up to millions of dollars, and the “\$20” has already been calculated and declared to be excess or surplus and distributed to all the other remaining members of MCRCSIP, but not to Plaintiffs.

Up through February 28, 2012, MCRCSIP had a longstanding pattern and practice of refunding excess assessments to all Members, based on unused excess reserves remaining at the actuarial closing of an insurance fiscal year, which was refunded or paid back ten years later (*id.*, ¶28). For many years, MCRCSIP had calculated refunds of unused reserves for each closed actuarial year by paying a prorated amount to each Member, based on a fraction consisting of a numerator of the assessment paid by a county and a denominator of total assessments paid by all Members, multiplied by the surplus or unused reserve for each such particular insurance year.

¹ This brief will refer to this money as “excess premiums,” since there does not appear to be a term of art to describe the exact status of funds such as those at issue.

Also during February 2012, the Michigan Legislature began to contemplate new laws that would allow Counties to dissolve appointed County Road Commissions and to transfer the rights, powers, duties, and functions of a County Road Commission to that County's Board of Commissioners. These potential changes were introduced as HB 5125 and HB 5146. On February 14, 2012, while these bills were pending in the Michigan legislature, MCRCSIP, through its Administrator (Ex. 3), notified the Ingham County Road Commission that, in the event Ingham County transferred the functions of the ICRC in-house to the Ingham County Board of Commissioners (ICBC), MCRCSIP would continue to provide only Road Liability Coverage and Physical Damage coverage for road vehicles, but would not continue to provide Auto Liability or Trunkline Automobile Liability coverage.

On February 21, 2012, the bills passed and were signed into law as MCL 224.6 and MCL 46.11, taking immediate effect. On February 28, 2012, MCRCSIP, through its Administrator (Ex. 3), notified the ICRC that on February 23, 2012, the MCRCSIP Board of Directors had calculated the amount the ICRC would have to pay in premiums for the next fiscal year. ICRC was provided a breakdown of its proposed invoice for the cost of insurance coverage for April 1, 2012 – March 13, 2013.

Defendant's Administrator clarified that should the Ingham County Board of Commissioners (ICBC) take advantage of the new organizational scheme as outlined in MCL 224.6(7) and MCL 46.11(s) by transferring to itself the functions of the ICRC, MCRCSIP would not offer certain types of insurance coverage (directors', officers' and public officials' liability), nor Crime/Employee Dishonesty coverage as it had previously done. However, the Administrator stated MCRCSIP would continue to make available General Liability, Auto Liability and Excess Umbrella coverages to Ingham County for road operations only.

MCRCSIP, through its Administrator, then made the following statement of intent regarding refunds to the ICRC on February 28, 2012:

My last comment is with respect to the right to be included in MCRCSIP Refunds. Our Board currently has a policy that states that any Member leaving the Pool loses their right to participate in future refunds. We currently have open years for liability beginning in 2002. **However, our Board has said that it is their intent to transfer the Road Commission's right to refunds to the County if their Membership in the Pool is uninterrupted.** (emphasis added) (see Ex.4)

On April 13, 2012, ICRC paid a final premium for the fiscal year April 1, 2012-March 31, 2013, in the amount of \$400,716.00 in reliance on the MCRCSIP Administrator's February 28, 2012 letter.

On April 24, 2012, the ICBC, proceeding under MCL 224.6(7) and MCL 46.11(s)—and in reliance on the MCRCSIP Administrator's February 14 and 28, 2012 communications (Exs. 3 and 4)—after the requisite two (2) public hearings under MCL 224.6(9), adopted a resolution dissolving the appointed ICRC, and transferring all powers, duties and functions “including but not limited to the following assets: **property**, equipment, furniture, cash, and **investments**” of the road commission to the ICBC. (Ex. 5a). The Calhoun County Board of Commissioners followed suit with respect to the CCRC on September 20, 2012 and the Jackson County Board of Commissioners did likewise with respect to the JCRC on January 15, 2013. (Exs. 5b and 5c).

On May 29, 2012, the MCRCSIP Board of Directors, through its Board Chairman, sent a letter to the Members of MCRCSIP outlining his concern that MCRCSIP might lose members from its insurance pool if County Commissioners were to exercise their newly created statutory authority under MCL 224.6(7) and MCL 46.11(s) to transfer the powers and duties of appointed county road commissions to county boards of commissioners (Ex. 11). In that letter, MCRCSIP's Board Chairman stated, “...your Board of Directors unanimously passed a motion

at its November 10, 2011 meeting to recommend that our Members allow counties with road responsibilities to become Members of MCRCSIP.” (*Id.*, ¶14). Attached to the Chairman’s letter were two resolutions for consideration by the Members to vote on at their upcoming annual meeting on July 19, 2012, including Resolution “B” providing for amendment to the MCRCSIP Declaration of Trust and By-Laws to allow “counties that have assumed the powers and duties provided by law to county road commissions” to be members of our Pool. All three Plaintiff Counties were misled into believing the right to excess premium refunds and continued membership in the Insurance Pool were not in jeopardy.

On May 29, 2012, MCRCSIP, through its Administrator, sent the ICRC an e-mail with two documents attached: “Agreement for Cancellation of Insurance” and “Agreement for Withdrawal From Michigan County Road Commission Self-Insurance Pool.” MCRCSIP notified the Ingham County Finance Director that it would not refund the balance of the April 13, 2012 premium paid in full (\$400,716.00) for the 2012/2013 Insurance Policy covering the one full year period of April 1, 2012 – March 31, 2013, unless both Agreements as submitted by MCRCSIP on May 29, 2012 were executed. In order to avoid losing \$400,716 and to get its refund, ICRC then executed both Agreements under protest on May 31, 2012 (Ex. 8a). The Calhoun and Jackson County Road Commissions were also pressured by MCRCSIP to sign identical agreements, on October 23, 2012 and January 16, 2013, respectively (Exs. 8b and 8c). All three of the “Agreements for Withdrawal From Michigan County Road Commission Self-Insurance Pool” included the following critical provision in the final paragraph:

Limited Purpose of this Agreement. The sole purpose of this Agreement is to effectuate the termination of the Commission’s membership from MCRCSIP as of 12:01 a.m. on June 1, 2012 [Ingham] [January 16, 2013 – Jackson] [November 1, 2012 – Calhoun], **and not to affect or impact in any way any other terms or conditions contained in the Declaration of Trust – Inter-Local Agreement, or By-Laws.** [*emphasis added*]

On June 1, 2012, Ingham County, through its County Finance Director, protested the action of MCRCSIP to disallow continued membership in the Insurance Pool (Ex. 6), but MCRCSIP steadfastly refused to alter its decision. Then, on June 25, 2012, MCRCSIP, through its Administrator (Ex. 6), reversed its stated intent of February 28, 2012, “to transfer the Road Commission’s right to refunds to the County if their Membership in the Pool is uninterrupted...” (see Ex. 4) and notified Ingham County as follows (*id.*, ¶24):

However, MCRCSIP’s Board confirms its prior advice that no refund of surplus equity that otherwise might have been afforded to the former ICRC will be made available to any entity, including Ingham County. Pursuant to its long-standing policy, **the Board does not refund surplus attributable to any Member that has withdrawn from the Pool.** [*emphasis added*]

At the Annual Membership Meeting on July 19, 2012, not surprisingly, the Members of MCRCSIP, who stood to gain financially by the outcome of the vote, rejected its Board of Directors’ recommendation from May 29, 2012, to “allow counties with road commission responsibilities to become Members of MCRCSIP”. (see Ex. 11) (*id.*, ¶25). MCRCSIP subsequently unilaterally concluded that, by statutorily abolishing their respective road commissions, the Counties of Ingham, Jackson, and Calhoun effectively withdrew their respective road commissions from membership and participation in the MCRCSIP, and in so doing, “forfeited” any entitlement to the ten years of refund of surplus equity going back to the 2002-2003 year (*id.*, ¶26).

This new position stood in marked contrast to the situation as of February 28, 2012, at which point MCRCSIP had “open years for liability beginning with 2002”, which meant that members had in fact overpaid assessments for all such years and were in a position to participate in and benefit from the calculation of refunds of excess assessments as each such insurance year’s potential liability was actuarially closed (see Ex. 6).

On July 17, 2014, each of the Counties of Ingham, Jackson, and Calhoun formally demanded that the MCRCSIP pay to the respective Boards of Commissioners of Ingham, Jackson and Calhoun counties their respective former Road Commission's share of any premium surplus then held by MCRCSIP, or improperly distributed to the remaining Members of the MCRCSIP for the actuarial years going back to 2002-2003 and recognized by MCRCSIP as being funds paid in excess of reserve requirements imposed by MCL 124.7a (Ex. 7). Thereafter, MCRCSIP refused to pay any of the Plaintiffs any part of their respective former road commission's shares of ten years of surplus assessments, whether as existing on the effective date of "termination from pool," June 1, 2012, or the date of the various resolutions abolishing each county's road commission, or any other date going back to the 2002-2003 year for which surplus premium refunds had not already been paid (*id.*, ¶32). MCRCSIP thereafter distributed its surplus of assessments paid, including the respective surplus in assessments paid by each Plaintiff's former appointed road commission, to the remaining Members as each actuarial year was closed, each member thereby receiving the excess funds that Plaintiffs' former road commissions had paid as assessment surpluses, amounting to far in excess of \$25,000.00.

After each former road commission signed its respective "Agreement in Recognition of Termination from Pool" (Exs. 8a, b, and c) in order to receive the refund of the then current year's premium paid (having been involuntarily ejected or terminated from membership when each county legally transferred its road commission's functions to its Board of Commissioners) MCRCSIP refused to pay any of the Plaintiffs their respective predecessor in interest's share of surplus assessments for actuarial years from 2002 through 2012. Because Plaintiff Counties did

not voluntarily or otherwise “withdraw” from membership in MCRCSIP, ¶9 of the Declaration of Trust dated April 1, 1984 has no proper application to them.

Plaintiffs filed the present suit on May 28, 2015 alleging four counts: violation of Article 9 §18 of the Michigan Constitution of 1963; Extortion; Statutory Embezzlement/Conversion; and Breach of Contract. Plaintiffs sought an award of damages for all surplus payments due for actuarial years 2002-2012; fines and damages associated with defendant’s actions (Ex. 9). On April 13, 2016 Plaintiffs moved for partial summary disposition under MCR 2.116(C)(9) and (10) as to the issue of liability. Defendant filed a Counter-request for Summary Disposition pursuant to MCR 2.116(I)(2). The trial court denied Plaintiffs’ motion and granted Defendant’s Counter-request for Summary Disposition in an Opinion and Order dated July 8, 2016.

In its Opinion, the trial court first addressed Plaintiffs’ argument that Defendant violated Michigan’s prohibition on lending of credit (Constitution of 1963, art 9, §18, which provides that “[t]he credit of the state shall not be granted to, nor in aid of any person, association or corporation, public or private, except as authorized in this constitution”). The trial court simply concluded “neither Plaintiffs nor its former road commission loaned their credit to Defendant.” (Trial Court Opinion—Ex. 2 at 13-14).

Second, the trial court erroneously concluded that Plaintiffs’ claim that Defendant committed extortion should be dismissed. It concluded that Defendant did not act with malice and that Plaintiffs acted under their own spheres of influence. The court determined that Plaintiffs were not forced to do anything against their wills because they knew that if they transferred the powers of their road commissions to their boards of commissioners, they would be giving up future refunds. This finding completely ignored the fact that Defendant stated that it would only return the premiums that Plaintiffs had paid in advance for the following year

(amounting to hundreds of thousands of dollars), if Plaintiffs executed agreements that purported indicate their “withdrawal” from MCRCSIP. It also failed to note that Plaintiffs signed these documents under protest and that the documents expressly stated that they were for a “limited purpose.” (Ex. 2 at 16).

Third, the trial court granted Defendant’s Motion for Summary Disposition as to conversion/embezzlement. In so doing, it demonstrated a fundamental lack of understand of the workings of insurance pools when it concluded that the premiums paid by the former road commissions to Defendant were in exchange for insurance coverage and that surplus distributions were not guaranteed. In addition, the trial court erroneously stated that there had been a fair exchange for value between the parties. (Ex. 2 at 13-14).

Fourth, the trial court dismissed Plaintiffs’ Breach of Contract Claim. Again, the court noted that surplus distributions were not guaranteed (ignoring that while the distributions were not guaranteed in advance, once the actuarial years were closed out and reflected a surplus, that surplus was guaranteed), that Plaintiffs and their former road commissions knew that dissolution of the former road commissions would result in the forfeiture of future surplus refunds (ignoring the facts that Defendant told Plaintiffs that they would be allowed to remain in the pool if they shifted from road commission control to control by county commissioners), that each Plaintiff acted under its own sphere of influence (ignoring that Plaintiffs were heavily influenced by Defendants assurances that they could remain members, and then were pressured by Defendants to sign a “withdrawal” or face the loss of hundreds of thousands of dollars in premiums for insurance that they would not even have been allowed to use), and that Plaintiffs were a separate entity from its former Road Commissions and never contracted with Defendant (ignoring that Plaintiffs were successors in interest). (Ex. 2 at 15-16).

Finally, in a footnote, the trial court dismissed the notion that Plaintiffs could be considered the same entities as, or successors in interest to, their former Road Commissions because MCL 46.11(s) stated that the former Road Commissions were “dissolved.” It mistakenly reasoned that because the Road Commissions were dissolved, they could not have been absorbed because Black’s Law Dictionary (2014) defines “dissolution” as: “the act of bringing to an end; termination.” (Ex. 2 at 14 n. 36). Again this conclusion completely disregards the entire concept of successor interest where one entity ceases to exist, and a second entity now “stands in the shoes” of the former.

STANDARDS OF REVIEW

“Summary disposition under MCR 2.116(C)(9) is proper if a defendant fails to plead a valid defense to a claim.” *Village of Dimondale v Grable*, 240 Mich App 553, 564, 618 NW2d 23 (2000). When deciding a motion under MCR 2.116(C)(9), which tests the sufficiency of a defendant’s pleadings, the trial court must accept as true all well-pleaded allegations and properly grants summary disposition where a defendant fails to plead a valid defense to a claim. *Id.* “Summary disposition under MCR 2.116(C)(9) is proper when the defendant’s pleadings are so clearly untenable that as a matter of law no factual development could possibly deny the plaintiff’s right to recovery.” *Id.* at 425-426.

Whether a state statutory scheme preempts a decision by an unincorporated private association is a question of statutory interpretation and, thus, a question of law. *Ter Beek v City of Wyoming*, 297 Mich App 446, 452, 823 NW2d 864 (2012)

If material outside the pleadings is considered, MCR 2.116(C)(10) is the appropriate basis for summary disposition. *Silberstein v Pro-Golf of America, Inc*, 278 Mich App 446, 457; 750 NW2d 615 (2008) (“Where a motion for summary disposition is brought under both MCR

2.116(C)(8) and (C)(10), but the parties and the trial court relied on matters outside the pleadings, . . . MCR 2.116(C)(10) is the appropriate basis for review.”). When reviewing a motion under MCR 2.116(C)(10), the Court considers the pleadings, affidavits, depositions, admissions, and any other documentary evidence submitted by the parties in a light most favorable to the nonmoving party. *The Cadle Co v City of Kentwood*, 285 Mich App 240, 247; 776 NW2d 145 (2009). A motion for summary disposition under MCR 2.116(C)(10) may be granted where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Campbell v Dep’t of Human Servs*, 286 Mich App 230, 235; 780 NW2d 586 (2009). A (C)(10) motion must be supported by evidentiarily admissible materials outside the pleadings. MCR 2.116(G)(3), (5) and (6); *Spiek v Dep’t of Transp*, 456 Mich 331, 338; 572 NW2d 201 (1998).

The Trial Court granted Defendant’s Motion for Summary Disposition pursuant to MCR 2.116(I)(2), which provides: “[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party.”

The Court of Appeals reviews de novo a trial court’s decisions on motions for summary disposition. *Hackel v Macomb Co Comm*, 298 Mich App 311, 315; 826 NW2d 753 (2012).

ARGUMENT

I. DID THE TRIAL COURT ERR WHEN IT FAILED TO GRANT PLAINTIFFS’ MOTION FOR SUMMARY DISPOSITION AS TO LIABILITY AND GRANTED DEFENDANT’S CROSS-MOTION FOR SUMMARY DISPOSITION WHEN IT CONCLUDED THAT PLAINTIFFS ARE NEITHER THE SAME ENTITIES, NOR THE SUCCESSORS IN INTEREST OF THE ROAD COMMISSIONS OF INGHAM, JACKSON AND CALHOUN COUNTIES?

Fundamentally, this entire dispute arises because MCRCSIP takes the position that its “former” members, the Road Commissions of Ingham, Jackson and Calhoun Counties, ceased

to exist when each of the respective county boards voted to dissolve its appointed road commission and assume the powers and duties thereof in accordance with MCL 46.11 and 224.6(7). Plaintiffs, however, take the position that such action simply resulted in the rights and interests of each respective appointed road commission being absorbed into the County Board, and otherwise continuing unaffected and unchanged.

Two statutes occupy a central place in this controversy. MCL 224.6(7) now provides:

(7) Except as otherwise provided under subsection (5) and subject to the requirement provided in subsection (9), before January 1, 2015, **the powers, duties, and functions that are otherwise provided by law for an appointed board of county road commissioners may be transferred to the county board of commissioners by a resolution** as allowed under section 11 of 1851 PA 156, MCL 46.11. The appointed board of county road commissioners of that county **is dissolved** on the date specified in the resolution adopted under this subsection, and **the county board of commissioners is authorized to receive and expend funds as allowed under 1951 PA 51, MCL 247.651 to 247.675.** *[emphasis added]*

And MCL 46.11(s) now provides:

(s) Before January 1, 2020, by majority vote of the members of the county board of commissioners elected and serving in a county with an appointed board of county road commissioners, pass a resolution that transfers the powers, duties, and functions that are otherwise provided by law for the appointed board of county road commissioners of that county to the county board of commissioners. The resolution is subject to the requirement in section 6(9) of chapter IV of 1909 PA 283, MCL 224.6. The appointed board of county road commissioners of that county is dissolved on the date specified in the resolution adopted under this subdivision, and **the county board of commissioners is authorized to receive and expend funds as allowed under 1951 PA 51, MCL 247.651 to 247.675.** * * * *[emphasis added]*

The Legislature crafted these provisions artfully. Contrary to MCRCSIP's position, the Legislature did not provide for the abolition of county Road Commissions in this situation; it very specifically stated that an "appointed county road commission" would be "dissolved" on the effective date of such a resolution. The reason for this precise distinction is important—

County Boards of Commissioners are necessarily elected, not appointed, so when a County Board functions as a county road commission, it cannot be described as an “appointed road commission.”

But the Legislature was careful to distinguish that NOT just **any** “road commission” was dissolved, only “the appointed road commission.” Immediately, within the same sentence, the Legislature provided that following such dissolution of “the appointed road commission”, “the county board of commissioners is authorized to receive and expend funds as allowed under 1951 PA 51”, where the Legislature provided *inter alia* for a system of county primary roads, MCL 247.652 and .655, and also other county roads “under the jurisdiction of the board of county road commissioners in each of the several counties of the state,” MCL 247.654. Thus, where a county board of commissioners has absorbed both the duties and powers of an appointed road commission, the county board of commissioners is now the “board of county road commissioners.”

This analysis is consistent with “the fundamental rule” of statutory construction that “every word of a statute should be given meaning and no word should be treated as surplusage or rendered nugatory if at all possible.” *Pittsfield Charter Twp v Washtenaw Co*, 468 Mich 702, 714; 664 NW2d 193 (2003). The provisions of a statute must be read in the context of the entire statute in the interest of producing an harmonious whole. *Burton v Reed City Hosp Corp*, 471 Mich 745, 757; 691 NW2d 424 (2005).

Were this not so, existing county roads would have suddenly been without a responsible agency to maintain and repair them—something the Legislature was at pains to avoid by expressly referencing 1951 PA 51. Similarly, but for the Counties becoming the successors of their appointed Road Commissions, existing road construction contracts would have been

unconstitutionally impaired, US Const, art 1, §10; Const 1963, art 1, §10, because a key contracting party ceased to exist, and the taxpayers of the affected counties would have ceased, as a body politic, to own all assets of their respective former Road Commissions, contrary to MCL 45.3, which provides that each organized county shall “purchase and hold real estate for the use of the county, and also MCL 45.4, which provides (boldfaced emphasis added):

All real and personal estate, heretofore conveyed by any form of conveyance to the inhabitants of any county, or to the county treasurer, or the governor of the late territory of Michigan, or to any committee, trustees, or other persons, for the use and benefit of such county, shall be deemed to be the property of such county; and all such conveyances shall have the same force and effect as if they had been made to the inhabitants of such counties by their respective corporate names.

All rights of property belonging to Plaintiffs’ former appointed Road Commissions thus devolved upon the respective county boards, for the benefit of the inhabitants of each Plaintiff County. The MCRCSIP’s notion that, somehow, the dissolution of the Plaintiff Counties’ appointed Road Commissions had the effect of leaving no one possessed of those commissions’ former property rights is thus seen as delusional and unsustainable as a matter of law.

Nor does anything suggests the Legislature intended that such an abandonment of property rights flow from its authorization to County Boards to absorb their appointed Road Commissions if they saw fit to do so. And all such untoward consequences are avoided by recognizing that the Plaintiff County Boards of Commissioners simply succeeded in all respects to the status of Road Commissions, albeit not appointed Road Commissions. Whether appointed or elected, each Plaintiff County Board is its respective county’s road commission, is the successor to all rights of its former appointed road commission, and had the same right to become or remain a member of MCRCSIP.

