

SPECIAL ASSESSMENT CONTRACT – MLIA & SILVER CREEK TOWNSHIP

This Special Assessment Contract (the “Contract”) is entered into as of the 18th day of February, 2021, by and between the Township of Silver Creek, a Michigan general law township, whose address is 32764 Dixon Street, Dowagiac, MI 49047 (the “Township”), and the Magician Lake Improvement Association, a Michigan limited liability company, (“MLIA”), whose address is: PO Box 313, Dowagiac, MI 49047.

WITNESSETH:

WHEREAS, MLIA is Michigan non-profit corporation that was formed to, among other things “the benefit of the community... (and) to foster, promote, and educate the community, on the social and recreational uses and the environment concerns and maintenance of Magician Lake of Silver Creek Township, Cass County, Michigan”; and

WHEREAS in accordance with its Articles of Incorporation, the MLIA has the authority to do all lawful acts to carry out its purposes, consistent with the provisions of the Nonprofit Corporation Act; and

WHEREAS Silver Creek Township is a Michigan Municipal Corporation with its boundaries located entirely within Cass County, Michigan; and

WHEREAS in accordance with PA 188 of 1954, Silver Creek Township has previously created a special assessment district and adopted plans and cost estimates for the funding of weed control and improvements to Magician Lake within the Township; and

WHEREAS said special assessment expired in 2019 and the Township and MLIA wish to commence preparation of a (5-year) special assessment for weed control and the improvement

of Magician Lake within the Township with the goal of continuing said lake improvements; dependent upon perceived public support from those in the special assessment district; and

WHEREAS, MLIA has requested the authority to participate in the procuring of plans and cost estimates and the approval of bills for the Special Assessment District; and

WHEREAS MLIA is a voluntary association, which may or may not represent the all of the property owners within the district; and

WHEREAS Silver Creek Township is the approving authority for “public works” projects funded via special assessment and it has a responsibility to assure support for the project and adherence to any plans and cost estimates for any such improvement project; and

WHEREAS the Silver Creek Township Board wishes to accept the assistance of MLIA, as outlined herein, due to its particular focus on Magician Lake, which is the subject matter of the proposed special assessment and to that end both parties wish to establish their respective responsibilities as it relates to the proposed renewed special assessment district.

NOW, THEREFORE, the Parties, in consideration of their mutual undertakings as described herein, hereby agree to the following:

1. **PETITION.** The Township Board requires petitions representing not less than 51% of the property owners in the special assessment district prior to the re-establishment of the special assessment district, in order to assure itself that there is majority support for said project. The Township will provide said petitions to MLIA and any members of the public who wish to circulate said petitions. Upon receipt of said signed petitions, the Township Clerk or designee of the Clerk will verify the signatures as required by Act No. 188 of the Public Acts of Michigan of 1954, as amended (“Act 188”), and will place the matter on a township board agenda for tentative approval. The Township will make every effort to undertake the necessary public

hearings and noticing as required by PA 188 for petitions that are filed on or before June 15th of the calendar year. Due to statutory noticing and timing requirements, the Township cannot guarantee that petitions submitted after June 15th of the calendar year will be process and approved in time for the December tax bills.

2. PROCUREMENT OF PLANS AND COST ESTIMATES. Silver Creek Township hereby designates MLIA to procure detailed plans and cost estimates for the proposed lake improvements for the proposed 5-year period and submit it to the Township Board by no later than July 1st of the year for the initial SAD request. MLIA shall submit a [RS1] updated plans and cost estimates to the Township Board, with any additional data requested by the Township Board, in a timely manner. Failure to timely submit plans and cost estimates will result in delay of action by the Township, as it is the Township's obligation to make such information available for public inspection prior to the first public hearing. If the plans and cost estimates are not detailed enough and/or if more information is needed, the Township Board may, at its sole discretion, contact the contractor(s) and request additional information. The Township Board may require the contractor(s) and/or the MLIA or both to appear at a board meeting for the presentation of the plans and cost estimates and/or public hearing thereon.

3. UNDERTAKING BY TOWNSHIP. The Township hereby agrees that it will cause a petition to be prepared and be made available to the public and the MLIA. The Township further agrees that it will follow the procedures in PA 188 of 1954, as amended for the re-establishment of the special assessment project as outlined in the plans and cost estimates, as the same may be revised at the behest of the Township Board.