Defendant argues, however, that “the Pool’s Bylaws limit membership to Road Commissions.” What Defendant fails to acknowledge is that each Plaintiff County Board of Commissioners IS for all legal purposes now [also] a “Road Commission”. As such, each is entitled to join—or continue as a member of—Defendant MCRCSIP, or any other association that limits membership to “Michigan County Road Commissions”.

Moreover, Defendant is not the final authority on how its Bylaws are construed. When called upon to construe a bylaw or internal regulation of a voluntary association, the principles applicable to statutory construction apply—meaning that the association is not the sole judge of the meaning or interpretation of its own rules. Bylaws are generally construed in accordance with the same rules used for statutory construction. *Slatterly v Madiol*, 257 Mich App 242, 250; 668 NW2d 154 (2003). Under these rules, “statutes are presumed to operate prospectively unless the contrary intent is clearly manifested.” *Franks v White Pine Copper Div*, 422 Mich 636, 671; 375 NW2d 715 (1985), quoting *Selk v Detroit Plastic Products*, 419 Mich 1, 9; 345 NW2d 184 (1984).

Here, neither the MCRCSIP Bylaws nor its Declaration of Trust provide a definition of “county road commission” distinct from that in the Michigan Compiled Laws; it was assumed and understood that whatever statutory definition existed was being borrowed for the purposes of the Pool. Article II of the Pool’s Bylaws recites that “municipal corporations” is defined to include “Road Commissions” by PA 1951, No 35, and then provides that “these By-laws govern a road commission self-insurance pool.” Article III then adds that “The Pool shall be comprised of county Road Commissions of the State of Michigan which are authorized and approved under Section 1 of Act 138, PA 1982, as amended (MCL 124.1; MSA 54081), to enter into an agreement to pool their loss exposures and which have executed the Pool Trust Agreement.”

Because Plaintiff County Boards of Commissioners are now authorized by MCL 46.11 and 224.6(7) to do whatever an elected or appointed road commission may do under MCL 124.1, Plaintiff Counties were (and are) not barred from either becoming or remaining members of MCRCSIP or receiving refunds of the overpayments made by their predecessors in interest.

This analysis also shows why Defendant's further contention, that Plaintiff Counties' former appointed Road Commissions did not assign their contract rights (whether as against Defendant or any other person or entity), is flatly wrong-headed and misplaced. No formal or informal contractual "assignment" was necessary; each Plaintiff County Board of Commissioner succeeded, *by law*, to all "powers, duties and functions" of their former Road Commissions, MCL 224.6(8); MCL 46.11(s).

Previously, Defendant contended that for Plaintiff Counties' Boards of Commissioners to succeed to the rights of their former appointed Road Commissions would "impair the obligation of contracts" in violation of Const 1963, art 1, §10. Quite the contrary. The Legislature expressly provided that the County Board of Commissioners would thereby assume "the powers, duties and functions that are otherwise provided by law for the appointed board of road commissioners of that county", MCL 46.11(s). That simply replaces the former appointed Road Commissions with their respective County Boards of Commissioners, and does not impair the obligation of any contract with a former appointed road commission, since the County Board must, by statute, now fulfill all such obligations. Correlatively, Plaintiff County Boards also succeeded to all contract rights of their former appointed Road Commissions.

Here, a familiar principle of constitutional law leads to easy resolution of any difficulty: if one interpretation of a statute leads to grave constitutional difficulties, and another creates no such problems, then the latter interpretation is correct. *Evans Products Co v State Bd of*

Escheats, 307 Mich 506, 533–535; 12 NW2d 448 (1943). “In cases of [constitutional] doubt, every possible presumption, not clearly inconsistent with the language and the subject matter, is to be made in favor of the constitutionality of the act.” *Sears v Cottrell*, 5 Mich 251, 259 (1858). “The rule is too well settled to require citation of authority that if a statute may reasonably be so construed as to avoid constitutional objections, it is the duty of the court to adopt such construction.” *Shapero v State Dept. of Revenue*, 322 Mich 124, 137; 33 NW2d 729 (1948) “‘Statutes will be construed in the most beneficial way which their language will permit to prevent absurdity, hardship or injustice; to favor public convenience and to oppose all prejudice to public interests.’ 2 Laws’ Sutherland Statutory Const. (2d Ed.) § 490.” *Id.*, 322 Mich at 139. Plaintiffs construction of MCL 224.6(7) and MCL 46.11(s) to make themselves successors to their former appointed Road Commissions for all purposes is therefore the proper one.

Count IV of the Plaintiffs’ Complaint pleads a claim for breach of contract. Defendant contended below that “Michigan does not recognize a cause of action for breach of [an] implied covenant of good faith and fair dealing.” *In re Leix Estate*, 289 Mich App 574, 591; 797 NW2d 673 (2010). But granting that proposition does not mean that parties to a contract have no such obligations. To the contrary, although *sometimes* not an independent basis for action, the common law implied covenant of good faith and fair dealing remains highly relevant to breach of contract cases

Michigan courts will recognize an action for breach of an implied covenant of good faith and fair dealing where—as here—a party makes the manner of its performance a matter of its own discretion. *Paradata Computer Networks, Inc v Telebit Corp*, 830 F Supp 1001, 1005 (ED Mich, 1993), citing *Burkhardt v City Nat’l Bank of Detroit*, 57 Mich App 649, 652; 226 NW2d 678 (1975). See also Mantese & Newman, Still Keeping the Faith: The Duty of Good Faith

Revisited, 76 Mich B J 1190 (November 1997), and cases cited in Gamer, *The Implied Covenant of Good Faith in Franchising: A Model for Discretion*, 20 Okla City U L Rev 305, 321–325. However, when interpreting a contract, the obligation of good faith cannot be employed to override express contract terms. *General Aviation, Inc v Cessna Aircraft Co*, 703 F Supp 637, 643 (WD Mich, 1988), rev'd in part on other grounds 915 F2d 1038 (CA 6, 1990). Nor may a court use the implied covenant of good faith as a tool for rewriting the parties' agreement based on unspecified notions of fairness. *Id.* at 644. *The purpose of the implied covenant of good faith is to enable enforcement of contract terms in a manner consistent with the parties' reasonable expectations.* *Id.* at 644. In *Verderese v Q Lube, Inc* (Mich App No 199084, released May 26, 1998), 1998 WL 1991608, at 6. (Ex. 12), the Court of Appeals held there was an issue of material fact precluding summary disposition as to the defendant's breach of the implied covenant of good faith and fair dealing (slip op p. 6).

Next, Defendant contends there never was a contract between Plaintiffs and the Pool. Of course, Defendant could not, and does not, contend that the ICRC, JCRC, and CCRC did not have a contractual relationship with the Pool. Defendant, without explicitly formulating its position, clearly asserts that, somehow, Plaintiff Counties are not successors in interest to their former appointed Road Commissions. If that were correct, no doubt Defendant's argument would have some basis in reality, although for a short period of time after Plaintiffs absorbed their former appointed Road Commissions into their respective Boards of Commissioners, they were continued to be insured by the Pool and paid premiums for the privilege of being so insured.

But Plaintiffs are indeed the successors in interest to their former Road Commissions; MCL 224.6(7) and MCL 46.11(s) so provide.

II. DID THE TRIAL COURT ERR WHEN IT FAILED TO GRANT PLAINTIFFS' MOTION FOR SUMMARY DISPOSITION AS TO LIABILITY AND GRANTED DEFENDANT'S CROSS-MOTION FOR SUMMARY DISPOSITION WHEN DEFENDANT'S DISTRIBUTION OF EXCESS PREMIUMS PAID BY PLAINTIFFS' PREDECESSORS IN INTEREST TO AND AMONG MCRC SIP'S OTHER MEMBERS, INCLUDING FUNDS THAT, FOLLOWING MCRC SIP'S STANDARD PRO RATA METHODOLOGY, WOULD HAVE GONE TO A PLAINTIFF COUNTY'S FORMER APPOINTED ROAD COMMISSIONS, AS A MATTER OF LAW CONTRAVENES CONST 1963, ART 9, §18 AND IS A BREACH OF CONTRACT, AND REQUIRES SUCH SHARES BE PAID TO PLAINTIFFS?

By converting Plaintiffs' shares of surplus premiums for its remaining Members, Defendant has breached Const 1963, art 9, §18 by using the credit of Ingham, Jackson, and Calhoun counties to aid and supplement the financial interests of the other Members of MCRC SIP.

The Michigan Constitution of 1963, art 9, §18, provides that "[t]he credit of the state shall not be granted to, nor in aid of any person, association or corporation, public or private, except as authorized in this constitution." The prohibition against the lending of credit applies to counties as political subdivisions and instrumentalities of the state. *Advisory Opinion on Constitutionality of 1986 PA 281*, 430 Mich 93; 422 NW2d 186 (1988); *Oakland Co Drain Comm'r v Royal Oak*, 306 Mich 124, 142; 10 NW2d 435 (1943). The purpose of this section is to assure that the state and its political subdivisions, which generally cannot borrow, do not accumulate unauthorized debts by guaranteeing the debts of others. *Advisory Opinion re Constitutionality of 1966 PA 346*, 380 Mich 554, 564; 158 NW2d 416 (1968).

Our Supreme Court has held that where the state acquires or transfers something of value, Const 1963, art 9, § 18 is not violated. *Alan v Wayne County*, 388 Mich 210, 325; 200 NW2d 628 (1972). Const 1963, art 9, § 18 is violated only when the state creates an obligation legally enforceable against it for the benefit of another. *Sprick v Regents of the Univ of Mich*, 43

Mich App 178, 190-191; 204 NW2d 62 (1972); *Petrus v Dickinson Co Bd of Comm'rs*, 184 Mich App 282, 297; 457 NW2d 359 (1990).

But aside from directly lending its credit, where a municipality transfers property, there must generally be a fair exchange of value for value. *Alan v Wayne Co*, 388 Mich. 210, 325, 330; 200 NW2d 628 (1972). A transfer of property by a governmental body that is not supported with adequate consideration violates art 9, § 18:

There is another means by which tax increment bonds might be found outside the definition of a loan of credit, as contemplated in art 9, § 18. If the state or a municipality receives value in return for what it gives away, there is no loan of credit under the constitution. We articulated this rule in *Alan, supra*, p 325:

“Michigan case law interpreting Const 1963, art 9 § 18 is neither ample nor precise. It is clear the state or its subdivision the county cannot give anything away without consideration. (Citations omitted.) Note that the constitution as far as the state and county are concerned makes no difference between a public and a private purpose in this regard. * * *”

Normally, “the Legislature or Executive Branch is the judge of what is fair value in matters in which it is concerned.... Their judgment, however, is subject to judicial review for abuse of judgment.” *Id.*, p 330.

As this passage indicates, it is for the legislative and executive branches of government to determine if value was obtained, but courts will intervene if an abuse of discretion is shown.

Here, the legislative branch—the Boards of Commissioners of Ingham, Jackson and Calhoun Counties—has concluded that value was not obtained. Obviously, if a county were to make a valuable grant without consideration, the courts would be *forced* to regard that as an abuse of discretion. *Alan, supra* at 326-327. In exchange for signing the two termination agreements, none of Plaintiff Counties’ former appointed Road Commissions received any consideration, still less valuable consideration². Yet as a result, MCRCSIP and its members

² MCRCSIP contends that each of the former appointed road commissions, in exchange for signing the termination agreements (Exs. 8a, b and c), was given a refund of unused premiums

used these invalid agreements as pretext to take for themselves money paid by and belonging to the former Road Commissions of Plaintiff Counties, to which refund rights each Plaintiff County Board of Commissioners legally succeeded under the provisions of MCL 224.6(7) and MCL 46.11(s).

Furthermore, MCL 124.5 *et seq.*, the statute forming the source of authority for and the basis for MCRCSIP's creation and continued existence, does not permit retention of such excess funds. To the contrary, MCL 124.7(a)(ii) requires that the intergovernmental contract specify "the amount of cash reserves to be set aside for the payment of claims", and likewise, in subsection (a)(iv), requires the intergovernmental contract to detail "the amount of aggregate excess insurance coverage to be maintained or the amount of the deposit of unimpaired surplus to be maintained with the state treasurer." Because the Pool could not exist without this statutory authorization, the statute, being in derogation of common law, must be strictly construed, *School Dist of City of Lansing v City of Lansing*, 260 Mich 405, 419; 245 NW 449 (1932), and **therefore the Pool cannot maintain any surplus or excess funds beyond what is identified in its Declaration of Trust.**

Moreover, the very structure of the Pool, even though in this respect ostensibly permitted by MCL 124.7(b)(ii) (which allows the intergovernmental contract to provide for

for the year of termination, 2012-2013 for Ingham and Calhoun Counties, 2013-2014 for Jackson County. But Plaintiffs' predecessors were each entitled to a refund of prepaid premiums for insurance coverage that was no longer being provided—MCRCSIP could hardly terminate insurance coverage for which payment had been tendered in advance and yet retain the unused portion of the premiums. Thus, MCRCSIP's agreement to refund *unused* premiums for the final year of membership was not consideration for any contractual agreement, because MCRCSIP had a prior legal obligation to restore such funds to Plaintiffs. *46th Circuit Trial Court v Crawford Co*, 476 Mich 131, 158; 719 NW2d 553 (2006) ("Under the preexisting duty rule, it is well settled that doing what one is legally bound to do is not consideration for a new promise." *Id.* at 740–741. Such a contract would appear to fail for lack of consideration. *Puett v Walker*, 332 Mich 117, 122; 50 NW2d 740 (1952).").

“levying and collecting assessments for deficiencies”), makes each member potentially liable for the debts of other members, and that is a further infringement of Const 1963, art 9, ¶18. In *City of Tyler v Texas Employers’ Insurance Ass’n*, 288 SW 409 (Tex Comm’n App, 1926, judgm’t adopted), the Texas Commission of Appeals considered whether an incorporated municipality might subscribe to the Texas Employers’ Insurance Association (TEIA) to cover possible workers’ compensation liabilities under VTCS art. 8308, §7 (authorizing any employer may be subject to workers’ compensation laws to subscribe to TEIA). The court noted that the TEIA—like MCL 124.7(b)(ii), required its members to pay a proportionate share of any assessment the TEIA levied to cover its losses and expenses. 388 SW at 411-412.

The *Tyler* court cited two reasons the Texas Constitution, article III, section 52(a)³—indistinguishable from Mich Const 1963, art 9, §18 in its substantive effect—prohibited municipalities from subscribing to such an association. The second reason was that a subscriber to the TEIA was obligated to pay assessments to cover the TEIA’s losses, and thus any municipality that subscribed to the TEIA was lending its credit in violation of article III, section 52. *Id.* In *Lewis v Independent School District*, 161 SW2d 450, 452 (Tex, 1942), the Texas Supreme Court reaffirmed the conclusions reached in *City of Tyler*.

³ Texas Constitution, Article III, §52(a) provides:

Except as otherwise provided by this section, the Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company. However, this section does not prohibit the use of public funds or credit for the payment of assessments on nonassessable life, health, or accident insurance policies and annuity contracts issued by a mutual insurance company authorized to do business in this State.

Texas Constitution, Article III, §§60 and 61 are substantially identical, with section 60 pertaining to “counties and other political subdivisions,” and section 61 to “cities, towns, and villages.”

Because Plaintiff Counties succeeded to all rights of their former appointed Road Commissions, Plaintiffs have a right to the shares of excess or surplus funds that MCRCSIP annually distributes for prior years (usually from surplus collected over a decade previously, thus in 2015 Defendant distributed surplus from the 2002-2003 premium year). ‘A state agency . . . may not employ the power, directly or indirectly, for the use and benefit of another, Unless so authorized by law.’ *Sinas v City of Lansing*, 382 Mich 407, 413–14; 170 NW2d 23 (1969).

Defendant’s central argument is that “the Pool never had any of the Counties’ money, and the Counties do not ‘own’ the potential refunds they now seek. See *A&D Development v Michigan Commercial Insurance Mut (After Remand)*, 2014 WL 7338871 (Mich App, December 23, 2014) (summary disposition of multiple claims, including conversion, proper where participants in a self-insured fund did not own surplus premiums as a matter of law).” Plaintiffs have made no claim that they own any part of surplus reserves while funds remain part of reserves for any year of continuing liability exposure.

However, from the time Plaintiff Counties’ predecessors in interest (ICRC, JCRC, and CCRC) joined the Pool, MCRCSIP’s Board of Directors, upon the closing of all risk for an actuarial year, distributed the surplus or excess reserves from that year to the members in proportion to the premiums each had paid for that year. MCRCSIP has continued to distribute surplus reserves according to the same pattern as each actuarial year closes, except it has excluded Plaintiffs from receiving their predecessors-in-interest’s shares of such distributions, and MCRCSIP has instead divvied up those predecessors’ shares among Road Commissions whose counties did not exercise their rights under MCL 224.6(7) and MCL 46.11(s).

And that is why the *A&D Development v Michigan Commercial Insurance Mut (After Remand)*, 2014 WL 7338871 (Mich App, December 23, 2014)—an unpublished decision

having no precedential value, MCR 7.215(C)(1)—has no application here. (Ex. 13). Plaintiffs are not claiming a right to a share of MCRCSIP's reserves, but rather are claiming a right to the refund of excess unused funds whenever the MCRCSIP Board of Directors closes an actuarial year to which the ICRC, JCRC, or CCRC contributed assessments or payments for insurance coverage and defendant declares a distribution of surplus reserves. At the point where the MCRCSIP Board of Directors determines there is an excess of reserves and determines to distribute (and not before), the money in dispute ceases to be property of the MCRCSIP or part of its reserves, and becomes a fund to be distributed among those who contributed to its creation (that is, those whose contributions from any part of the surplus for the closed actuarial year at issue).

In the *A&D Case*, no such distribution had been declared by the self-insurance pool's board of directors, so the funds remained part of the pool's reserves. The money having been paid into the pool voluntarily, there could be no conversion, because the party paying the premium had no right to a refund unless and until a distribution of surplus reserves might be declared, which never happened in that case.

Moreover, the habitual declaration of distributions of excess reserves from closed actuarial years by MCRCSIP's Board of Directors was, pursuant to Article XII of MCRCSIP's Bylaws, necessarily reflective of an established policy. To return to our scenario from the FACTS portion of this brief, Plaintiffs here want their portion of the \$20, which Defendant has already calculated, closed out, divvied up and paid out divided portions of the \$20 to other members. The Defendants in the *A&D Case* had calculated that there was \$20 leftover, but had never decided to distribute it to any of its members. Furthermore, the Plaintiffs in the *A&D*

Case were not political subdivisions of the state, and there were no Constitutional restrictions on what could be done with the money they paid into the Pool.

Article XII of Defendant's own By-laws, provides that "The Pool Board shall develop procedures for addressing accumulated equity, if any * * *." Distributing surplus reserves from closed actuarial years among those whose premiums contributed to the surplus was and remains the MCRCSIP's Policy, but it has now deviated so as to deny Plaintiff Counties their predecessors' in interest shares of such distributions. *Ad hoc* determinations, made by remaining members for their own enrichment, are antithetical to the by-laws, as well as tainted by conflict of interest.

Where there has been conflict of interest, as well as bad faith, oppression, or other unfair conduct, the association and its members cannot hide behind the finality of any internal process to whitewash themselves of all their sins. In *Dietz v American Dental Ass'n*, 479 F Supp 554, 557 (ED Mich, 1979), the Court held:

Generally, courts are reluctant to interfere with the internal workings of a private association, but if justice and equity require, courts will review the decision of a private association. See *McCreery Angus Farms v. American Angus Association*, 379 F Supp 1008, 1019 (SD Ill, 1974), summarily aff'd, 506 F2d 1404 (CA 7, 1974); *Falcone v. Middlesex County Medical Society*, 34 NJ 582; 170 A2d 791, 796 (1961).

* * *

The association must exercise its powers according to its by-laws and constitution; it cannot decide to exclude or expel a member or deny rights of membership for arbitrary, capricious, or discriminatory reasons. See *Hatley v. American Quarter Horse Association*, 552 F.2d 646, 655-56 (5th Cir. 1977) (refusal to register member's horse); *Marjorie Webster Junior College, Inc. v. Middle States Association of Colleges and Secondary Schools*, 139 U.S.App.D.C. 217, 432 F.2d 650, 655-57 (D.C. Cir. 1970), Cert. denied, 400 U.S. 965, 91 S.Ct. 367, 27 L.Ed.2d 384; *McCreery Angus Farms, supra*, 379 F.Supp. at 1010; *Pinsker, supra*, 526 P.2d at 255; *Blende v. Maricopa County Medical Society*, 96 Ariz. 240, 393 P.2d 926, 929 (1964); *Virgin v. American College of Surgeons*, 42 Ill.App.2d 352, 192 N.E.2d 414, 423 (1963); *Falcone, supra*, 170 A.2d at 799; *Kurk v. Medical*

Society of County of Queens, Inc., 46 Misc.2d 790, 260 N.Y.S.2d 520, 525 (1965); *Davidson v. Youngstown Hospital Association*, 19 Ohio App.2d 246, 250, 250 N.E.2d 892, 48 Ohio Op.2d 371 (1969); *Woodard v. Porter Hospital, Inc.*, 125 Vt. 419, 217 A.2d 37, 40 (1966). But see *Elizabeth Hospital, Inc. v. Richardson*, 269 F.2d 167 (8th Cir. 1959), cert. denied, 361 U.S. 884, 80 S.Ct. 155, 4 L.Ed.2d 120 (no cause of action under Arkansas law for denial of membership).

A conflict of interest is a key factor in judicial review to determine whether the association has acted arbitrarily or capriciously or abused its discretion. In *Firestone Tire & Rubber Co v Bruch*, 489 US 101; 109 S Ct 948; 103 L Ed 2d 80 (1989), the US Supreme Court held that, when evaluating challenges to denials of benefits in actions brought under 29 USC §1132(a)(1)(B), district courts are to review the plan administrator's decision under a de novo standard of review, unless the plan grants discretionary authority to the administrator or fiduciary to determine eligibility for benefits or interpret the terms of the plan. The Court recognized that "if a benefit plan gives discretion to an administrator or fiduciary who is operating under a conflict of interest, that conflict must be weighed as a factor in determining whether there is an abuse of discretion." *Firestone*, 489 US at 115 (internal quotation omitted).

Subsequently, in *Metropolitan Life Insurance Co v Glenn*, 554 US 105; 128 S Ct 2343; 171 L Ed 2d 299 (2008), SCOTUS interpreted the relevant language in *Firestone*, holding that courts should continue to apply a deferential abuse-of-discretion standard of review in cases where a conflict of interest is present, but that courts should take the conflict into account not in formulating the standard of review, but in determining whether the administrator or fiduciary abused its discretion:

We do not believe that *Firestone's* statement implies a change in the standard of review, say, from deferential to de novo review. Trust law continues to apply a deferential standard of review to the discretionary decisionmaking of a conflicted trustee, while at the same time requiring the reviewing judge to take account of the conflict when determining whether

the trustee, substantively or procedurally, has abused his discretion. We see no reason to forsake *Firestone*'s reliance upon trust law in this respect.

Glenn, 554 US at 115-116 (emphasis in original) (internal citations omitted). The Court held that it was not “necessary or desirable” for courts to create special procedural, evidentiary, or burden-of-proof rules to account for conflicts of interest, and that “conflicts are but one factor among many that a reviewing judge must take into account.” *Id.* at 116-117.

In this instance, the MCRSIP did not apply any pre-existing internal rule or policy, but allowed its Board of Directors—consisting of county representatives each of whom stood to gain a direct financial benefit from a decision to refuse refunds or distributions to “former” members such as Ingham, Jackson and Calhoun Counties, thereby ensuring a larger distribution to the very counties whose agents made the challenged decision (by including the funds thus embezzled from each Plaintiff County *inter alia*)—to make an *ad hoc* determination rife with conflict of interest. Such pecuniary advantage to the decision makers—each of whom was a government representative, operating within an association of government agencies—suffices to establish a violation of fundamental due process principles. *Aetna Life Ins Co v Lavoie*, 475 US 813, 822 ff; 106 S Ct 1580; 89 L Ed 2d 823 (1986). Even considering MCRSIP as a private rather than governmental organization, the lack of fundamental fairness becomes so paramount and obvious as to irredeemably taint the Board’s decision with respect to distributions of surplus and to warrant judicial intervention.

Granting that MCRSIP might from time to time amend its internal rules or policies, it could not do so if the new rule is unreasonable, OR (as here) the new rule divests former members of rights *already vested*, such as the right to a share of any surplus upon withdrawal. *Parish v New York Produce Exchange*, 169 NY 34, 49-51; 61 NE 977, 981-982 (1901).

Indeed, what MCRCSIP and its members have done is nearly indistinguishable from what was attempted by a faction in *Russian Orthodox All Saints Church v Darin*, 222 Mich 35; 192 NW 697 (1923), but prohibited as unjust, oppressive, and invalid by our Supreme Court, which opined, 222 Mich at 55:

Measuring the legal rights and obligations of members belonging to this voluntary association by civil laws, or even its own by-laws and rules, the proceedings under which the minority members assumed to transfer themselves into a majority in order to control its temporal affairs cannot be recognized as of any legal validity. The majority members first took legal steps in the society's name and as its successor to, and did, comply with the provisions of the statute authorizing incorporation of unincorporated voluntary religious societies. There could be but one valid incorporation of the society. As we view the rift between the two factions, there was no actual secession on doctrine or other grounds by either faction, from the church or society, but a contest for supremacy within it amongst its members, for control of its temporalities. The incorporation by the majority was a valid incorporation by the majority of and for the entire voluntary association, including both factions. **It thereby succeeded to the temporalities of the society, but in trust for the religious purposes and uses for which they had been procured and dedicated by that society, and in which each member has a beneficial interest. The majority have not, and could not because of this factional dispute for control, read out of the association those belonging to the opposing faction, if valid members at the time of the division, any more than could the minority.** The faithful exercise by plaintiff of this trust, by whomsoever controlled, remains a subject of equity cognizance. So long as that trust is not violated, the unquestioned right of control is with the majority.

And therein lies the rub in the present case—neither Defendant nor its remaining members could, while holding funds in trust for the entire original group, hijack Pool assets for their own accounts, or “read out of the association those belonging to the opposing faction, who were valid members at the time of the division [or discriminate between those who exercised their rights under MCL 224.6(7) and MCL 46.11(s) and those who did not]”.

Furthermore, because the Legislature has left it to the discretion of county boards of commissioners whether to abolish separate county Road Commissions and absorb the functions,

rights and duties thereof into the county board itself, for the MCRSIP to require that members forfeit their membership, and also their pro rata share of any determination of surplus, penalizes those counties that avail themselves of this statutory right. To construe the Declaration of Trust or any bylaw to permit this is clearly contrary to the public policy which the Legislature left to the political process—indeed, it is an act of extortion by MCRSIP. MCL 750.213. As held in *Sands Appliance Services, Inc v Wilson*, 463 Mich 231, 246; 615 NW2d 241 (2000), “because courts have a duty to refuse to enforce a contract that is contrary to public policy. *Manning v Bishop of Marquette*, 345 Mich 130, 133–134; 76 NW2d 75 (1956), if the contract [of ‘voluntary’ termination] violated the statute, it violated Michigan public policy.” There is no *de minimis* form of extortion outside the ambit of MCL 750.213.

Although the Declaration of Trust dated April 1, 1984—Ex. 1—provides in §9 that “The Pool may treat members who withdraw from future Pool Years differently and less favorably than the Pool treats members who continue in the pool for future years”, Plaintiffs did not withdraw, but rather, were ejected or terminated from continued membership in the MCRCSIP.

Moreover, to the extent any predecessor appointed road commission—on the eve of its dissolution—signed an “Agreement in Recognition of Termination from Pool”, such execution was without consideration and also the result of duress, *Vyne v Glenn*, 41 Mich 112, 115; 1 NW 997 (1879) rendering such “agreements” invalid and of no legal force or effect.

The contract defense of duress exists when a party, by the unlawful act of another party, is induced to enter into a contract under circumstances that deprived him or her of the exercise of free will. *Apter v Joffo*, 32 Mich App 411, 416; 189 NW2d 7 (1971), quoting *Knight v Brown*, 137 Mich 396, 398; 100 NW 602 (1904). “In order to void a contract on the basis of

economic duress, the wrongful act or threat must deprive the victim of his unfettered will.”

Hungerman v McCord Gasket Corp, 189 Mich App 675, 677; 473 NW2d 720 (1991).

Here, each former appointed road commission purported to agree to withdraw from membership in MCRCSIP (a) hours before being dissolved and (b) in order to obtain a refund of that current year’s unused insurance premiums, to which each was already legally entitled. The situation is similar to that in *Vyne v Glenn, supra*, where the Supreme Court held:

The defendant informed the plaintiff that he had stopped the payment of certain moneys due the latter from third parties, well knowing plaintiff’s circumstances at the time, and that his failure to get the moneys so due him would result in his financial ruin, and thus compel the plaintiff to settle with the defendant in order that the stoppage might be removed. It is idle to say that such settlement was free and voluntary, and that it should be sustained. To say that the plaintiff had a legal remedy if a wrong had been done him, or that the commencement of garnishee proceedings would not vitiate a settlement thereafter made between the debtor and creditor, may be true generally, but where the wrong done, as in this case, was for the evident purpose of forcing a settlement not in accordance with the legal rights of parties, and where the delays incident to litigation would but work the ruin which the plaintiff dreaded, to hold that because he had a legal remedy for the wrong, and did not avail himself thereof, would not meet the difficulties in a case like the present. The choice offered him was financial ruin or immediate settlement. If this was not obtaining a settlement under duress, it would be difficult to conceive what would be.

While predecessor appointed Road Commissions were, admittedly, not on the brink of “financial ruin”, they were about to be absorbed into their respective county boards of commissioners, and had only hours remaining in which to clear up the issue of refunds of unused premiums paid in advance. It may also be that the appointed road commissioners shared feelings of enmity toward the county commissioners who supplanted them and were only too happy to conspire with their “old buddies” at the MCRCSIP to stick a knife in their successors’ backs. The situations, albeit not identical, are sufficiently similar.

In any event, the termination agreements did not waive any rights to share in distributions of surplus. **Paragraph 5 of each termination agreement (Exs. 8a, b and c) provides that “the sole purpose of this Agreement is to effectuate termination of the Commission’s membership from the MCRCSIP * * * and not to affect or impact in any way any other terms or conditions contained in the Declaration of Trust-Interlocal Agreement, or By-Laws.”** So Plaintiff Counties, as successors to all rights of their appointed Road Commissions, step into the shoes of their Road Commissions and retain all rights to share surplus distributions for the actuarial plan years during which those appointed Road Commissions contributed to the surplus premium paid.

Nor can MCRCSIP hide behind whatever discretion is vested in either its Board of Directors or its members as a group (as during a membership meeting). The members of a voluntary association may set up a tribunal to adjust differences that arise between the association and its members, and may by contract make the tribunal’s decision final *in the absence of bad faith or error in law*. *Howe v Patrons’ Mut Fire Ins Co of Michigan*, 216 Mich 560, 568; 185 NW 864 (1921), quoting *Patrons’ Fire Insurance Co v Attorney General*, 166 Mich. 438, 442; 131 NW 1119 (1911). A construction of the association’s foundational document, or its bylaws or internal rules, which results in summarily denying a member its rights, or any other aspect of fundamental fairness, is disfavored, and will not be adopted if any other interpretation is possible. *Id.*, 216 Mich at 566 citing *Puhr v Grand Lodge, German Order of Harugari*, 77 Mo App 47; 1898 Westlaw 1840, (1898).

Moreover, where there has been bad faith, oppression, or other unfair conduct, the association and its members cannot hide behind the finality of an internal tribunal’s processes to

whitewash all sins. In *Dietz v American Dental Ass'n*, 479 F Supp 554, 557 (ED Mich, 1979), the Court held:

Generally, courts are reluctant to interfere with the internal workings of a private association, but if justice and equity require, courts will review the decision of a private association. See *McCreery Angus Farms v. American Angus Association*, 379 F Supp 1008, 1019 (SD Ill, 1974), summarily aff'd, 506 F2d 1404 (CA 7, 1974); *Falcone v. Middlesex County Medical Society*, 34 NJ 582; 170 A2d 791, 796 (1961).

Where a professional association has monopoly power and membership in the association significantly affects the member's practice of his profession, courts will hold the association has a fiduciary duty to be substantively rational and procedurally fair. The association must exercise its powers according to its by-laws and constitution; it cannot decide to exclude or expel a member or deny rights of membership for arbitrary, capricious, or discriminatory reasons. See *Hatley v American Quarter Horse Association*, 552 F.2d 646, 655-56 (5th Cir. 1977) (refusal to register member's horse); *Marjorie Webster Junior College, Inc. v. Middle States Association of Colleges and Secondary Schools*, 139 U.S.App.D.C. 217, 432 F.2d 650, 655-57 (D.C. Cir. 1970), Cert. denied, 400 U.S. 965, 91 S.Ct. 367, 27 L.Ed.2d 384; *McCreery Angus Farms, supra*, 379 F.Supp. at 1010; *Pinsker, supra*, 526 P.2d at 255; *Blende v. Maricopa County Medical Society*, 96 Ariz. 240, 393 P.2d 926, 929 (1964); *Virgin v. American College of Surgeons*, 42 Ill.App.2d 352, 192 N.E.2d 414, 423 (1963); *Falcone, supra*, 170 A.2d at 799; *Kurk v. Medical Society of County of Queens, Inc.*, 46 Misc.2d 790, 260 N.Y.S.2d 520, 525 (1965); *Davidson v. Youngstown Hospital Association*, 19 Ohio App.2d 246, 250, 250 N.E.2d 892, 48 Ohio Op.2d 371 (1969); *Woodard v. Porter Hospital, Inc.*, 125 Vt. 419, 217 A.2d 37, 40 (1966). But see *Elizabeth Hospital, Inc. v. Richardson*, 269 F.2d 167 (8th Cir. 1959), cert. denied, 361 U.S. 884, 80 S.Ct. 155, 4 L.Ed.2d 120 (no cause of action under Arkansas law for denial of membership).

Another indication that our Legislature and Courts look unfavorably on the exact practice of Defendant can be found in Michigan's 1969 Worker's Compensation law. MCL 500.2016, which was amended in 1998 provides:

(1) In addition to other provisions of law, **the following practices as applied to worker's compensation insurance including worker's compensation coverage provided through a self-insurer's group are defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:**

(a) **As a condition of receiving a dividend for the current or a previous year, requiring an insured to renew or maintain worker's compensation insurance with the insurer beyond the current policy's expiration date or requiring a member to continue participation with a worker's compensation self-insurer group.**

(b) As a condition of obtaining worker's compensation insurance, requiring a premium deposit greater than 25% of the total projected annual premium or \$2,500.00, whichever is greater.

(c) As a condition of obtaining worker's compensation insurance, requiring the purchase of any other form of insurance from the same insurer.

(d) As the result of a payroll audit or examination, requiring the payment of an increased premium increment within 30 days of written notification of the increase in premium.

(2) This section does not apply if the insured was guilty of misrepresentation, fraud, or other acts of bad faith.

(3) This section also applies to worker's compensation self-insurers' groups.

While clearly this law applies only to Worker's Compensation self-insurers' groups, the prohibition on the exact type of conduct that Defendant has also engaged in should be viewed as strong evidence that our Legislature deems this sort of conduct unacceptable. A practice that is considered "unfair and deceptive acts or practices in the business of insurance," does not magically become a fair and just practice in the context of a different, but similar insurance client.

Further, if one were merely to replace the words "worker's compensation," with "county road commission" in the following excerpt from *Health Care Ass'n Workers Comp Fund v Dir of the Bureau of Worker's Comp, Dep't of Consumer & Indus Servs*, 265 Mich App 236, 247-49; 694 NW2d 761 (2005), it is plain that this Court does not look favorably on actions identical to the actions of Defendant:

. . . a worker's compensation self-insurer group . . . employs an unfair method of competition and engages in an unfair or deceptive act or practice "in the business of insurance" if it commits the proscribed act of withholding payment of a dividend on the basis of an employer's discontinuance of participation with the self-insurer group. Accordingly, . . . [the insurance pool] is engaged in a proscribed practice in the business of insurance if it engages in the conduct it is prohibited from committing by MCL 500.2016(1)(a).

This case supports the conclusion that Defendant's actions have been unconscionable.

In sum, not only has defendant violated Michigan's constitutional prohibition on lending of credit by diverting funds paid by Plaintiffs and declared as surplus or excess, and redistributing it to other County Road Commissions, it has done so in a way that has been deemed "unfair or deceptive" by our Legislature and this Court.

III. THE TRIAL COURT ERRED WHEN IT FAILED TO GRANT PLAINTIFFS' MOTION FOR SUMMARY DISPOSITION AS TO LIABILITY AND GRANTED DEFENDANT'S CROSS-MOTION FOR SUMMARY DISPOSITION OF PLAINTIFFS' EXTORTION CLAIMS WHEN DEFENDANT MCRC SIP'S ACTIONS: FIRST THREATENING PLAINTIFFS THAT, SHOULD THEY INVOKE THEIR RIGHTS UNDER MCL 224.6(7) AND MCL 46.11(S) TO ABSORB THE LEGAL RIGHTS AND DUTIES OF THEIR APPOINTED COUNTY ROAD COMMISSION BOARDS INTO THEIR RESPECTIVE BOARDS OF COMMISSIONERS, THEY WOULD JEOPARDIZE THEIR ROAD COMMISSIONS' RIGHTS TO SHARES OF SURPLUS PREMIUMS FOR ACTUARIAL YEARS 2002 TO 2012; AND THEN DISTRIBUTING PLAINTIFF'S SUCCESSOR SHARES AMONG MEMBERS WHO DID NOT INVOKE MCL 224.6(7) AND MCL 46.11(S), DID CONSTITUTE EXTORTION AS DEFINED BY MCL 750.213 AND STATUTORY CONVERSION MCL 600.2919a.

A. EXTORTION

Note, first, that Defendant does not dispute that an act of extortion can form the basis for a civil action, irrespective of any criminal prosecution. But lest there be any doubt, a penal statute is presumed to establish a private cause of action in favor of those within the protective ambit of the statutory proscription. *B F Farnell Co v Monahan*, 377 Mich 552, 555; 141 NW2d 58 (1966); *Long v Chelsea Comm Hosp*, 219 Mich App 578, 585; 557 NW2d 157 (1996).

MCL 750.213 defines the crime of extortion, a major felony punishable by up to 20 years' imprisonment, in pertinent part as follows:

Any person who shall, either orally or by a written or printed communication, maliciously threaten * * * any injury to the * * * property * * * of another with intent thereby to extort money or any pecuniary advantage whatever, or with intent to compel the person so threatened to do or refrain from doing any act against his will, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 20 years or by a fine of not more than 10,000 dollars.

The concept of a “malicious threat” with regard to criminal prosecutions for extortion was clarified in *People v Harris*, 495 Mich 120, 136; 845 NW2d 477 (2014), where “malice: is defined as: “[t]he intent, without justification or excuse, to commit a wrongful act. 2. Reckless disregard of the law or of a person’s legal rights. 3. Ill will; wickedness of heart. This sense is most typical in nonlegal contexts.” *Black’s Law Dictionary* (9th ed.), p. 1042.

Therefore, only those threats made with the intent to commit a wrongful act without justification or excuse, or made in reckless disregard of the law or of a person’s legal rights, rise to the level necessary to support an extortion conviction. The threats by MCRCSIP were willfully made, with studied intent first to dissuade Plaintiff Counties from exercising their newly acquired rights under MCL 224.6(7) and MCL 46.11s, and then to punish Plaintiff Counties for having done so by stealing their successor shares of distributions of surplus reserves for actuarial years 2002-2012 and distributing those monies among the remaining road commission members who were not absorbed. So the threat was initially made to cause Plaintiff Counties to do something against their will—maintain the status quo as to their appointed Road Commissions—and then the threat transmogrified into theft of shares, to the pecuniary advantage of MCRCSIP and its remaining members. These actions—especially viewed in a light most favorable to Plaintiffs per *Maiden v Rozwood*,

461 Mich 109; 597 NW2d 817 (1999)—sufficiently represent malicious threats resulting in extortion to state a claim on which relief may be granted.

Defendant's arguments—"The Pool didn't extort anything"—are for the jury to weigh; they involve factual questions as to how MCRCSIP's actions, which are documented for all the world to see, and which engender issues of intent and motive, should be viewed. Summary disposition is rarely appropriate in cases involving questions of credibility, intent or state of mind. *In re Handelsman*, 266 Mich App 433, 438; 702 NW2d 641 (2005). Certainly, the financial motive of MCRCSIP is manifest, as is the blatant conflict of interest of both its members and its Board of Directors (each director being an agent of a member as well as a fiduciary for all members). All elements of the definition of "malicious threat" adopted in *Harris* are present.

B. STATUTORY CONVERSION

Conversion arises from "any distinct act of domain wrongfully exerted over another's personal property in denial of or inconsistent with the rights therein." *Foremost Ins Co v. Allstate Ins Co*, 439 Mich 378, 391; 486 NW2d 600 (1992). The act is wrongful when it is inconsistent with the ownership rights of another. *Check Reporting Servs, Inc v Mich Nat'l Bank-Lansing*, 191 Mich App 614, 626; 478 NW2d 893 (1991). Under Michigan law, a plaintiff may sue "for the conversion of funds that were delivered to the defendant for a specified purpose, but that the defendant diverted to his or her own use." *Hogue v Wells*, 180 Mich 19, 24; 146 NW 369 (1914); *Warren Tool Co v Stephenson*, 11 Mich App 274, 300; 161 NW2d 133 (1968).

Common law conversion “consists of any distinct act or dominion exerted over another’s personal property in denial of or inconsistent with the rights therein.” *Dep’t of Agriculture v Appletree Marketing, LLC*, 485 Mich 1, 13–14; 779 NW2d 237, 244 (2010).

Statutory conversion is the subject of MCL 600.2919a, which provides:

Sec. 2919a. (1) A person damaged as a result of either or both of the following may recover 3 times the amount of actual damages sustained, plus costs and reasonable attorney fees:

(a) Another person’s stealing or embezzling property or converting property to the other person's own use.

(b) Another person’s buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property when the person buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property knew that the property was stolen, embezzled, or converted.

(2) The remedy provided by this section is in addition to any other right or remedy the person may have at law or otherwise.

In accordance with MCL 224.6(7) and MCL 46.11(s), Plaintiffs succeeded to all rights and duties of their former appointed Road Commissions. To the extent the ICRC, JCRC, or CCRC was entitled to share in a distribution of MCRC SIP’s surplus reserves upon the closing of actuarial years from 2002 through 2012, such entitlements devolved upon the Boards of Commissioners of Ingham, Jackson, and Calhoun Counties respectively.

In Prosser & Keeton, *Torts* (5th ed.), §15, pp. 93–99, the authors distinguish between acquiring possession and withholding possession:

Where there has been no wrongful taking or disposal of the goods, and the defendant has merely come rightfully into possession and then refused to surrender them, demand and refusal are necessary to the existence of the tort.

Here, Plaintiffs made demand and Defendant refused to pay over their money (Ex. 9 ¶¶31-35).

In *Trail Clinic, PC v Bloch*, 114 Mich App 700, 703–704; 319 NW2d 638 (1982), a medical clinic advised an insurance company to send payments owed to a doctor to the clinic, but the record showed that the doctor had already stopped working for the clinic. The clinic then

endorsed and deposited checks from the insurance company, which the doctor was owed for services rendered at a new employer. *Id.* The Court of Appeals explained: “A demand is unnecessary ... where the property has been wrongfully appropriated by the defendant for his own use and benefit.” *Id.* at 706. Under the facts of *Trail Clinic*, the doctor's new employer was not required to prove that a demand for the checks was made. *Id.* at 706–707.

There are three elements to a common-law conversion claim: (1) a distinct act of dominion; (2) wrongfully exerted; and (3) over another's personal property. The act is wrongful when it is inconsistent with the ownership rights of another. *Check Reporting Servs, Inc v Mich Nat'l Bank-Lansing, supra*, 191 Mich App at 626. MCL 600.2919a, prohibits but does not define “conversion.” The appropriate understanding for this situation is that, “[w]hen a statute does not define a term, we will construe the term according to its common and approved usage.” *Nelson v Grays*, 209 Mich App 661, 664; 531 NW2d 826 (1995). “A legal term of art, however, must be construed in accordance with its peculiar and appropriate legal meaning.” *Brackett v Focus Hope, Inc*, 482 Mich 269, 276; 753 NW2d 207 (2008). Therefore, the common-law definition defines both common-law and statutory conversion, and each of its elements was well-pleaded below.

But MCL 600.2919a is also satisfied if property was embezzled. The elements of embezzlement by an agent or trustee are:

- (1) the money in question must belong to the principal,
- (2) the defendant must have a relationship of trust with the principal as an agent or employee,
- (3) the money must come into defendant's possession because of the relationship of trust,
- (4) the defendant dishonestly disposed of or converted the money to [its] own use or secreted the money,
- (5) the act must be without the consent of the principal, and
- (6) at the time of the conversion, the defendant intended to defraud or cheat the principal.

People v Lueth, 253 Mich App 670, 683; 660 NW2d 322 (2002); MCL 750.174(1).

The funds at issue belong to Plaintiffs. Plaintiffs had a relationship of trust with Defendant. Defendant was able to keep this money because of this trust relationship. Defendant gave the money to its other members in contravention of Michigan's constitution. Plaintiffs specifically told Defendant that it did not have consent to give out this money, and Defendant, based on its early representations to Plaintiffs that they would be able to retain their portion of the distribution of surplus reserves, defrauded or cheated Plaintiffs. In short, all of the elements necessary to support a claim for statutory conversion were satisfied and this claim should not have been dismissed.

RELIEF REQUESTED

For all the foregoing reasons, Plaintiffs-Appellants the Counties of Ingham, Jackson, and Calhoun respectfully request that this Honorable Court (a) reverse the trial court's denial of Plaintiffs' Motion for Summary Disposition as to Liability and remand for entry of an order granting Plaintiffs' Motion for Summary Disposition in its entirety, (b) vacate the trial court's Order granting Defendant's Motion for Summary Disposition and, (c) grant Plaintiffs such other and further relief as justice may require.

Respectfully submitted:

COHL, STOKER & TOSKEY, P.C.

Date: October 25, 2016

By: /s/ Bonnie G. Toskey

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APPENDIX 58

STATE OF MICHIGAN
IN THE COURT OF APPEALS

**THE COUNTIES OF INGHAM, JACKSON,
and CALHOUN**, Municipal corporations
and bodies politic and corporate,

Plaintiffs/Appellants,

v

**THE MICHIGAN COUNTY ROAD
COMMISSION SELF-INSURANCE POOL**,
an unincorporated voluntary Association,

Defendant/Appellee.

Supreme Court No 156980

Court of Appeals Docket No. 334077

Ingham Circuit Ct No. 15-432-NZ

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PLAINTIFF/APPELLANTS INGHAM, JACKSON, and CALHOUN COUNTIES'
SUPPLEMENTAL BRIEF
ON REMAND

ORAL ARGUMENT REQUESTED*

*Only if MCRCSIP is allowed oral argument.

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Given that the Plaintiff Counties are successors in interest to their road commissions, the Defendant Michigan County Road Commission Self-Insurance Pool may not, in accordance with its governing documents, decline to issue to the counties refunds of surplus premiums from prior-year contributions.

A. Four (4) of the five (5) documents specified by the Supreme Court for consideration on remand are binding on the parties; the “MCRCSIP Refund Overview” is not binding;22

B. The legitimate documents make clear that only Pool Members who voluntarily withdraw from membership jeopardize their right to share in refunds of excess premium; as all Plaintiff Counties involuntarily terminated their memberships (or were simply treated as having done so, in the case of Jackson County) under extortionate threat, all Plaintiff Counties remain entitled to refunds.23

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STATEMENT OF QUESTIONS PRESENTED

Issue I [as specified in the Supreme Court's order of remand]:

Given that the Plaintiff Counties are successors in interest to their road commissions, may the Defendant Michigan County Road Commission Self-Insurance Pool (MCRCSIP), in accordance with its governing documents, decline to issue to the counties refunds of surplus premiums from prior-year contributions, where

- A. Four (4) of the five (5) documents specified by the Supreme Court for consideration on remand are binding on the parties; the "MCRCSIP Refund Overview" is not binding; and**
- B. The legitimate documents make clear that only Pool Members who voluntarily withdraw from membership jeopardize their right to share in refunds of excess premium; whereas all Plaintiff Counties involuntarily terminated their memberships (or were simply treated as having done so, in the case of Jackson County) under extortionate threat?**

Plaintiffs Ingham, Calhoun and Jackson Counties answer "no", the MCRCSIP may NOT decline to issue refunds of surplus premiums from prior year contributions under these circumstances."

Defendant MCRCSIP answers "yes".

This Court on first appeal answered "no".

Subsidiary Questions:

- 1. Does the law of the case doctrine apply, so that all prior rulings in this Court's October 10, 2017 Opinion, except the penultimate sentence (the central subject of this remand proceeding) are binding on the parties and this Court?**

Plaintiffs Ingham, Calhoun and Jackson Counties answer "yes".

Defendant MCRCSIP ignores this doctrine entirely and reargues all the issues it lost and which are unaffected by the Supreme Court's Remand Order, in an effort to pretend it is writing on a clean slate.

- 2. Does applying the findings and rulings that are the law of the case to the documents referenced in the Supreme Court's Order of Remand demonstrate that Plaintiff Counties are entitled to refunds as though they continued as members of the pool, because only members that *voluntarily* withdraw from membership in the pool are subject to being treated "less favorably"?**

Plaintiffs Ingham, Calhoun and Jackson Counties answer “yes”.

Defendant MCRCSIP evades the question and makes no distinction between members who have been illegally denied continuation of membership and those who voluntarily withdraw from membership.

- 3. Do MCRCSIP’s actions—refusing to recognize Plaintiff Counties legal right to succeed to their former appointed Road Commissions’ membership in the Pool, then using that refusal to posit a forfeiture of surplus distribution rights—constitute duress, and violate public policy?**

Plaintiffs Ingham, Calhoun and Jackson Counties answer “yes”.

Defendant MCRCSIP evades the question and refuses to recognize that Plaintiff Counties had a legal right to succeed to the membership of their former appointed Road Commissions, but were barred from doing so by MCRCSIP.

- 4. Is MCRCSIP’s treatment of Plaintiff Counties’ successorship rights—treating their former appointed Road Commissions as having forfeited all rights to return of surplus by virtue of now being “former members” subject to “less favorable” treatment (after being involuntarily ejected from the Pool and denied continuation of membership as successors in interest) fatally tainted by conflict of interest, constitute a breach of trust, and violate Plaintiffs’ due process rights?**

Plaintiffs Ingham, Calhoun and Jackson Counties answer “yes”, “yes”, and “yes”.

Defendant MCRCSIP refuses to address the question (although it has been repeatedly raised by Plaintiffs).

- 5. Was MCRCSIP’s distribution of excess premiums paid by Plaintiffs’ predecessors in interest to and among MCRCSIP’s other members, including funds that, following MCRCSIP’S standard aliquot methodology (July 19, 1990 Memorandum), would have gone to a Plaintiff County’s former appointed Road Commission, in contravention of Const 1963, Art 9, §18, as well as a breach of contract, and are such shares required to be paid to Plaintiffs?**

Plaintiffs Ingham, Calhoun and Jackson Counties answer “yes”, “yes”, and “yes”.

Defendant MCRCSIP refuses to address the question (although it has been repeatedly raised by Plaintiffs).

- 6. Does MCRCSIP’s and its members’ distribution of Plaintiff Counties’ predecessors’ aliquot shares of surplus constitute statutory conversion or embezzlement, and entitle Plaintiff Counties to treble damages?**

Plaintiffs Ingham, Calhoun and Jackson Counties answer “yes” and “yes”.

Defendant MCRCSIP refuses to address the question (although it has been repeatedly raised by Plaintiffs).

COUNTERSTATEMENT OF FACTS

Under MCR 7.212(D)(3)(b), Plaintiff Counties—now in the position of appellees in this remand proceeding—which are not accepting the opposing party’s Statement of Facts, “shall include * * * a counter-statement of facts, pointing out the inaccuracies and deficiencies in the [opposing party’s] statement of facts without repeating that statement * * *”. Plaintiff Counties begin by identifying the inaccuracies and deficiencies in the Michigan County Road Commission Self-Insurance Pool (MCRCSIP) summary.

Inaccuracies and Deficiencies in MCRCSIP’s Statement of Facts

A. MCRCSIP’s Statement of Facts Violates MCR 7.212(D)(1) and (C)(6), Includes Multiple References to Materials Not Part of the Record on Appeal, and Must be Stricken or Disregarded.

Unabashedly violating all the relevant court rules, defendant MCRCSIP presents a Statement of Facts that refers to multiple documents that are not part of the record on appeal, omitting all references to facts which detract from or contradict its tendentious narrative.

MCR 7.210(A) provides in relevant part:

- (A) **Content of Record.** Appeals to the Court of Appeals are heard on the original record.
- (1) *Appeal from Court.* In an appeal from a lower court, the record consists of the original papers filed in that court or a certified copy, the transcript of any testimony or other proceedings in the case appealed, and the exhibits introduced. * * *

Exhibit F in MCRCSIP’s Appendix is an undated, unsigned document, not shown to have been adopted or approved by MCRCSIP’s Board of Directors or its members, purporting to show a “12 factor methodology” for computing and distributing excess premium for closed fiscal years. This document first appeared as Exhibit E to MCRCSIP’s October 31, 2017 Motion for Reconsideration in this Court, where, at p. 4 footnote 3, MCRCSIP admitted: “This Exhibit is

not part of the circuit court record.”¹

It is well established that “[t]his Court’s review is limited to the record established by the trial court, and a party may not expand the record on appeal.” *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 56; 649 NW2d 783 (2002); see also *Wiand v Wiand*, 178 Mich App 137, 143; 443 NW2d 464 (1989) (“This Court’s review is limited to the record developed by the trial court and we will not consider references to facts outside the record.”) In a contemporaneous case involving a different self-insurance pool, this Court cited and applied both MCR 7.210(A) and *Wiand* in refusing to consider material not part of the record. *Matouk v Mich Municipal League Liability and Property Pool*, 320 Mich 402, 414; 907 NW2d 853 (2017).

MCRC SIP’s effrontery in its attempt to evade past the restrictions of MCR 7.210(A) is exacerbated by the fact that this appeal arises from summary disposition. It has long been settled that appellate review of summary disposition is strictly limited to the record as it existed at the time the trial court ruled; nothing added later, including (*especially including*) on a motion for reconsideration can be considered by the reviewing court. *Quinto v Cross and Peters Co*, 451 Mich 358, 362, 366-367 n 5; 547 NW2d 314 (1996); *Peña v Ingham County Rd. Comm’n*, 255 Mich App 299, 313 n 4; 660 NW2d 351 (2003) (“When determining the propriety of the denial

¹ Ignoring its prior confession that Exhibit F (MCRC SIP’s Appendix) is not part of the record on appeal, MCRC SIP represents in its Supplemental Brief (p. 7) that “This ‘refund overview’ (**Exhibit F**) is the last of the documents the Supreme Court directed this Court to review.” First, it is the fourth of five documents, not last. Second, the Supreme Court appears to have overlooked the fact that the document is not part of the record, and thus that Plaintiffs have never had an opportunity to challenge the document’s authenticity or applicability. Because the document is undated, only partly legible, unsigned, is not printed on paper featuring MCRC SIP’s logo (whereas the only other post-found MCRC SIP documents which are not e-mails uniformly feature MCRC SIP’s logo—see MCRC SIP’s Appendix Exhibit E and Exhibit 29), and not shown (by reference to any minutes or other record of the proceedings of MCRC SIP’s Board of Directors) as having been adopted or approved by MCRC SIP’s members or Board of Directors, it has no evidentiary value, even if it has somehow been added to the record on appeal. For aught that appears, it may have been created after this lawsuit was filed. It is wholly lacking necessary authentication—see MRE 902(8) and (11).

of defendant's motion, we must limit our review to the evidence presented to the trial court at the time defendant's motion was decided. *Sprague [v Farmers Ins Exch]*, 251 Mich App 260, 265, 650 NW2d 374 (2002)], *supra*; *Long [v Chelsea Community Hosp]*, 219 Mich App 578, 588, 557 NW2d 157 (1996)], *supra*.”).

B. MCRCSIP's Factual Summary is Argumentative and Selective, Contrary to the Requirements of MCR 7.212(C)(6).

In addition to relying on materials *de hors* the record on appeal, MCRCSIP's Statement of Facts violates MCR 7.212(D)(1), which provides that an appellee's brief “must conform to subrule (C).” MCR 7.212(C)(6) in turn provides:

(C) Appellant's Brief; Contents. The appellant's brief must contain, in the following order:

* * *

- (6) A statement of facts that must be a clear, concise, and chronological narrative. All material facts, both favorable and unfavorable, must be fairly stated without argument or bias. The statement must contain, with specific page references to the transcript, the pleadings, or other document or paper filed with the trial court,
- (a) the nature of the action;
 - (b) the character of pleadings and proceedings;
 - (c) the substance of proof in sufficient detail to make it intelligible, indicating the facts that are in controversy and those that are not;
 - (d) the dates of important instruments and events;
 - (e) the rulings and orders of the trial court;
 - (f) the verdict and judgment; and
 - (g) any other matters necessary to an understanding of the controversy and the questions involved;

Throughout its factual summary, MCRCSIP includes argumentative assertions. For example, on p. 8 of its Supplemental Brief, MCRCSIP posits that “As early as April, 2012, Ingham County knew that if the Ingham County Road Commission was not a member of the Pool, [it would] not receive *any* refunds for previous years which the pool may close out in the

future with savings refunds distributed back to members.’ (Tr. Ex. 15² (emphasis added).)” Of course, this is patently false; while that was (and remains) *MCRCSIP’s legal position*, predicated on the contention that Ingham County would not simply step into the shoes of its Road Commission and could not remain a member of the Pool, that position was never accepted by Ingham County, as this lawsuit emphatically demonstrates beyond peradventure. And it has been flatly rejected by this Court (Plaintiffs’ Appendix, Exhibit 1). So, besides being argumentative and in no way factual, MCRCSIP’s statement is also illogical and legally invalid—threatening to deny another party its legal rights if it will not do as you demand, then violating its rights, cannot be blamed on the party which merely insisted on enforcing its legal rights.

This same tendentious—and mendacious—assertion is made sequentially as to Jackson County (MCRCSIP Supplemental Brief, p. 12: “*The County knew that ending its relationship with the Pool meant walking away from approximately nine years of potential future surplus distributions.*”) and Calhoun County (*id.*, p. 14: “The analysis showed that *Calhoun was aware that future surplus distributions would only be given to current Pool members*, and that the County would not be eligible for membership without a bylaw change.”)

Equally argumentative—and contradicting MCRCSIP’s own argument that each Plaintiff County stepped into the shoes of its former Road Commission (MCRCSIP Supplemental Brief, pp. 19-20)—is the claim (*id.*, p. 14) that Calhoun County passed a third resolution “whereby the

² “Tr. Ex. 15” is a collection of e-mail correspondence. In an April 5, 2012 e-mail from William Conklin, (MCRCSIP Appendix Exhibit 15) then the General Manager of the ICRC, addressed to Mary Lannoye and Jill Rhode, Conklin simply writes, “Also Gayle informs me that if we pull out of MCRCSIP, we will not receive any refunds for previous years which the pool may close out in the future with savings refunds distributed back to the members.” So not only did Conklin merely report MCRCSIP’s threat made at the time, without endorsing it in any way, but it is rather curious that Conklin is now described as speaking for “Ingham County”, when up to this point MCRCSIP has insisted that Plaintiff Counties are legally distinct from their former appointed Road Commissions.

County *specifically agreed* to undertake certain contractual obligations of the Road Commission, and *chose not to* assume other contractual obligations, negating the idea that the County ‘simply stepped into the shoes’ of the Road Commission.’³

MCRCSIP’s statement of facts ends with a “Fact Summary” that is wholly argumentative, contrary to the requirements of MCR 7.212(C)(6) (the “Argument” portion of MCRCSIP’s Supplemental Brief begins immediately after the “Fact Summary”). That offense against the rules—which brings into play MCR 7.216(A)(10) (providing that the Court of Appeals may “dismiss an appeal * * * for * * * failure of the appellant * * * to pursue the case in conformity with the rules”)⁴—dovetails with MCRCSIP’s studied refusal to reference a single fact favorable to Plaintiffs. Again, MCR 7.212(C)(6) in relevant part requires that a statement of facts include “all material facts, both favorable and unfavorable”, which “must be fairly stated without argument or bias.”

C. MCRCSIP’s Statement of Facts Contains Deliberately Misleading Assertions, and Factual Claims Advanced in Contravention of the Law of the Case Doctrine.

Next on the list of deliberately misleading formulations is MCRCSIP’s purported recounting of the voluntary withdrawal of each Plaintiff County from the Pool. First, MCRCSIP asserts that Ingham County planned to dissolve its appointed Road Commission for “reasons [that] had nothing to do with future refunds from the Pool” (MCRCSIP Supplemental Brief, p. 8). The reasons why any Plaintiff County opted to supplant its appointed Road Commission with its Board of Commissioners are utterly irrelevant to this lawsuit and this appeal (and this remand)—MCRCSIP’s theft and conversion of each Plaintiff County’s aliquot share of unused

³ The referenced “third resolution”, undated, unsigned, and unauthenticated (MCRCSIP Appendix Exhibit 50, pp. 553-555) iterates two collective bargaining agreements and 25 or more other contracts (some of which may involve multiple contracts, such as software licenses, which are not enumerated)

⁴ With respect to the issue on remand, MCRCSIP is the Appellant—the trial court did not rule on that issue, but MCRCSIP raised it in its motion for rehearing and in the Supreme Court.

premiums for closed years is not made legitimate (or illegitimate) whatever those reasons, but must have its legality tested based on the documents specified in the Supreme Court's Order of Remand and the facts surrounding discontinuation of membership in the Pool.

Thus, when MCRCSIP next asserts (*id.*, p. 8) that "Ingham County * * * knew it would not be able to continue as a Pool member without a bylaw amendment"⁵, it is pursuing an argument it has already lost. On initial appeal, this Court ruled that each Plaintiff County's Board of Commissioners is now also its County's Road Commission. The Supreme Court did not alter that ruling, remanding for consideration of a limited issue without retaining jurisdiction, so this Court's original ruling is, in that regard, the law of this case.

In *Johnson v White*, 430 Mich 47; 420 NW2d 87 (1988), the Plaintiff appealed a jury verdict of no cause of action, raising issues involving admitted testimony and jury instructions. The Court of Appeals held that the challenged testimony was properly admitted, but also that the jury instructions were erroneous, so it vacated the verdict and remanded for a new trial. Both parties appealed, with the Plaintiff challenging on the testimonial issue, and the defendant challenging on the instructional issue. The Supreme Court remanded *Johnson* to the Court of Appeals on the instructional issue in light of a new decision, but the Plaintiff's cross appeal on the testimonial issue was denied. *Id.* at 52. On remand, the Court of Appeals, in addition to addressing the instructional issue, revisited the testimonial issue and reversed its earlier decision.

Defendant appealed to the Supreme Court once more, which held that the Court of Appeals was barred by the law of the case from revisiting the testimonial issue, opining, 430 Mich at 53:

⁵ MCRCSIP has consistently admitted that "county road commission" is undefined in either its inter-local agreement or its bylaws. This Court previously so held (Plaintiffs' Appendix, Exhibit 1, p. 5).

Where a case is taken on appeal to a higher appellate court, the law of the case announced in the higher appellate court supersedes that set forth in the intermediate appellate court. Rulings of the intermediate appellate court, however, remain the law of the case insofar as they are not affected by the opinion of the higher court reviewing the lower court's determination. 5B CJS, § 1964, p. 574.

In the case at bar, this Court's order denying leave to appeal the Plaintiff's cross appeal which concerned the [testimonial issue] left undisturbed the Court of Appeals adjudications of those issues. Those adjudications are the law of the case and were not subject to further review by the Court of Appeals on remand from this Court. Accordingly, the Court of Appeals decision as to these issues must be vacated.

Clearly, MCRCSIP cannot accept that the notion its bylaws and inter-local agreement, which limit membership to "county road commissions" without defining the term⁶, simply do not operate to bar a County that has succeeded to and replaced its former Road Commission with its Board of Commissioners from membership in the Pool. MCRCSIP has definitively lost that argument—the fact that it has generated a 568 page Appendix that includes over ten copies of its Declaration of Trust and Inter-Local Agreement, and *zero* copies of this Court's prior Opinion, is telling, and reflects that MCRCSIP wants this Court to believe it is writing on a blank slate. Per *Johnson v White*, that is not the case at all. As a general rule, an appellate court's determination of an issue in a case binds the appellate court in subsequent appeals. *Webb v Smith (After Second Remand)*, 224 Mich App 203, 209; 568 NW2d 378 (1997).

Here, on p. 4 of this Court's October 10, 2017 Opinion herein (Plaintiffs' Appendix, Exhibit 1, p. 4), this Court held:

Reading MCL 224.6 as a whole shows that a county that has adopted a county road system must have a board of county road commissioners. The general rule in MCL 224.6(1) and its four exceptions make clear that a county that has adopted the county road system must have a road commission that is elected, MCL 224.6(1),

⁶ Notably, MCRCSIP's Declaration of Trust (MCRCSIP's Appendix Exhibit B, pp. 4-10) imposes no restrictions on the nature of entities that may become members. To the contrary, Article VI, Section 6 (*id.* at p. 4) allows the Board of Directors "to admit as new members whomever it determines * * * is acceptable, and financially sound. The Board of Directors shall be the sole judge of whether or not an applicant for membership shall be admitted to membership."

appointed, MCL 224.6(4), reorganized by amendment to a county charter, MCL 224.6(5), or dissolved for its role to be transferred to the county board of commissioners, MCL 224.6(7) and (8). Therefore, when a county dissolves its road commission, the county board of commissioners becomes the successor in interest to the former road commission.

Then (Plaintiffs' Appendix, Exhibit 1, pp. 4-5), this Court went on to further declare:

The counties further disagree with the Pool's narrow reading of the statute because it would constitutionally impair contracts for road construction and maintenance that involved the former road commissions. See US Const, Art 1, § 10; Const 193, Art 1, § 10. Rather, the counties argue, the former road commissions' contractual rights devolved upon the respective counties.

We agree. * * * The Pool's narrow reading of "powers, duties, and functions" would result in the unconstitutional impairment of the former road commissions' contracts, rendering the statutory provisions permitting dissolution of the road commissions unconstitutional. We avoid this result by interpreting the statutory provisions more comprehensively. Thus, we conclude that the counties became the successors in interest to their former road commissions when they exercised their statutory right to dissolve the road commissions. As successors in interest, the counties took on all statutory rights and responsibilities given to road commissions.

Further (*id.*, p. 5), this Court delivered the final kibosh to MCRCSIP's reliance on its By-Laws as precluding Plaintiff Counties from continuing their former Road Commissions' membership in the Pool:

The Pool's bylaws limit membership to county road commissions, but the bylaws do not define a county road commission. Instead, the bylaws refer to the statutory authority of county road commissions. Because we concluded that the counties were successors in interest to their dissolved road commissions as a matter of statutory interpretation, we likewise conclude that the successor counties are eligible for Pool membership by virtue of the statutory reference to county road commissions in the Pool's bylaws.

So the Counties did possess the *legal* right—denied by MCRCSIP at the critical juncture when each Plaintiff County sought to continue membership in the Pool and was refused—to assume and continue their former Road Commissions' membership in the Pool⁷. MCRCSIP's

⁷ MCRCSIP adds the absurd contention that Plaintiff Counties never applied for membership (after being refused the right to succeed to the memberships held by their predecessors), which would require a 2/3 vote to admit them. Having been flatly refused their legal right, as

unyielding obduracy in the face of these now settled legal rulings is stultifying and stupefying, but MCRCSIP's endless repetition of its false factual propositions does not render them true.

To like effect, MCRCSIP (MCRCSIP Supplemental Brief, p. 8 and footnote 6) emphasizes that "each Road Commission was *dissolved*" (emphasis by MCRCSIP), as though this proves that no Plaintiff County can be a legal successor to its former Road Commission, which is diametrically contrary to this Court's prior determination, which stands undisturbed by anything in the Supreme Court's Order of limited Remand. These are undisguised attempts to avoid the law of the case doctrine (which, not surprisingly, is nowhere mentioned in MCRCSIP's Supplemental Brief, a subterfuge for trying to evade the principle).

D. Neither Ingham County (or its former appointed Road Commission--ICRC) nor Calhoun County (or its former appointed Road Commission--CCRC) voluntarily withdrew or resigned from Pool membership; the limited legal effect of the "Cancellation and Termination Agreements" executed by the former ICRC and CCRC with respect to Ingham and Calhoun Counties' right to share in refunds of closed fiscal years was previously determined by this Court and is the law of this case.

MCRCSIP admits (MCRCSIP Supplemental Brief, p. 9) that on "Friday, May 25, 2012, the Pool's Administrator, Gayle Pratt, advised William Conklin, the Ingham County Road Commission's Managing Director, that the Pool would not insure the County after June 1". Thus, neither the Ingham County Road Commission, nor Ingham County, voluntarily withdrew from membership in the Pool; proposed continuation of membership was *affirmatively rejected* by the Pool. This fact is of crucial importance, but nowhere acknowledged by MCRCSIP.

To circumvent this functional blackballing of Plaintiff Counties by MCRCSIP, the Pool quotes the Cancellation Agreement as noting that (MCRCSIP Supplemental Brief, p. 10)

successors in interest, to assume the memberships of their predecessors on the erroneous ground they were not "county road commissions", Plaintiff Counties had no reason to undertake a futile act of applying for membership as "county road commissions". "[T]he law will not require the doing of a futile act." *Generou v Kalamazoo Regional Psychiatric Hosp*, 192 Mich App 295, 305; 480 NW2d 638 (1992), citing *Adkins v Dep't of Civil Service*, 140 Mich App 202, 213; 362 NW2d 919 (1985).

“[b]ecause, as of June 1, 2012, the Commission being non-existent will no longer be a member of the [Pool] or a road commission within the meaning of the applicable By-Laws and the Inter-Local Agreement that govern membership in the [Pool], the [Pool] will not be able to issue insurance coverage to the Commission after it is dissolved.” Again, however, in its prior Opinion herein, this Court found the two Cancellation Agreements (Ingham and Calhoun) of no import, and the Supreme Court did nothing to reverse or undermine that ruling, found on pp. 5-6 of this Court’s prior decision:

* * * Accordingly, reading the withdrawal agreements as a whole and in light of the limitation on their scope, the withdrawal agreements did not alter eligibility for the refund of surplus premiums from prior year contributions. * * *

MCRCSIP’s summary of facts as to Calhoun (MCRCSIP Supplemental Brief, p. 14) essentially repeats the falsehoods, misrepresentations, and omissions as to Ingham, and similar corrections are required (see also the discussion of *In re Estate of Finlay*, below, pp. 27, 50).

E. MCRCSIP Propounds an Outrageous Deception in Asserting that Jackson County (or its former appointed Road Commission--JCRC) Executed a Cancellation and Termination Agreement and/or an Agreement for Cancellation of Insurance; as this Court previously ruled and MCRCSIP previously judicially admitted, JCRC Never Withdrew or Resigned Pool membership at all, involuntarily or otherwise, and Neither of the Claimed Agreements is Signed by Any Representative of Jackson County or the JCRC.

Finally, as to Jackson County, MCRCSIP outdoes itself with an outrageous, false statement. In its Supplemental Brief (p. 13), under the heading “**Jackson County Road Commission withdrew from the Pool**”, MCRCSIP claims: “The same day power was transferred, Pratt forwarded Cancellation and Termination Agreements to the Jackson County Road Commission (Tr. Ex. 49).” MCRCSIP goes on to describe the terms of those Cancellation and Termination Agreements as being operative.

But a review of MCRCSIP’s Appendix (Exhibit 49, pp. 475-476 and 488-489) reflects that “Tr. Ex. 49”, is *nowhere signed by any representative of either Jackson County or its former*

Road Commission. Each of these two documents (the first a purported “Agreement for Cancellation of Insurance”, the second an “Agreement in Recognition of Termination from Michigan County Road Commission Self-Insurance Pool”) has a signature line, below which is the typed name and title “Kenneth R. Straub, Its: Managing Director”, but no signature, no “/s/” followed by a name, and nothing to function in lieu of a signature (such as an electronic signature). This should come as a surprise to no one—in its prior Opinion (Plaintiffs’ Appendix, Exhibit 1, p. 5), this Court noted:

First, the record contains no evidence that the Jackson County road commission signed a withdrawal agreement, and the Pool agrees that it did not. Thus, the Jackson County road commission did not withdraw from the Pool.

So this latest effort to assert as fact something diametrically contrary to MCRCSIP’s prior judicial admission and equally contrary to this Court’s express ruling, evidences the worst kind of mendacity by two officers of Michigan’s “one court of justice”, Const 1963, Art 6, §1; MCR 9.103(A). Plaintiffs will be requesting sanctions under MCR 7.216(C)(1)(b) and MCR 7.211(C)(8) for the effort incurred to expose this egregious attempt to mislead this Court.

F. MCRCSIP’s Supplemental Brief Should Be Stricken Under MCR 7.212(I).

This Court should strike MCRCSIP’s Supplemental Brief, MCR 7.212(I). MCR 7.212(I) provides in pertinent part:

- (I) **Nonconforming Briefs.** If, on its own initiative or on a party’s motion, the court concludes that a brief does not substantially comply with the requirements in this rule, * * * it may strike the nonconforming brief.

MCRCSIP’s Supplemental Brief does not have one or two minor argumentative sections, or merely mention in passing materials not part of the record, or contain only minimal omissions of material facts unfavorable to its position, or propound only one or two factual propositions in contravention of the law of the case doctrine, or contain a minor misstatement of fact attributable

to typographical error or infelicitous phrasing as contrasted with a major blatant false statement directly contrary to this Court's prior ruling and MCRCSIP's prior judicial admission. Instead, MCRCSIP's statement of facts contains page after page of argument, multiple references, crucial to its position, to materials not part of the record on appeal in violation of MCR 7.210(A), page after page of factual assertions flatly contradicted by this Court's prior rulings (exacerbated by its studious omission of this Court's prior decision from its Appendix), while omitting any reference to even a single fact unfavorable to its position, while prominently advancing a blatant false and misleading statement highlighted with a boldfaced heading. Unless the requirements of the rules, and the independent duty of officers of Michigan's one court of justice, to make a "fair presentation", are meaningless, this Court must recognize and declare that MCRCSIP has far exceeded the bounds of tolerance, and MCRCSIP's Supplemental Brief should be stricken accordingly.

COUNTERSTATEMENT OF MATERIAL FACTS

The Supreme Court's December 5, 2018 Order (MCRCSIP's Appendix, Exhibit A p. 2) provides, in its operative language:

Pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REMAND this case to the Court of Appeals for consideration of the issue raised by the defendant but not addressed by that court during its initial review of this case: Whether, even if the Plaintiff Counties are successors in interest to their road commissions, the defendant Michigan County Road Commission Self-Insurance Pool nevertheless may, in accordance with its governing documents, decline to issue to the counties refunds of surplus premiums from prior-year contributions. In addressing this question, the Court of Appeals shall consider, among other things, the following documents: the Declaration of Trust, By-Laws, Inter-Local Agreements, MCRCSIP Refund Overview, and the July 19, 1990 memorandum to the Pool members. The court shall address whether these documents are binding on the parties, and, if so, what effect they have on the Plaintiffs' entitlement to refunds.

We do not retain jurisdiction.

The five documents expressly referenced in the Supreme Court’s remand order to be considered by this Court contain the following pertinent provisions:

- 1. **Declaration of Trust** (Plaintiff’s Appendix, Exhibit 2, pp. 4-7, 11-12⁸)

ARTICLE I

CREATION OF THE TRUST

There is hereby established and created a Trust Fund, which shall be known as the “MICHIGAN COUNTY ROAD COMMISSION SELF-INSURANCE POOL” * * *

ARTICLE III

DESIGNATION OF TRUSTEES

SECTION 1. Number of Trustees; Designation of Governing Body.

The operation and administration of the Trust shall be the joint responsibility of a Board of Directors, consisting of not less than nine (9) Trustees. * * *

ARTICLE V

RULES AND REGULATIONS

The Board of Directors may prescribe such rules and regulations as may, in their judgment and discretion, be proper and necessary for the sound and efficient administration of the Trust; provided, however, that the rules and regulations shall not be inconsistent with the provisions of this Declaration of Trust, the By-Laws or applicable Federal and/or State laws and/or regulations.

ARTICLE VI

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

SECTION 6. Admission of New Members. The Board of Directors may admit as new members of this Trust whomever it determines, by not less than two-thirds (2/3) vote, is acceptable and financially sound. The Board of Directors shall be the sole judge of whether or not an applicant for membership shall be admitted to membership.

⁸ It should be noted that the version of the Declaration of Trust in MCRCSIP’s Appendix Exhibit B is incomplete—it is missing page 9 of the Declaration as numbered internally (what should be p. 12 of the Appendix).

SECTION 9. Use of Funds.

* * * All remaining funds coming into its possession or under its control with respect to that fiscal year of the Trust shall be set aside and shall be used only for the following purposes:

* * *

- (f) Distribution among the members during that fiscal year in such manner as the Members and the Board of Directors shall deem to be equitable, of any excess monies remaining after payment of claims * * * The Board of Directors may treat members who withdraw from future Trust Years differently and less favorably than they treat members who continue in the Trust for future years.

ARTICLE X

MISCELLANEOUS

SECTION 2. Termination of Trust. This Trust may be terminated at any time by concurrence of all of the parties to this agreement, or their successors. * * *

SECTION 6. Distribution of Dividends or Reserves. There will be no disbursement out of this Trust for any fiscal year by way of dividends or distribution of accumulated reserve to Members until (a) after provision has been made for all known obligations and (b) the Board of Directors shall deem the distribution to be proper.

SECTION 12. Binding Effect. This Trust shall be binding upon and be fully enforceable as to each Member and the successors and assigns of each Member.

- 2. **By-Laws** (MCRC SIP's Appendix Exhibit C, pp. 15-16, 21-22, 28)

ARTICLE III

NATURE OF THE ORGANIZATION

The Pool shall be comprised of county road commissions of the State of Michigan * * * The Pool is not to operate as an insurance company but rather is to be the contracting mechanism by which each Member receives, from the Pool, risk and financial management services and protections.

ARTICLE IV

MEMBERSHIP

1. Members. A Member county road commission (herein referred to as "Member") shall be a county road commission located in the State of Michigan, which has paid its annual contribution, as determined by the Pool Board, and has met

other requirements as may be set by the Pool Board, including execution of the Inter-Local Agreement and the Trust Agreement. * * *

ARTICLE VI

POWERS AND DUTIES OF THE BOARD

The Pool Board in addition to other powers and duties herein conferred and imposed or authorized by law, shall have the following powers and duties:

11. The Pool Board shall require the securing of a fidelity bond on each and all of the employees of the Pool Board or upon other persons charged with the duty of handling any of the monies or investments of the Pool. The Pool shall pay the premium for such a bond.

12. The Pool Board may provide for a suitable seal with the following letters upon its face: "Michigan County Road Commission Self-Insurance Pool". The seal shall be used for the authentication of legal documents, contracts, and other instruments indicating the official action of the Pool Board.

ARTICLE XII

WITHDRAWAL OR TERMINATION OF MEMBERSHIP

Any Member may withdraw from the Pool by giving at least sixty days written notice to the Pool Board of its desire to so withdraw. The Pool Board shall develop procedures for addressing accumulated equity, if any * * *

3. **Inter-Local Agreement** (MCRCSIP Appendix Exhibit D, pp. 32-35, 40-41)

* * * The conditions of membership agreed upon by and between the parties are as follows:

1. * * * The responsibility of the Pool with regard to fixing contributions to the Pool, maintaining reserves, * * * disposing of surpluses * * * shall be as set forth in the Trust creating the Pool, the Pool By-Laws, rules, regulations, coverage agreements and Inter-Local Agreements entered into between the Pool and participating county road commissions. Any county road commission in the State of Michigan may join the Pool by execution of the Trust and an Inter-Local Agreement and otherwise agreeing to become bound by and complying with the By-Laws, rules and regulations of the Pool. * * *

3. * * * All remaining funds coming into the possession of the Pool with respect to the fiscal year of the Pool shall be set aside and shall be used only for the following purposes:

H. * * * Distribution among the members during that fiscal year in such manner as the Pool shall deem equitable, of any excess monies remaining after payment of claims and claim expenses and after provision has been made for open claims and outstanding reserves * * * provided further, that undistributed excess funds from previous Pool Years may be distributed at any time if not required for loss funding and if approved for distribution by applicable Boards and authorities. The Pool may treat members who withdraw from future Pool Years differently and less favorably than the Pool treats members who continue in the Pool for future years.

22. This Agreement shall be governed by the Laws of the State of Michigan.

23. The Caption headings for each provision of this Agreement are included for informational purposes only and shall not be used to construe the provision more broadly or narrowly than the text would indicate⁹.

24. This Agreement is binding upon the parties herein, their successors and assigns.

4. MCRCSIP Refund Overview (MCRCSIP Appendix Exhibit F, p. 47)

For all liability refunds authorized by the Board of Directors, the following steps are used to determine the proper allocation of the distribution to members:

1. Apportion the refund according to eligible years according to Board direction.

* * *

2. Apportion each year's refund to eligible members:

a. Eligible members are members that paid liability premiums in the year being considered, that stayed in the Pool continuously since that year, and that are members at the date the refund is approved.

* * *

5. July 19, 1990 Memorandum to the Pool Members (MCRCSIP Appendix Exhibit E, pp. 44-45)

* * * The following is the policy adopted by your Board:

A Member which has properly given its sixty days written notice of its desire to withdraw from the Pool * * *

⁹ For this reason, quoted provisions of the Inter-Local Agreement herein omit the section captions so as not to mislead the reader.

A Withdrawing Member forfeits any and all rights to a dividend, credits, or accumulated interest that is to be or shall become payable after the effective date of the Member's withdrawal from the Pool.

* * *

* * *It is imperative for the existence of the Pool that members do not leave and return at will.

Many different approaches to discourage this practice have been discussed; however, a final decision has not yet been made.

Beyond those documents, the following facts were established in Plaintiff Counties' original Brief on Appeal to this Court (Plaintiffs' Appendix, Exhibit 3, pp. 18b-25b), which summary is consistent with this Court's prior Opinion (Plaintiffs' Appendix, Exhibit 1, pp. 1-2):

Each Plaintiff County's respective appointed Road Commission became a member of MCRCSIP by executing an Interlocal Agreement and Trust Agreement, by which they were required to accept the Declaration of Trust: Jackson County Road Commission (JCRC) on March 7, 1984; Ingham County Road Commission (ICRC) on June 10, 1985; Calhoun County Road Commission (CCRC) in 1984 or 1985.

Each year members of MCRCSIP were assessed an annual premium, which was paid into the self-insurance pool (the Pool). As insurance claims were made for each year, the money from the Pool was used to pay these claims. When premiums collected for a specific policy year exceeded the aggregate amount needed to pay all claims and administrative expenses for that year, there were premium excesses. Thus, as time passed and claims against a policy year were made, reserved and ultimately paid, the Pool was able to make an actuarial determination as to the balance needed to satisfy outstanding claims associated with that premium policy year and that year would be "closed out." Here, the amount of premium excess was calculated and closed out 10-12 years after the premiums were actually paid by the members. The remaining amount is the "surplus premium." The Pool distributes this surplus back to its members.

Up through February 28, 2012, MCRC SIP had a longstanding pattern and practice (and a settled policy, reflected in the July 19, 1990 Memorandum [MCRC SIP Appendix Exhibit E, pp. 44-45]) of refunding excess assessments to all Members, based on unused excess reserves remaining at the actuarial closing of an insurance fiscal year, which was refunded or paid back ten years later. For many years, MCRC SIP had calculated refunds of unused reserves for each closed actuarial year by paying a prorated amount to each Member, based on a fraction consisting of a numerator of the assessment paid by a county and a denominator of total assessments paid by all Members, multiplied by the surplus or unused reserve for each such particular insurance year.

On February 28, 2012, MCRC SIP, through its Administrator (Plaintiff Appendix, Exhibit 5), notified the ICRC that on February 23, 2012, the MCRC SIP Board of Directors had calculated the amount the ICRC would have to pay in premiums for the next fiscal year. ICRC was provided a breakdown of its proposed invoice for the cost of insurance coverage for April 1, 2012 – March 13, 2013.

Defendant's Administrator clarified that should the Ingham County Board of Commissioners (ICBC) take advantage of the new organizational scheme as outlined in MCL 224.6(7) and MCL 46.11(s) by transferring to itself the functions of the ICRC, MCRC SIP would not offer certain types of insurance coverage (directors', officers' and public officials' liability), nor Crime/Employee Dishonesty coverage as it had previously done. However, the Administrator stated MCRC SIP would continue to make available General Liability, Auto Liability and Excess Umbrella coverages to Ingham County for road operations only.

MCRC SIP, through its Administrator, then made the following statement of intent regarding refunds to the ICRC on February 28, 2012:

My last comment is with respect to the right to be included in MCRCSIP Refunds. Our Board currently has a policy that states that any Member leaving the Pool loses their right to participate in future refunds. We currently have open years for liability beginning in 2002. **However, our Board has said that it is their intent to transfer the Road Commission's right to refunds to the County if their Membership in the Pool is uninterrupted.** (emphasis added) (*id.*, p.2)

On April 13, 2012, ICRC paid a final premium for the fiscal year April 1, 2012-March 31, 2013, in the amount of \$400,716.00 in reliance on the MCRCSIP Administrator's February 28, 2012 letter.

On April 24, 2012, the ICBC, proceeding under MCL 224.6(7) and MCL 46.11(s)—and in reliance on the MCRCSIP Administrator's February 14 and 28, 2012 communications (Plaintiffs' Appendix, Exhibits 4 and 5)—after the requisite two (2) public hearings under MCL 224.6(9), adopted a resolution dissolving the appointed ICRC, and transferring all powers, duties and functions “including but not limited to the following assets: **property**, equipment, furniture, cash, and **investments**” of the road commission to the ICBC. (Plaintiffs' Appendix, Exhibit 6). The Calhoun County Board of Commissioners followed suit with respect to the CCRC on September 20, 2012 and the Jackson County Board of Commissioners did likewise with respect to the JCRC on January 15, 2013. (Plaintiffs' Appendix, Exhibits 7 and 8).

On May 29, 2012, the MCRCSIP Board of Directors, through its Board Chairman, sent a letter to the Members of MCRCSIP, predicated on the erroneous legal assumption or fallacy that counties which transferred the powers and duties of their road commissions to their Boards of Commissioners would not be “county road commissions” and thus would not be eligible to continue as members of the Pool. The Members were asked to amend the By-Laws to allow such Counties to become members. (MCRCSIP Appendix Exhibit 18)

On May 29, 2012, MCRCSIP, through its Administrator, sent the ICRC an e-mail with two documents attached: “Agreement for Cancellation of Insurance” and “Agreement for

Withdrawal From Michigan County Road Commission Self-Insurance Pool.” (MCRCSIP Appendix Exhibit 19) MCRCSIP notified the Ingham County Finance Director that it would not refund the balance of the April 13, 2012 premium paid in full (\$400,716.00) for the 2012/2013 Insurance Policy covering the one full year period of April 1, 2012 – March 31, 2013, unless both Agreements as prepared and submitted by MCRCSIP on May 29, 2012 were executed. In order to avoid forfeiting \$400,716 and to get its refund, ICRC then executed both Agreements under protest on May 31, 2012 (Plaintiffs’ Appendix, Exhibit 9). The Calhoun and Jackson County Road Commissions were also pressured by MCRCSIP to sign identical agreements, on October 23, 2012 and January 16, 2013, respectively (Plaintiffs’ Appendix, Exhibits 10 and 11). All three of the “Agreements for Withdrawal From Michigan County Road Commission Self-Insurance Pool” included the following critical provision in the final paragraph:

Limited Purpose of this Agreement. The sole purpose of this Agreement is to effectuate the termination of the Commission’s membership from MCRCSIP as of 12:01 a.m. on June 1, 2012 [Ingham] [January 16, 2013 – Jackson] [November 1, 2012 – Calhoun], **and not to affect or impact in any way any other terms or conditions contained in the Declaration of Trust – Inter-Local Agreement, or By-Laws.** *[emphasis added]*

On June 1, 2012, Ingham County, through its County Finance Director, protested the action of MCRCSIP to disallow continued membership in the Insurance Pool (Plaintiffs’ Appendix, Exhibit 12), but MCRCSIP steadfastly refused to alter its decision. Then, on June 25, 2012, MCRCSIP, through its Administrator (MCRCSIP Appendix Exhibit 29), reversed its stated intent of February 28, 2012, “to transfer the Road Commission’s right to refunds to the County if their Membership in the Pool is uninterrupted...” (Plaintiffs’ Appendix, Exhibit 5) and notified Ingham County as follows (Plaintiffs’ Appendix, Exhibit 13, ¶24):

However, MCRCSIP’s Board confirms its prior advice that no refund of surplus equity that otherwise might have been afforded to the former ICRC will be made available to any entity, including Ingham County. Pursuant to its long-standing

policy, **the Board does not refund surplus attributable to any Member that has withdrawn from the Pool.** [*emphasis added*]

At the Annual Membership Meeting on July 19, 2012, not surprisingly, the Members of MCRC SIP, who stood to gain financially by the outcome of the vote, rejected the May 29, 2012 recommendation of its Board of Directors' to "allow counties with road commission responsibilities to become Members of MCRC SIP". (Plaintiffs' Appendix, Exhibit 13, ¶25, Complaint Exhibit 5). (However, that vote was irrelevant, given this Court's October 10, 2017 Opinion holding that, as a matter of law, each Plaintiff County is a "county road commission" eligible for Pool membership under existing ByLaw.) MCRC SIP subsequently unilaterally concluded that, by statutorily abolishing their respective road commissions pursuant to MCL 224.6(7) and MCL 46.11(s), the Counties of Ingham, Jackson, and Calhoun "effectively withdrew" their respective road commissions from membership and participation in the MCRC SIP, and in so doing, "forfeited" any entitlement to ten years of surplus equity going back to the 2002-2003 fiscal year (*id.*, ¶26).

On July 17, 2014, each of the Plaintiff Counties formally demanded that MCRC SIP pay to the respective Boards of Commissioners of Ingham, Jackson and Calhoun counties their respective former Road Commission's share of any premium surplus then held by MCRC SIP, or improperly distributed to the remaining Members of MCRC SIP for the actuarial years going back to 2002-2003 and recognized by MCRC SIP's Board of Directors as being funds paid in excess of reserve requirements imposed by MCL 124.7a (Plaintiffs' Appendix, Exhibit 14). Thereafter, MCRC SIP refused to pay any of the Plaintiffs any portion of their respective former road commission's shares of ten years of surplus assessments, whether as existing on the effective date of "termination from pool," June 1, 2012, or the date of the various resolutions abolishing each county's road commission, or any other date going back to the 2002-2003 year

for which surplus premium refunds had not already been paid (Plaintiffs' Appendix, Exhibit 13, ¶32). MCRCSIP thereafter distributed its surplus of assessments paid, including the respective pro-rata surplus attributable to each Plaintiff County's former appointed road commission, to the remaining Members as each actuarial year was closed.

After the former Ingham and Calhoun road commissions signed their respective "Agreement in Recognition of Termination from Pool" as a condition of their receipt of refunds of the then-current year's premium paid (having been involuntarily ejected or terminated from membership), MCRCSIP refused to pay any of the Plaintiffs their respective predecessor-in-interest's share of surplus assessments for actuarial years from 2002 through 2012.

Plaintiffs filed the present suit on May 28, 2015 alleging four counts: violation of Article 9 §18 of the Michigan Constitution of 1963; Extortion; Statutory Embezzlement/Conversion; and Breach of Contract. Plaintiffs sought an award of damages for all surplus payments due for actuarial years 2002-2012, and fines and damages associated with defendant's actions (Plaintiffs' Appendix, Exhibit 13). This appeal, and remand proceeding, derive from the Circuit Court's denial of Plaintiff Counties' Motion for Summary Disposition and granting of MCRCSIP's counter-request for Summary Disposition.

ARGUMENT

ISSUE I [as specified in the Supreme Court's order of remand]:

Given that the Plaintiff Counties are successors in interest to their road commissions, the Defendant Michigan County Road Commission Self-Insurance Pool may not, in accordance with its governing documents, decline to issue to the counties refunds of surplus premiums from prior-year contributions.

- A. Four (4) of the five (5) documents specified by the Supreme Court for consideration on remand are binding on the parties; the "MCRCSIP Refund Overview" is not binding;**

- B. The legitimate documents make clear that only Pool Members who voluntarily withdraw from membership jeopardize their right to share in refunds of excess premiums; as all Plaintiff Counties involuntarily terminated their memberships (or were simply treated as having done so, in the case of Jackson County) under extortionate threat, all Plaintiff Counties remain entitled to refunds.**

STANDARD OF REVIEW¹⁰

This Court reviews de novo a trial court's decision to grant or deny a motion for summary disposition. *Village of Dimondale v Grable*, 240 Mich App 553, 563; 618 NW2d 23 (2000). We also review de novo legal questions, *In re Jude*, 228 Mich App 667, 670; 578 NW2d 704 (1998), including issues of statutory interpretation, *Slater v Ann Arbor Public Schools Bd of Ed*, 250 Mich App 419, 426; 648 NW2d 205 (2002), and contract interpretation, *Rossow v Brentwood Farms Dev, Inc*, 251 Mich App 652, 658; 651 NW2d 458 (2002).

Summary disposition under MCR 2.116(C)(9) is appropriate if a defendant fails to mount a valid defense and no factual development would defeat the Plaintiff's claim. *Village of Dimondale*, 240 Mich App at 564. A motion for summary disposition under MCR 2.116(C)(9) "tests the sufficiency of the defendant's pleadings," and the "trial court must accept as true all well-pleaded allegations" *Slater*, 250 Mich App at 425. To grant summary disposition under MCR 2.116(C)(9), the trial court can only consider the pleadings, including complaints, answers, and replies, but not the motion for summary disposition itself. *Village of Dimondale*, 240 Mich App at 565; MCR 2.110(A).

Summary disposition is proper if there is no genuine issue of material fact. MCR 2.116(C)(10). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Spiek v Mich Dep't of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998).

¹⁰ This section of Plaintiff Counties' Supplemental Brief is taken *verbatim* from this Court's October 10, 2017 Opinion (Plaintiffs' Appendix, Exhibit 1, p. 2-3). Thus, there can be no doubt as to the accuracy of this summary. Note, however, that discussion of MCR 2.116(I)(2) has been omitted as no longer relevant.

This Court considers the pleadings and the evidence in the light most favorable to the nonmoving party. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

Finally¹¹, “[w]hether the law of the case doctrine applies is a question of law that we review de novo.” *KBD & Assoc, Inc v Great Lakes Foam Technologies, Inc*, 295 Mich App 666, 679; 816 NW2d 464 (2012).

ISSUE PRESERVATION

Plaintiff Counties not only filed this lawsuit due to their exclusion from refunds after each was denied continued membership in the Pool, but expressly argued in their own Summary Disposition Motion and in response to MCRCSIP’s cross-motion that the various Cancellation and Termination Agreements or Termination of Insurance Agreements were the product of extortion perpetrated by MCRCSIP. Likewise, Plaintiff Counties argued that Const 1963, Art 9, §18 prohibited any County’s right to a refund of excess premiums paid from being distributed to other counties to share such funds (see Plaintiff Counties’ original Brief on Appeal, pp. 20-40 – Plaintiffs’ Appendix, Exhibit 3). Note that those arguments by Plaintiffs were not reached by this Court in its October 10, 2017 Opinion—as reflected in footnote 2 thereof (Plaintiffs’ Appendix, Exhibit 1, p 6, fn. 2): “Accordingly, we do not address the counties’ remaining arguments.”

LEGAL ANALYSIS

After filing its Motion for Leave to File a Supplemental Brief, MCRCSIP’s Supplemental Brief—which presents two issues, neither of which corresponds to the issue specified in the Supreme Court’s Order of Remand¹²—cites exactly one Michigan case¹³ and three statutes (none

¹¹ This portion of the Standard of Review is new, having become relevant only by virtue of the Supreme Court’s Order of Remand.

¹² MCRCSIP’s first issue is phrased in terms of Plaintiff Counties’ former appointed Road Commissions having “withdrawn” from membership in the Pool. This Court previously squarely

of which is claimed to control or even impact the issue on remand), proves to be a major disappointment. MCRCSIP's argument as submitted boils down to two (2) propositions: (1) each Plaintiff County stands in the shoes of its former appointed Road Commission, and has no greater (or lesser) rights to refunds than their former appointed Road Commissions, and (2) the documents referenced in the Supreme Court's Order of Remand expressly provide that non-members of the Pool may be treated less favorably than members.

1. The law of the case doctrine applies, and all prior rulings in this Court's October 10, 2017 Opinion (Plaintiffs' Appendix, Exhibit 1, pp 1-6), except the penultimate sentence (the central subject of this remand proceeding) are binding on the parties and this Court.

As earlier noted, per *Johnson v White*, 430 Mich 47, 53; 420 NW2d 87 (1988), all portions of this Court's October 10, 2017 Opinion left undisturbed by the Supreme Court's limited Remand Order are binding on the parties and this Court under the law of the case doctrine. See also *Webb v Smith (After Second Remand)*, 224 Mich App 203, 209; 568 NW2d 378 (1997). The only part of the October 10, 2017 Opinion which is not binding is the penultimate sentence (Plaintiffs' Appendix, Exhibit 1, p. 6): "Thus, the counties are entitled to receive refunds of surplus premiums from prior year contributions made by the former road commissions." That sentence is the exclusive subject of this Remand.

Given that MCRCSIP's Statement of Facts continues to flog a panoply of dead horses as to the legal relationship of Plaintiff Counties to their former appointed Road Commissions, it is necessary to establish the facts and legal propositions governed by law of the case principles

addressed that contention, ruling in favor of Plaintiff Counties (Plaintiffs' Appendix, Exhibit 1, pp. 5-6) (see below). Moreover, as discussed below, the key documents make clear that "withdraw" in this context requires a *voluntary* act, and each Plaintiff County was involuntarily barred from continued Pool membership and extorted to discontinue its membership in the Pool.

¹³ Inasmuch as the documents at the center of this remand specify that they are governed by Michigan law, citations to authorities from elsewhere—for a proposition directly addressed by longstanding Michigan jurisprudence—adds nothing. Apparently recognizing this, MCRCSIP's own Index of Authorities omits all the cases cited in its footnote 21 on p. 20 of its Supplemental Brief.

(Plaintiffs' Appendix, Exhibit 1, pp. 4-6), and which for present purposes must be deemed settled:

The Pool argues that the counties are not successors in interest to their dissolved road commissions because the statute provides for the transfer of only the “powers, duties, and functions” of the former road commissions but not their property rights or interests. The Pool contends that because the counties have only the powers expressly authorized by statute, the dissolved road commissions’ property rights and interests did not transfer to the counties. We reject this stilted reading of the statute.

* * *

* * * Applying the Pool’s argument, these facilities and equipment would become ownerless once a county board of commissioners dissolved its county’s road commission and assumed its powers.

The counties further disagree with the Pool’s narrow reading of the statute because it would constitutionally impair contracts for road construction and maintenance that involved the former road commissions. See US Const, Art 1, § 10; Const 193, Art 1, § 10. Rather, the counties argue, the former road commissions’ contractual rights devolved upon the respective counties.

We agree. * * * The Pool’s narrow reading of “powers, duties, and functions” would result in the unconstitutional impairment of the former road commissions’ contracts, rendering the statutory provisions permitting dissolution of the road commissions unconstitutional. We avoid this result by interpreting the statutory provisions more comprehensively. Thus, we conclude that the counties became the successors in interest to their former road commissions when they exercised their statutory right to dissolve the road commissions. As successors in interest, the counties took on all statutory rights and responsibilities given to road commissions.

B. POOL MEMBERSHIP

The parties dispute whether the counties could be members of the Pool for the purpose of determining whether they are eligible for surplus refunds of prior year contributions. The Pool contends that its bylaws only permit road commissions to be members, so the counties are not qualified for membership. This Court construes bylaws using the same rules applied to contract interpretation. *Tuscany Gove Ass’n v Peraino*, 311 Mich App 389, 393; 875 NW2d 234 (2015). We begin with the plain language of the bylaws and apply it if it is clear and unambiguous. *Rossow*, 251 Mich App at 658.

The Pool’s bylaws limit membership to county road commissions, but the bylaws do not define a county road commission. Instead, the bylaws refer to the statutory authority of county road commissions. Because we concluded that the counties were successors in interest to their dissolved road commissions as a matter of statutory

interpretation, we likewise conclude that the successor counties are eligible for Pool membership by virtue of the statutory reference to county road commissions in the Pool's bylaws.

Next, the Pool argues that the counties are not entitled to refunds even if deemed successors in interest because they withdrew from the Pool. We examine the language of the withdrawal agreements to determine their scope. See *Rosow*, 251 Mich App at 658.

First, the record contains no evidence that the Jackson County road commission signed a withdrawal agreement, and the Pool agrees that it did not. Thus, the Jackson County road commission did not withdraw from the Pool.

Ingham County's and Calhoun County's road commissions each signed an agreement to withdraw from the Pool. These withdrawal agreements began by stating that the counties dissolved their road commissions pursuant to statute. The agreements made withdrawal from the Pool effective from the date of dissolution of the road commissions. Further, the agreements contained a provision limiting their scope to withdrawal of membership without affecting "any other terms or conditions" of the Declaration of Trust, the inter-local agreement, or the bylaws. The Pool also agreed to administer claims arising from events occurring before the date of dissolution of the road commissions. Accordingly reading the withdrawal agreements as a whole and in light of the limitation on their scope, the withdrawal agreements did not alter eligibility for the refund of surplus premiums from prior year contributions.
* * *

Note that the "termination agreements" executed by the ICRC and CCRC are predicated on a statement of law reflecting MCRCSIP's erroneous legal position—"Consequently, as of June 1, 2012, the Commission is dissolved and by operation of law cannot and is not eligible to be a member of the MCRCSIP" (MCRCSIP Appendix Exhibit 25, p. 170)—which is now established to be false by virtue of this Court's October 10, 2017 Judgment¹⁴. As that erroneous statement of law is the sole basis for each of those agreements, the agreements are a nullity, as parties cannot agree upon nor stipulate to the law, for reasons elucidated in *In re Estate of Finlay*, 430 Mich 590, 595; 424 NW2d 272 (1988):

It is well established that a court is not bound by the parties' stipulations of law. See, e.g.,

¹⁴ It was, of course, erroneous in 2012, but it took more than 6 years for MCRCSIP—until the Supreme Court left this Court's October 10, 2017 decision undisturbed on that issue—to accept that fact.

Rice v Ruddiman, 10 Mich 125, 138 (1862), and *Bradway v Miller*, 200 Mich 648, 655; 167 NW 15 (1918).^[6] It is within the inherent power of a court, as the judicial body, to determine the applicable law in each case. To hold otherwise could lead to absurd results; for example, parties could force a court to apply laws that were in direct contravention to the laws of this state. It would also allow the parties to stipulate to laws that were obsolete, overruled, or unconstitutional.

^[6] See also *Heifetz v Bank of America Nat'l Trust & Sav Ass'n*, 147 Cal App 2d 776, 781; 305 P2d 979 (1957), and *Denver & RG R Co v Johnson*, 50 Colo 187, 190; 114 P 650 (1911). These cases hold that a stipulation of law does not preclude an appellate court from reviewing the issue on appeal.

2. Applying the Findings and Rulings that are the Law of the Case to the Documents Referenced in the Supreme Court's Order of Remand Demonstrates that Plaintiff Counties Are Entitled to Refunds as though They Continued as Members of the Pool, Because Only Members That Voluntarily Withdraw From Membership In The Pool Are Subject To Being Treated "Less Favorably".

Plaintiff Counties agree with the basic proposition that, with respect to the right to refunds, as successors they stand in the shoes of their former appointed Road Commissions, and now possess the same rights. *Paw Paw Depositors Corp v John W Free State Bank*, 278 Mich 637, 640; 270 NW 815 (1937). Moreover, Plaintiff Counties further agree that the foundational contractual documents—the Declaration of Trust, ByLaws, and Inter-Local Agreement—are binding, and that the July 19, 1990 Memorandum, reflecting as it does an action by MCRCSIP's Board of Directors authenticated by the Pool's seal was a legally valid action. Those documents are also binding on MCRCSIP.

A review of the key documents reveals the following truths:

- a. Article X, §2 of the Declaration of Trust recognizes that members of the Pool may be replaced by "successors". Similarly, ¶24 of the Inter-Local Agreement provides that the Agreement is "binding upon the parties herein, their successors and assigns".
- b. All members of the Pool are part of a Trust, managed by a Board of Directors

- consisting of 9 Trustees (Declaration of Trust, Article III, §1).
- c. The Pool's Directors (Trustees) control the Pool's money, and are required to be bonded to assure their fealty to their fiduciary obligations to the Members (ByLaws Article VI, §11).
 - d. The Trust may be enforced by each Member and "the successors and assigns of each Member" (*id.*, Article X, §12).
 - e. The Pool owes to each Member "financial management services and protections" (By-Laws, Article III).
 - f. At the time each Plaintiff County was told by MCRCSIP's agents they could not assume their respective appointed Road Commissions' Membership status, each of those appointed Road Commissions had paid its annual contribution for the then-current fiscal year, had executed all required documents, and was a Member in good standing of the Pool per Bylaws, Article 4.1.
 - g. The document identified as "MCRCSIP Refund Overview" does not bear the seal of the Pool, lacking which it is not authentic and may not be considered binding in this remand proceeding (ByLaws, Article X, §12—"The seal shall be used for the authentication of legal documents, contracts, and other instruments indicating the official action of the Pool Board")¹⁵.
 - h. Members who withdraw from the Pool may be treated "differently and less favorably" than members who remain (Declaration of Trust, Article VI, §9(f));

¹⁵ "The word 'shall' is unambiguous and is used to denote mandatory, rather than discretionary, action." *Yachcik v Yachcik*, 319 Mich App 24, 36; 900 NW2d 113 (2017) This understanding applies to contracts as well as other matters. *NL Ventures VI Farmington, LLC v City of Livonia*, 314 Mich App 222, 230; 886 NW2d 772 (2016).

Inter-Local Agreement, ¶3H).

- i. According to the terms of the Pool's By-Laws, "withdraw" means voluntary termination of membership (By-Laws, Article XII—"desire to so withdraw").
- j. The concept that "withdraw" involves a voluntary renunciation of membership, and thus does not encompass the involuntary termination of Plaintiff Counties' predecessors' membership in the Pool, is reflected and carried forward in the July 19, 1990 Memorandum to the Pool Members ("written notice of the desire to withdraw from the Pool").¹⁶ Thus, that Memorandum does not support forfeiture of Plaintiff Counties' right to share surplus distributions on an aliquot basis.

It cannot be said, by any stretch of the imagination, that the Counties, or their predecessors in interest, *voluntarily* withdrew from membership in the Pool, or expressed the requisite "desire" to do so. Indeed, as this Court held (and MCRCSIP previously conceded by way of judicial admission), Jackson County/the JCRC never signed any document terminating its membership in the Pool. Ingham and Calhoun/ICRC and CCRC signed termination agreements that this Court previously held "did not alter eligibility for the refund of surplus premiums from prior year contributions." Plaintiff Counties' predecessors were compelled by MCRCSIP—which flatly refused to recognize their legal status as successors to their appointed Road Commissions, to terminate their memberships in the Pool. Thus, the "treated less favorably" option applicable to members who *choose* to withdraw is inapposite.

¹⁶ Note that neither MCRCSIP nor its Board of Directors (Trustees) is the final authority on how its By-Laws are construed. By-Laws or internal regulations of a voluntary association are construed according to the principles of statutory construction—meaning that the association is not the sole judge of the meaning or interpretation of its own rules. *Slatterly v Madiol*, 257 Mich App 242, 250; 668 NW2d 154 (2003).

3. MCRC SIP's Actions—Refusing To Recognize Plaintiff Counties Legal Right To Succeed To Their Former Appointed Road Commissions' Membership In The Pool, Then Using That Refusal To Posit A Forfeiture Of Surplus Distribution Rights—Constituted Duress, And Violated Public Policy.

Correlatively, MCRC SIP used its refusal to continue insurance coverage and to refund unused premiums (both of which were breaches of contracts to which the Counties became successor parties), because the Legislature left it to the discretion of county boards of commissioners whether to abolish separate county Road Commissions and absorb the functions, rights and duties thereof into the county board itself. For MCRC SIP to require that members forfeit their membership, and also their pro rata share of any determination of surplus, penalizes those counties that legislatively availed themselves of this statutory right to have their Boards of Commissioners become their Boards of Road Commissioners. To construe the Declaration of Trust, or any bylaw, to permit this penalty is clearly contrary to the public policy which the Legislature chose to repose in the political and legislative process—extortion by MCRC SIP. As held in *Sands Appliance Services, Inc v Wilson*, 463 Mich 231, 246; 615 NW2d 241 (2000), “because courts have a duty to refuse to enforce a contract that is contrary to public policy. *Manning v Bishop of Marquette*, 345 Mich 130, 133–134; 76 NW2d 75 (1956), if the contract [of ‘voluntary’ termination’] violated the statute, it violated Michigan public policy.” A contract signed under duress is invalid and of no legal force or effect, *Vyne v Glenn*, 41 Mich 112, 115; 1 NW 997 (1879).

The contract defense of duress exists when a party, by the unlawful act of another party, is induced to enter into a contract under circumstances that deprived him or her of the exercise of free will. *Apter v Joffo*, 32 Mich App 411, 416; 189 NW2d 7 (1971), quoting *Knight v Brown*, 137 Mich 396, 398; 100 NW 602 (1904). In order to void a contract on the basis of economic duress, the wrongful act or threat must deprive the victim of his unfettered will.” *Hungerman v*

McCord Gasket Corp, 189 Mich App 675, 677; 473 NW2d 720 (1991). The situation is similar to that in *Vyne v Glenn*, *supra*, where the Supreme Court held:

The defendant informed the plaintiff that he had stopped the payment of certain moneys due the latter from third parties, well knowing plaintiff's circumstances at the time, and that his failure to get the moneys so due him would result in his financial ruin, and thus compel the plaintiff to settle with the defendant in order that the stoppage might be removed. It is idle to say that such settlement was free and voluntary, and that it should be sustained. To say that the plaintiff had a legal remedy if a wrong had been done him, or that the commencement of garnishee proceedings would not vitiate a settlement thereafter made between the debtor and creditor, may be true generally, but where the wrong done, as in this case, was for the evident purpose of forcing a settlement not in accordance with the legal rights of parties, and where the delays incident to litigation would but work the ruin which the plaintiff dreaded, to hold that because he had a legal remedy for the wrong, and did not avail himself thereof, would not meet the difficulties in a case like the present. The choice offered him was financial ruin or immediate settlement. If this was not obtaining a settlement under duress, it would be difficult to conceive what would be.

While predecessor appointed Road Commissions admittedly were not on the brink of "financial ruin," they were about to be absorbed into their respective county boards of commissioners, and had only hours in which to clear up the issue of refunds of substantial unused premiums required to be paid in advance.

Although this point appears concluded in favor of Plaintiff Counties' position by the law of the case, even if this were an open question, clearly both Ingham/ICRC and Calhoun/CCRC were forced to sign the termination agreements as a condition of refund of their pre-paid premiums. None of Plaintiff Counties' former appointed Road Commissions received any consideration in exchange for signing the two termination agreements, still less, any valuable consideration. According to MCRCSIP, each of the former appointed road commissions, in exchange for signing the termination agreements, was given a refund of unused premiums required to be paid in advance, for the year of termination, 2012-2013 for Ingham and Calhoun Counties, 2013-2014 for Jackson County (which, again, signed *nothing*). But Plaintiffs'

predecessors were each absolutely entitled to a refund of prepaid premiums for insurance coverage that was unilaterally terminated—MCRCSIP could hardly terminate insurance coverage for which payment had been required to be tendered in advance and yet retain the unused portion of the premiums. That would be an elementary breach of contract. *Kibby v Mich Cent R Co*, 142 Mich 313, 315; 105 NW 769 (1905)¹⁷. Thus, MCRCSIP's agreement to refund *unused* premiums for the final year of membership was not valid consideration for any contractual agreement, because MCRCSIP already had a prior legal obligation to restore such funds to Plaintiffs¹⁸ (or their predecessors in interest). *46th Circuit Trial Court v Crawford Co*, 476 Mich 131, 158; 719 NW2d 553 (2006) (“Under the preexisting duty rule, it is well settled that doing what one is legally bound to do is not consideration for a new promise.” *Id.* at 740–741. Such a contract would fail for lack of consideration. *Puett v Walker*, 332 Mich 117, 122; 50 NW2d 740 (1952).”).

Nor can MCRCSIP hide behind whatever discretion is vested in either its Board of Directors or its members as a group (as during a membership meeting). The members of a voluntary association may set up a tribunal to adjust differences that arise between the association and its members, and may by contract make the tribunal's decision final *in the absence of bad faith or error in law*. *Howe v Patrons' Mut Fire Ins Co of Michigan*, 216 Mich 560, 568; 185 NW 864 (1921), quoting *Patrons' Fire Insurance Co v Attorney General*, 166

¹⁷ The holding in *Kibby* was as follows:

“The contract for defendant made it obligatory to furnish a suitable car for the entire trip, and deliver the car and cargo to the connecting line in good condition. It did not full perform its duty of delivering to the connection carrier the potatoes in a suitable car adapted to their transportation. This was a breach of their contract and they were liable for the consequences.”

¹⁸ Note that, now that it is known (as Plaintiff Counties all along contended) that each Plaintiff is the *de jure* successor to its former appointed Road Commission, MCRCSIP's concomitant refusal to continue the insurance coverage after the Counties became Road Commissions was itself a breach of contract.

Mich 438, 442; 131 NW 1119 (1911). But a construction of the association's foundational document, or its bylaws or internal rules, which results in summarily denying a member its rights, or any other aspect of fundamental fairness, is disfavored, and will not be adopted if any other interpretation is possible. *Id.*, 216 Mich at 566 citing *Puhr v Grand Lodge, German Order of Harugari*, 77 Mo App 47; 1898 Westlaw 1840, (1898). Note that neither the Declaration of Trust, nor the By-Laws, nor the Inter-Local Agreement, purports to declare that the Board of Directors' (Trustees') decision to treat a withdrawn member "less favorably"—if applicable to successor members who were *involuntarily* eliminated from the Pool (arguably so the other members could steal their decade's worth of forthcoming refunds)—is deemed "final". While such language appears in Article VI, §6 of the Declaration of Trust (Plaintiffs' Appendix, Exhibit 2) with respect to admission of new members, it is conspicuously absent from any of the various provisions dealing with the Board's treatment of former members, and so does not apply to insulate any action from Plaintiffs claim.

Moreover, where there has been bad faith, oppression, or other unfair conduct, the association and its members cannot hide behind the finality of an internal tribunal's processes to whitewash all sins. In *Dietz v American Dental Ass'n*, 479 F Supp 554, 557 (ED Mich, 1979), the Court held:

Generally, courts are reluctant to interfere with the internal workings of a private association, but if justice and equity require, courts will review the decision of a private association. See *McCreery Angus Farms v. American Angus Association*, 379 F Supp 1008, 1019 (SD Ill, 1974), summarily aff'd, 506 F2d 1404 (CA 7, 1974); *Falcone v. Middlesex County Medical Society*, 34 NJ 582; 170 A2d 791, 796 (1961).

Where a professional association has monopoly power and membership in the association significantly affects the member's practice of his profession, courts will hold the association has a fiduciary duty to be substantively rational and procedurally fair. The association must exercise its powers according to its by-laws and constitution; it cannot decide to exclude or expel a member or deny rights of membership for arbitrary, capricious, or discriminatory reasons. See *Hatley v*

American Quarter Horse Association, 552 F.2d 646, 655-56 (5th Cir. 1977) (refusal to register member's horse); *Marjorie Webster Junior College, Inc. v. Middle States Association of Colleges and Secondary Schools*, 139 U.S.App.D.C. 217, 432 F.2d 650, 655-57 (D.C. Cir. 1970), Cert. denied, 400 U.S. 965, 91 S.Ct. 367, 27 L.Ed.2d 384; *McCreery Angus Farms, supra*, 379 F.Supp. at 1010; *Pinsker, supra*, 526 P.2d at 255; *Blende v. Maricopa County Medical Society*, 96 Ariz. 240, 393 P.2d 926, 929 (1964); *Virgin v. American College of Surgeons*, 42 Ill.App.2d 352, 192 N.E.2d 414, 423 (1963); *Falcone, supra*, 170 A.2d at 799; *Kurk v. Medical Society of County of Queens, Inc.*, 46 Misc.2d 790, 260 N.Y.S.2d 520, 525 (1965); *Davidson v. Youngstown Hospital Association*, 19 Ohio App.2d 246, 250, 250 N.E.2d 892, 48 Ohio Op.2d 371 (1969); *Woodard v. Porter Hospital, Inc.*, 125 Vt. 419, 217 A.2d 37, 40 (1966). But see *Elizabeth Hospital, Inc. v. Richardson*, 269 F.2d 167 (8th Cir. 1959), cert. denied, 361 U.S. 884, 80 S.Ct. 155, 4 L.Ed.2d 120 (no cause of action under Arkansas law for denial of membership).

Another indication that our Legislature and Courts look unfavorably on the exact practice of Defendant can be found in Michigan's 1969 Worker's Compensation law. MCL 500.2016, which was amended in 1998 provides:

- (1) In addition to other provisions of law, **the following practices as applied to worker's compensation insurance including worker's compensation coverage provided through a self-insurer's group are defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:**
 - (a) **As a condition of receiving a dividend for the current or a previous year, requiring an insured to renew or maintain worker's compensation insurance with the insurer beyond the current policy's expiration date or requiring a member to continue participation with a worker's compensation self-insurer group.**
 - (b) As a condition of obtaining worker's compensation insurance, requiring a premium deposit greater than 25% of the total projected annual premium or \$2,500.00, whichever is greater.
 - (c) As a condition of obtaining worker's compensation insurance, requiring the purchase of any other form of insurance from the same insurer.
 - (d) As the result of a payroll audit or examination, requiring the payment of an increased premium increment within

30 days of written notification of the increase in premium.

- (2) This section does not apply if the insured was guilty of misrepresentation, fraud, or other acts of bad faith.
- (3) **This section also applies to worker's compensation self-insurers' groups.**

Although clearly this law applies only to Worker's Compensation self-insurers' groups, the prohibition on the exact type of conduct that Defendant has also engaged in should be viewed as strong evidence that our Legislature deems this sort of conduct unacceptable. A practice that is considered "unfair and deceptive acts or practices in the business of insurance," does not magically become a fair and just practice in the context of a statutory insurance pool.

Further, if one were merely to replace the words "worker's compensation," with "county road commission" in the following excerpt from *Health Care Ass'n Workers Comp Fund v Dir of the Bureau of Worker's Comp, Dep't of Consumer & Indus Servs*, 265 Mich App 236, 247–49; 694 NW2d 761 (2005), it is plain that this Court does not look favorably on actions identical to the actions of Defendant:

. . . a worker's compensation self-insurer group . . . employs an unfair method of competition and engages in an unfair or deceptive act or practice "in the business of insurance" if it commits the proscribed act of withholding payment of a dividend on the basis of an employer's discontinuance of participation with the self-insurer group. Accordingly, . . . [the insurance pool] is engaged in a proscribed practice in the business of insurance if it engages in the conduct it is prohibited from committing by MCL 500.2016(1)(a).

This case supports a conclusion that MCRCSIP's actions have been unconscionable.

4. MCRCSIP's Treatment Of Plaintiff Counties' Successorship Rights—Treating Their Former Appointed Road Commissions As Having Forfeited All Rights to Return of Surplus By Virtue Of Now Being "Former Members" Subject to "Less Favorable" Treatment (After Being Involuntarily Ejected From The Pool And Denied Continuation Of Membership As Successors In Interest) Is Fatally Tainted By Conflict Of Interest, Constitutes A Breach Of Trust, And Violates Plaintiffs' Due Process Rights.

Article XII of Defendant's own By-Laws, provides that "The Pool Board shall develop procedures for addressing accumulated equity, if any * * *." The July 19, 1990 Memorandum to the Pool Members (MCRCSIP Appendix Exhibit E, pp. 44-45) fulfills this requirement, but addresses only members who withdraw after giving "written notice of desire" to do so, and says nothing about the rights of members who are refused continued participation without being expelled for cause after written notice by the requisite 2/3 vote of the members (Declaration of Trust, Article VI, §7).

Distributing surplus reserves from closed actuarial years among those whose premiums contributed to the surplus was and remains the MCRCSIP's settled policy (reflected in the July 19, 1990 Memorandum [MCRCSIP Appendix Exhibit E, pp. 44-45]), but MCRCSIP has now deviated so as to deny Plaintiff Counties their predecessors' shares of such distributions. *Ad hoc* determinations, made by remaining members for their own enrichment, are antithetical to the By-Laws, as well as tainted by conflict of interest. The resulting pecuniary advantage to the decision makers—each of whom was a government representative, operating within an association of government agencies, all of which profited by sharing among themselves surpluses attributable (by MCRCSIP's own bookkeeping methodology) to Plaintiff Counties' former appointed Road Commissions suffices to establish a violation of fundamental due process principles. *Aetna Life Ins Co v Lavoie*, 475 US 813, 822 ff; 106 S Ct 1580; 89 L Ed 2d 823 (1986). Even considering MCRSIP as a private rather than governmental organization, the lack of fundamental fairness becomes so paramount and obvious as to irredeemably taint the Board's decision with respect to distributions of surplus and to warrant judicial intervention.

Especially is this so because the Pool is, by its terms, a Trust (Declaration of Trust, Article I) administered by a Board of Trustees (*id.*, Article III, §1), each member of which has

the right to enforce the fiduciary duties owed it by other members (*id.*, Article X, §12). Because, as an unincorporated association, the Pool is not legally distinct from its members¹⁹, in dealing with one another the members, too, are trustees, and self-dealing cannot be tolerated by this Court. “[T]ransactions involving self-dealing should be closely scrutinized . . . to see whether the trustee’s actions indicate[] any fraud, bad faith or overreaching on the part of the trustee.” *In re Green Charitable Trust*, 172 Mich App 298, 314; 431 NW2d 492 (1988). “Bad faith is not a specific act in itself, but defines the character or quality of a party’s actions.” *Id.* at 315. “[B]ad faith has been defined as arbitrary, reckless, indifferent, or intentional disregard of the interests of the person owed a duty.” *Id.* Denying Plaintiff Counties their right to succeed to the memberships of their former appointed Road Commissions, in order to seize the refunds that would be due them and share the spoils among those who carried out the *putsch*, stands as an archetype of bad faith and self-dealing.

Granting that MCRCSIP might from time to time amend its internal rules or policies, it cannot do so if the new rule is unreasonable, OR (as here) the new rule operates to divest former members of rights *already vested*, such as the right to a share of any surplus when “withdrawal” was forced upon them by MCRCSIP. *Parish v New York Produce Exchange*, 169 NY 34, 49-51; 61 NE 977, 981-982 (1901).

Indeed, what MCRCSIP and its members have done is nearly indistinguishable from what was attempted by a faction in *Russian Orthodox All Saints Church v Darin*, 222 Mich 35;

¹⁹ MCL 600.2051(2) provides that “(2) * * *[A]ny unincorporated voluntary association having a distinguishing name may sue or be sued in its partnership or association name, or in the names of any of its members designated as such or both.” (Emphasis added.) Thus, while MCRCSIP may thus sue or be sued in its own name, the fact that it may also be sued in the names of “any of its members designated as such, or both” means that it is NOT legally distinct from its members at all, but rather MCRCSIP and its members are legally indistinct, and breach of trust or self-dealing by one is breach of trust by all.

192 NW 697 (1923), but prohibited as unjust, oppressive, and invalid by our Supreme Court, which opined, 222 Mich at 55 (boldfaced emphasis and underlining added):

Measuring the legal rights and obligations of members belonging to this voluntary association by civil laws, or even its own by-laws and rules, the proceedings under which the minority members assumed to transfer themselves into a majority in order to control its temporal affairs cannot be recognized as of any legal validity. The majority members first took legal steps in the society's name and as its successor to, and did, comply with the provisions of the statute authorizing incorporation of unincorporated voluntary religious societies. There could be but one valid incorporation of the society. As we view the rift between the two factions, there was no actual secession on doctrine or other grounds by either faction, from the church or society, but a contest for supremacy within it amongst its members, for control of its temporalities. The incorporation by the majority was a valid incorporation by the majority of and for the entire voluntary association, including both factions. **It thereby succeeded to the temporalities of the society, but in trust for the religious purposes and uses for which they had been procured and dedicated by that society, and in which each member has a beneficial interest. The majority have not, and could not because of this factional dispute for control, read out of the association those belonging to the opposing faction, if valid members at the time of the division, any more than could the minority.** The faithful exercise by plaintiff of this trust, by whomsoever controlled, remains a subject of equity cognizance. So long as that trust is not violated, the unquestioned right of control is with the majority.

And therein lies the rub in the present case—neither MCRCSIP nor its remaining members could, while holding funds in trust for the entire original group, hijack Pool assets for their own accounts, or “read out of the association those belonging to the opposing faction, who were valid members at the time of the division [or discriminate between those who exercised their rights under MCL 224.6(7) and MCL 46.11(s) and those who did not]”.

5. MCRCSIP's Distribution Of Excess Premiums Paid By Plaintiffs' Predecessors In Interest To And Among MCRCSIP's Other Members, Including Funds That, Following MCRCSIP'S Standard Aliquot Methodology (July 19, 1990 Memorandum), Would Have Gone To A Plaintiff County's Former Appointed Road Commission, As A Matter Of Law Contravenes Const 1963, Art 9, §18, Is Also A Breach Of Contract, And Requires Such Shares Be Paid To Plaintiffs.

By converting Plaintiff Counties' shares of surplus premiums for its remaining Members, MCRCSIP has breached Const 1963, Art 9, §18 by using the credit of Ingham, Jackson, and

Calhoun counties to aid and supplement the financial interests of the other Members of MCRCSIP, all of which are county agencies.

The Michigan Constitution of 1963, Art 9, §18, provides that “[t]he credit of the state shall not be granted to, nor in aid of any person, association or corporation, public or private, except as authorized in this constitution.” The prohibition against the lending of credit applies to counties as political subdivisions and instrumentalities of the state. *Advisory Opinion on Constitutionality of 1986 PA 281*, 430 Mich 93; 422 NW2d 186 (1988); *Oakland Co Drain Comm’r v Royal Oak*, 306 Mich 124, 142; 10 NW2d 435 (1943). The purpose of this section is to assure that the state and its political subdivisions, which generally cannot borrow, do not accumulate unauthorized debts by guaranteeing the debts of others. *Advisory Opinion re Constitutionality of 1966 PA 346*, 380 Mich 554, 564; 158 NW2d 416 (1968).

Our Supreme Court has held that, where the state acquires or transfers something of value, Const 1963, Art 9, § 18 is not violated. *Alan v Wayne County*, 388 Mich 210, 325; 200 NW2d 628 (1972). Const 1963, Art 9, § 18 is violated only when the state creates an obligation legally enforceable against it for the benefit of another. *Spruk v Regents of the Univ of Mich*, 43 Mich App 178, 190-191; 204 NW2d 62 (1972); *Petrus v Dickinson Co Bd of Comm’rs*, 184 Mich App 282, 297; 457 NW2d 359 (1990).

But aside from directly lending its credit, where a municipality transfers property, there must generally be a fair exchange of value for value. *Alan v Wayne Co*, 388 Mich 210, 325, 330; 200 NW2d 628 (1972). A transfer of property by a governmental body that is not supported with adequate consideration violates Art 9, § 18:

There is another means by which tax increment bonds might be found outside the definition of a loan of credit, as contemplated in Art 9, § 18. If the state or a municipality receives value in return for what it gives away, there is no loan of credit under the constitution. We articulated this rule in *Alan, supra*, p 325:

“Michigan case law interpreting Const 1963, Art 9 § 18 is neither ample nor precise. It is clear the state or its subdivision the county cannot give anything away without consideration. (Citations omitted.) Note that the constitution as far as the state and county are concerned makes no difference between a public and a private purpose in this regard. * * *”

Normally, “the Legislature or Executive Branch is the judge of what is fair value in matters in which it is concerned.... Their judgment, however, is subject to judicial review for abuse of judgment.” *Id.*, p 330.

As this passage indicates, it is for the legislative and executive branches of government to determine if value was obtained, but courts will intervene if an abuse of discretion is shown.

Here, the legislative branch (which, as the County Road Commission, is also the executive branch)—the Boards of Commissioners of Ingham, Jackson and Calhoun Counties—has concluded that value was not obtained. Obviously, if a county were to make a valuable grant without consideration, the courts would be *forced* to regard that as an abuse of discretion. *Alan, supra* at 326-327. Here, in exchange for signing the two termination agreements, none of Plaintiff Counties’ former appointed Road Commissions received any consideration, still less valuable consideration, as earlier shown. Yet MCRC SIP and its members used these invalid agreements as pretext to take for themselves funds paid by and belonging to the former Road Commissions of Plaintiff Counties, to which refund rights each Plaintiff County Board of Commissioners legally succeeded under the provisions of MCL 224.6(7) and MCL 46.11(s).

Furthermore, MCL 124.5 *et seq.*, the statute forming the source of authority for and the basis for MCRC SIP’s creation and continued existence, does not permit retention of such excess funds. To the contrary, MCL 124.7(a)(ii) requires that the intergovernmental contract specify “the amount of cash reserves to be set aside for the payment of claims”, and likewise, in subsection (a)(iv), requires the intergovernmental contract to detail “the amount of aggregate excess insurance coverage to be maintained or the amount of the deposit of unimpaired surplus

to be maintained with the state treasurer.” Because the Pool could not exist without this statutory authorization, the statute, being in derogation of common law, must be strictly construed, *School Dist of City of Lansing v City of Lansing*, 260 Mich 405, 419; 245 NW 449 (1932), and therefore the Pool cannot maintain any surplus or excess funds beyond what is identified and detailed in its Declaration of Trust.

Moreover, the very structure of the Pool, even though in this respect ostensibly permitted by MCL 124.7(b)(ii) (which allows the intergovernmental contract to provide for “levying and collecting assessments for deficiencies”), makes each member potentially liable for the debts of other members, and that is a further infringement of Const 1963, Art 9, ¶18. In *City of Tyler v Texas Employers’ Insurance Ass’n*, 288 SW 409 (Tex Comm’n App, 1926, judgm’t adopted), the Texas Commission of Appeals considered whether an incorporated municipality might subscribe to the Texas Employers’ Insurance Association (TEIA) to cover possible workers’ compensation liabilities under VTCS Art. 8308, §7 (authorizing any employer may be subject to workers’ compensation laws to subscribe to TEIA). The court noted that the TEIA—like MCL 124.7(b)(ii)—required its members to pay a proportionate share of any assessment the TEIA levied to cover its losses and expenses. 288 SW at 411-412.

The *Tyler* court cited two reasons the Texas Constitution, Article III, section 52(a)²⁰—indistinguishable from Mich Const 1963, Art 9, §18 in its substantive effect—prohibited

²⁰ Texas Constitution, Article III, §52(a) provides:

Except as otherwise provided by this section, the Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company. However, this section does not prohibit the use of public funds or credit for the payment of assessments on nonassessable life, health, or accident insurance policies and annuity contracts issued by a mutual insurance company authorized to do business in this State.

Texas Constitution, Article III, §§60 and 61 are substantially identical, with section 60 pertaining to “counties and other political subdivisions,” and section 61 to “cities, towns, and villages.”

municipalities from subscribing to such an association. The second reason was that a subscriber to the TEIA was obligated to pay assessments to cover the TEIA's losses, and thus any municipality that subscribed to the TEIA was lending its credit in violation of Article III, Section 52. *Id.* In *Lewis v Independent School District*, 161 SW2d 450, 452 (Tex, 1942), the Texas Supreme Court reaffirmed the conclusions reached in *City of Tyler*.

Because Plaintiff Counties succeeded to all rights of their former appointed Road Commissions, Plaintiffs have a right to the shares of excess or surplus funds that MCRCSIP annually distributes for prior years (usually from surplus collected over a decade previously, thus in 2015 Defendant distributed surplus from the 2002-2003 premium year). 'A state agency . . . may not employ the power, directly or indirectly, for the use and benefit of another, unless so authorized by law.' *Sinas v City of Lansing*, 382 Mich 407, 413-14; 170 NW2d 23 (1969).

Defendant's central argument—at least previously, before being abandoned—was that “the Pool never had any of the Counties' money, and the Counties do not ‘own’ the potential refunds they now seek. See *A&D Development v Michigan Commercial Insurance Mut (After Remand)*, 2014 WL 7338871 (Mich App, December 23, 2014) (summary disposition of multiple claims, including conversion, proper where participants in a self-insured fund did not own surplus premiums as a matter of law).” Plaintiff Counties have made no claim that they own any part of surplus reserves while funds remain part of reserves for any year of continuing liability exposure.²¹

However, from the time Plaintiff Counties' predecessors in interest (ICRC, JCRC, and CCRC) joined the Pool, MCRCSIP's Board of Directors, upon the closing of all risk for an

²¹ However, because MCRCSIP remains an unincorporated voluntary association, indistinguishable from its member (see footnote 20 above, citing MCL 600.2051(2)), MCRCSIP does not “own” those funds either, but merely holds those funds as trustee for member counties. Plaintiff Counties are thus beneficiaries of that Trust.

actuarial year, distributed the surplus or excess reserves from that year to the members in proportion to the premiums each had paid for that year. MCRCSIP has continued to distribute surplus reserves according to the same pattern as each actuarial year closes, except it has excluded Plaintiffs from receiving their predecessors-in-interest's shares of such distributions, and MCRCSIP has instead divvied up those predecessors' shares among Road Commissions whose counties did not exercise their rights under MCL 224.6(7) and MCL 46.11(s).

And that is why the *A&D Development v Michigan Commercial Insurance Mut (After Remand)*, 2014 WL 7338871 (Mich App, December 23, 2014)—an unpublished decision having no precedential value, MCR 7.215(C)(1), but previously centrally relied on by MCRCSIP, which now seems to have abandoned that argument entirely—has no application here. Plaintiff Counties are not claiming a right to immediate access to their aliquot share of MCRCSIP's reserves, but rather are claiming a right to the refund of excess unused funds whenever the MCRCSIP Board of Directors closes an actuarial year to which the ICRC, JCRC, or CCRC contributed assessments or payments for insurance coverage and MCRCSIP's Board of Trustees declares a distribution of surplus reserves. At the point in time where the MCRCSIP Board of Directors determines there is an excess of reserves and determines to distribute (and not before), the money in dispute ceases to be property of the Trust or part of reserves, and becomes a fund to be distributed among those who contributed to its creation (that is, those whose contributions from any part of the surplus for the closed actuarial year at issue). Indeed, this is precisely what the July 19, 1990 Memorandum provides. (MCRCSIP Appendix Exhibit E, pp. 44-45)

In the *A&D Case*, no such distribution had been declared by the self-insurance pool's board of directors, so the funds remained part of the pool's reserves. The money having been paid into the pool voluntarily, there could be no conversion, because the party paying the

premium had no right to a refund unless and until a distribution of surplus reserves might be declared, which never happened in that case. Here, the Pool has already declared distributions for the past 7 years (2012, 2013, 2014, 2015, 2016, 2017, and 2018).

Moreover, the habitual declaration of distributions of excess reserves from closed actuarial years by MCRCSIP's Board of Directors was, pursuant to Article XII of MCRCSIP's Bylaws (MCRCSIP Appendix Exhibit C, p. 28) and the July 19, 1990 Memorandum, (MCRCSIP Appendix Exhibit E, pp. 44-45) necessarily reflective of an established policy. Again, given the conflict of interest inherent in the MCRCSIP Board's handling of surpluses generated from premiums (and loss experience) of Plaintiff Counties' former appointed Road Commissions, were MCRCSIP to suddenly refuse to declare surpluses now that Plaintiff Counties' status as successors to their former appointed Road Commissions is established beyond dispute, that would simply be another form of self-dealing and tortious conversion. Meanwhile, for the seven (7) years since Plaintiff Counties succeeded to their former appointed Road Commissions, MCRCSIP has declared a distribution, although it has disbursed the aliquot shares that should have been paid to Plaintiff Counties among its other members. But this lawsuit has been pending since 2015, and between 2012 and 2015 Plaintiff Counties were demanding those shares, so MCRCSIP's members will simply have to disgorge the funds received that should have been paid to Plaintiff Counties. *MGM Grand Detroit, LLC v Community Coalition for Empowerment, Inc*, 465 Mich 303, 308 n. 5; 633 NW2d 357 (2001) ("Equity will not permit a wrongdoer to shelter himself behind a suddenly or secretly changed status though he succeeded in making the change before the chancellor's hand actually reached him.").

6. MCRCSIP's And Its Members' Distribution Of Plaintiff Counties' Predecessors' Aliquot Shares Of Surplus Constitutes Statutory Conversion or Embezzlement, And Entitles Plaintiff Counties To Treble Damages.

“In the civil context, conversion is defined as any distinct act of domain wrongfully exerted over another’s personal property in denial of or inconsistent with the rights therein.” *Foremost Ins Co v. Allstate Ins Co*, 439 Mich 378, 391; 486 NW2d 600 (1992). The act is wrongful when it is inconsistent with the ownership rights of another. *Check Reporting Servs, Inc v Mich Nat’l Bank–Lansing*, 191 Mich App 614, 626; 478 NW2d 893 (1991). Under Michigan law, a plaintiff may sue “for the conversion of funds that were delivered to the defendant for a specified purpose, but that the defendant diverted to his or her own use.” *Hogue v Wells*, 180 Mich 19, 24; 146 NW 369 (1914); *Warren Tool Co v Stephenson*, 11 Mich App 274, 300; 161 NW2d 133 (1968).

Statutory conversion is the subject of MCL 600.2919a, which provides:

Sec. 2919a. (1) A person damaged as a result of either or both of the following may recover 3 times the amount of actual damages sustained, plus costs and reasonable attorney fees:

- (a) Another person’s stealing or embezzling property or converting property to the other person’s own use.
- (b) Another person’s buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property when the person buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property knew that the property was stolen, embezzled, or converted.

(2) The remedy provided by this section is in addition to any other right or remedy the person may have at law or otherwise.

In accordance with MCL 224.6(7) and MCL 46.11(s), Plaintiffs succeeded to all rights and duties of their former appointed Road Commissions. To the extent the ICRC, JCRC, or CCRC was entitled to share in a distribution of MCRC SIP’s surplus reserves upon the closing of actuarial years from 2002 through 2012, such entitlements devolved upon the Boards of Commissioners of Ingham, Jackson, and Calhoun Counties respectively.

In Prosser & Keeton, *Torts* (5th ed.), §15, pp. 93–99, the authors distinguish between acquiring possession and withholding possession:

Where there has been no wrongful taking or disposal of the goods, and the defendant has merely come rightfully into possession and then refused to surrender them, demand and refusal are necessary to the existence of the tort.

Plaintiffs duly made demand; MCRCSIP, admittedly, refused to pay over their money (MCRCSIP Appendix Exhibit 18, ¶¶31-35). However, such demand was not truly necessary.

In *Trail Clinic, PC v Bloch*, 114 Mich App 700, 703–704; 319 NW2d 638 (1982), a medical clinic advised an insurance company to send payments owed to a doctor to the clinic, but the record showed that the doctor had already stopped working for the clinic. The clinic then endorsed and deposited checks from the insurance company, which the doctor was owed for services rendered at a new employer. *Id.* The Court of Appeals explained: “A demand is unnecessary ... where the property has been wrongfully appropriated by the defendant for his own use and benefit.” *Id.* at 706. Under the facts of *Trail Clinic*, the doctor's new employer was not required to prove that a demand for the checks was made. *Id.* at 706–707.

There are three elements to a common-law conversion claim: (1) a distinct act of dominion; (2) wrongfully exerted; (3) over another's personal property. The act is wrongful when it is inconsistent with the ownership rights of another. *Check Reporting Servs, Inc v Mich Nat'l Bank–Lansing, supra*, 191 Mich App at 626. MCL 600.2919a prohibits, but does not define, “conversion.” The appropriate understanding for this situation is that, “[w]hen a statute does not define a term, we will construe the term according to its common and approved usage.” *Nelson v Grays*, 209 Mich App 661, 664; 531 NW2d 826 (1995). “A legal term of art, however, must be construed in accordance with its peculiar and appropriate legal meaning.” *Brackett v Focus Hope, Inc*, 482 Mich 269, 276; 753 NW2d 207 (2008); see also MCL 8.3a. Therefore, the

common-law definition defines both common-law and statutory conversion, and each of its elements was well-pleaded below.

But MCL 600.2919a is also satisfied if property was embezzled. The elements of embezzlement by an agent or trustee are:

(1) the money in question must belong to the principal, (2) the defendant must have a relationship of trust with the principal as an agent or employee, (3) the money must come into defendant's possession because of the relationship of trust, (4) the defendant dishonestly disposed of or converted the money to [its] own use or secreted the money, (5) the act must be without the consent of the principal, and (6) at the time of the conversion, the defendant intended to defraud or cheat the principal.

People v Lueth, 253 Mich App 670, 683; 660 NW2d 322 (2002); MCL 750.174(1).

The funds at issue belong to (or were held in trust for) Plaintiffs' predecessors. Plaintiffs stand in a relationship of trust with MCRCSIP and MCRCSIP's members. MCRCSIP was in possession of this money because of that trust relationship. MCRCSIP disbursed Plaintiff Counties' share of declared surplus funds to its other members. Plaintiff Counties specifically informed MCRCSIP it did not have consent to distribute this money, and MCRCSIP, based on its early representations to Plaintiff Counties that they would be able to retain their portion of the distribution of surplus reserves, defrauded or cheated Plaintiffs of their aliquot shares. In short, all of the elements necessary to support a claim for statutory conversion were satisfied.

RELIEF REQUESTED

For all the foregoing reasons, Plaintiffs—the Counties of Ingham, Jackson, and Calhoun—respectfully request that this Honorable Court hold:

- A. Inasmuch as the governing documents—the Declaration of Trust, By-Laws, Inter-Local Agreement(s), and July 19, 1990 Memorandum²²—are binding on

²² But not the "MCRCSIP Refund Overview" which, aside from not being part of the record on appeal, MCR 7.210(A) (as acknowledged by MCRCSIP when attaching the document for the

the parties, but only allow for “less favorable” treatment of former members who voluntarily withdraw (Declaration of Trust, Article VI, §9(f) and Article XII; Inter-Local Agreement, ¶3H; July 19, 1990 Memorandum), Plaintiff Counties, which were prevented from exercising their legal right to continue membership in the Pool as successors in interest to their former appointed Road Commissions (Inter-Local Agreement, ¶¶1 and 24), should have been allowed to continue as members of the Pool under the Legislative purpose of the Act and the Pool’s plan documents, may not be accorded such unfavorable treatment, and are therefore entitled to aliquot shares of declared surplus in right of their predecessors calculated according to the July 19, 1990 Memorandum, for each year a surplus is or has been distributed.

- B. Given MCRC SIP’s status as an unincorporated voluntary association, its legal identity is not separate from that of its members. MCL 600.2051(2). The Pool is created as a Trust (Declaration of Trust, Article I), administered by a Board of Directors, each of whom is a Trustee (*id.*, Article 3, §1). The actions of the Pool/Members in denying Plaintiff Counties their right to succeed to the membership status and interests of their former appointed Road Commissions, which allowed remaining members to take for themselves the aliquot shares of surplus to which Plaintiff Counties succeeded, were tainted by conflict of interest and constituted a breach of Trust, and also predicated on an error of law which was at the root of termination agreements made by the Ingham and Calhoun County Road Commissions, nullifying whatever flowed therefrom in

first time to its October 31, 2017 Motion for Reconsideration, p. 4 footnote 3), is not authenticated by the Pool’s seal as required by the By-Laws, Article VI, §12.

terms of a purported forfeiture of rights. *In re Estate of Finlay*, 430 Mich 590, 595; 424 NW2d 272 (1988). Again, Plaintiff Counties as rightful successors are therefore entitled to repayment of aliquot shares of surplus in right of their predecessors calculated according to the July 19, 1990 Memorandum, for each year that surplus is distributed.

- C. Plaintiff Counties' claim for conversion or embezzlement, and treble damages, was improperly dismissed by the Circuit Court, and the case must be remanded to address that basis for recovery in addition to the foregoing.
- D. The foregoing rulings make it unnecessary for this Court to resolve claims of violation of Const 1963, Art 9, §18, which can only lead to the same result.

Respectfully submitted:

COHL, STOKER & TOSKEY, P.C.

Date: February 19, 2019

By: /s/ Bonnie G. Toskey

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APPENDIX 59

**AGREEMENT IN RECOGNITION OF TERMINATION FROM
MICHIGAN COUNTY ROAD COMMISSION SELF-INSURANCE POOL**

This Agreement, dated October 23, 2012, is made by and between the Michigan County Road Commission Self-Insurance Pool ("MCRCSIP") and the Board of County Road Commissioners of the County of Calhoun ("the Commission"), as follows:

Background

The MCRCSIP is a group self-insurance pool, authorized by MCL 124.1, *et seq.*, that provides risk management and coverage to its Members, including the Commission.

The Commission is a body corporate, authorized by MCL 224.1, *et seq.*, and is a Member of MCRCSIP as a signatory to both the MCRCSIP Inter-Local Agreement and the Declaration of Trust.

The Calhoun County Board of Commissioners has, pursuant to and in accordance with MCL 224.6(7), by Resolution Dissolving the Board of the Calhoun County Road Commissioner and Transferring All of Its Powers, Duties, and Functions to the Calhoun County Board of Commissioners; (Resolution dated September 20, 2012); dissolved the Commission as of November 1, 2012, and determined that the powers, duties, and functions of the Commission will be transferred to and undertaken by Calhoun County. Consequently, as of November 1, 2012, the Commission is dissolved and by operation of law cannot and is not eligible to be a Member of the MCRCSIP as provided in the applicable By-Laws and the Inter-Local Agreement that govern membership in the MCRCSIP. As such, both the Commission and the MCRCSIP agree that under the circumstances, the Commission is not eligible to participate as a member of the MCRCSIP as of 12:01 a.m. on November 1, 2012.

Consequently, steps will be taken to effectuate the cancellation of insuring agreements issued by MCRCSIP to the Commission effective as of 12:01 a.m. on November 1, 2012.

The parties recognize that the Declaration of Trust, Inter-Local Agreement, and By-Laws contain provisions governing the withdrawal of a member county road commission from the MCRCSIP, but given the abrupt and impending dissolution of the Commission, those provisions cannot be implemented by either party to take effect before November 1, 2012.

The purpose of this Agreement, the terms of those withdrawal provisions notwithstanding, is to effectuate the termination of the Commission's membership in MCRCSIP as of November 1, 2012.

The Agreement

The MCRCSIP and the Commission covenant and agree as follows:

1. **Waiver of Withdrawal Notice Period.** Each party, for itself and its directors, officers, successors and assigns, does hereby waive and hold for naught any and all provisions in

the Declaration of Trust, By-Laws, and Inter-Local Agreement that concern, relate to regulate, or affect in any way the requirement for written notice of withdrawal at least sixty days prior to the effective date of withdrawal.

- 2. Effective Withdrawal Date. By operation of the action taken by the Calhoun County Board of Commissioners (September 20, 2012) the Commission's membership in MCRCSIP shall be and is hereby terminated concurrent with the termination of the Calhoun County Road Commission as of 12:01 a.m. on November 1, 2012, without the necessity of any further action by either of the parties to this Agreement.
- 3. Contribution Adjustment. Any applicable contribution adjustment shall be made at the time cancellation is effective or as soon as practical thereafter, but payment or tender of unearned contribution shall not be a condition precedent to cancellation.
- 4. Existing Claims. MCRCSIP shall continue servicing any of the Commission's claims pending, those claims made prior in time to November 1, 2012 that are covered by a claims made policy, and those claims which occur or arise from incidents or events occurring prior in time to November 1, 2012 that are covered by occurrence policies, being the time of termination (November 1, 2012), unless the Commission or its successor in function specifically assumes the liability therefor and makes provision to indemnify MCRCSIP from loss by taking over the servicing of any such claim(s). The Commission or its successor in function shall be responsible for all applicable reimbursements as provided in the Inter-Local Agreement, By-Laws and Declaration of Trust in force as of the date of this Agreement.
- 5. Limited Purpose of this Agreement. The sole purpose of this Agreement is to effectuate the termination of the Commission's membership from the MCRCSIP as of 12:01 a.m. on November 1, 2012, and not to affect or impact in any way any other terms or conditions contained in the Declaration of Trust - Inter-Local Agreement, or By-Laws.

Michigan County Road Commission
Self-Insurance Pool

By: Gayle Pratt
Gayle Pratt
Its: Administrator

Date: 10-24-12

Calhoun County Board of
County Road Commissioners

By: Kevin Henning
Kevin Henning
Its: Managing Director

Date: 10-23-12