4. UNDERTAKING BY MLIA. MLIA agrees to obtain and provide the Township the required number of valid signatures on the petitions and to assist the Township in such

further special assessment proceedings, if any, that may result from the filing of a signed petition(s) with the Township. Such assistance may include: the tabulation of petition land areas in support of the proposed special assessment project and in the procurement preparation of plans, cost, estimates and the procuring of potential contractors for said improvements.

5. **TOWNSHIP BOARD DISCRETION.** While the Township agrees to prepare a special assessment petition as described herein, it is acknowledged and agreed by all parties that the Township Board retains full discretion to decide, based on a lack of public support or any other reason the Township Board deems appropriate, to not ultimately proceed with the establishment of the special assessment district and the public improvements referenced in this Contract. Should the Township Board make such a decision, this Contract shall thereupon terminate and be of no further force and effect.

6. **DEALING WITH VENDORS.** The Township Board of Silver Creek Township is the party responsible for all PA 188 of 1954 proceedings and contractors and has the authority to enter into contracts for services made by vendors in support of the approved plans and cost estimates. All vendor contracts must be pre-approved and signed by the Township Board; however, the Township Board requires the participation of the MLIA in procuring bids, and contracts for consideration by the Board. The Township Clerk will forward copies of all contracts to the MLIA.

It is understood that the MLIA has a considerably narrower focus, on the lake alone, than that of the Silver Creek Township Board. For this reason, the Township Board hereby delegates pre-approval authority for vendor bills, after the signing of vendor contracts with the Township Board, to the MLIA. The Township Board of Silver Creek Township shall arrange to pay all those contractor bills which are received and pre-approved by the MLIA at the Township

Board's monthly meeting, conditioned upon receipt of the same at least 7 days prior to said meeting (first Wednesday of every month for payment on the second Wednesday of the month); and so long as the Township Board finds that the same are supported by the plans and cost estimates that have been approved.

7. PROVISION OF MATERIALS. MLIA shall annually submit to the Silver Creek Township Board a complete budget of all anticipated income and expenses related to the Magician Lake special assessment, no later than February 1 of each year. MLIA will also annually submit income and expense statements related to the special assessment account for the time period of May 1 through November 1 of each year. MLIA shall provide to the Township Board of Silver Creek Township MLIA Board member contact information, including name, address, telephone and email address. This information shall be sent each time there are changes to board members information within 7 days from when MLIA receives the notice.

Any contracts, reports, and Certificates of Liability Insurance not already in possession of the Township Board of Silver Creek Township shall be provided to the Township by MLIA when executed or completed. MLIA shall procure liability insurance to cover actions of the officers and directors serving on the MLIA Board, and a copy of the certificate of such liability coverage shall be made available within 7 days to the Township Board of Silver Creek Township. Any authorization contracts obtained from the Michigan Department of Environment, Great Lakes, and Energy (EGLE) shall be submitted to the Township Board, as well as all Material Safety Data Sheets related to proposed chemical use on Magician Lake, within 7 days of receipt or request by the Township.

MLIA shall provide all meeting notices to Silver Creek Township at least 14 days in advance of the required publishing dates under OMA, so they may be posted in the proper areas and published as required by the Open Meetings Act, Public Act 267 of 1976;

8. MISCELLANEOUS. This Contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors, assigns and personal representatives. Unless otherwise specifically provided, all notices and other documents to be served or transmitted hereunder shall be in writing and addressed to the respective parties hereto at the addresses stated on page 1 of this Contract or such other address or addresses as shall be specified by the parties hereto from time to time and may be served or transmitted in person or by ordinary mail properly addressed with sufficient postage. This Contract has been executed in the State of Michigan and shall be governed by Michigan law. This Contract may only be amended pursuant to a written document executed by all of the parties hereto. The waiver by any party hereto of a breach or violation of any provision of this Contract shall not be a waiver of any subsequent breach of the same or any other provision of this Contract. If any section or provision of this Contract is unenforceable for any reason, the unenforceability thereof shall not impair the remainder of this Contract, which shall remain in full force and effect. It is contemplated that this Contract may be executed in multiple counterparts, all of which together shall be deemed to be one Contract. This Contract represents the entire understanding and agreement between the parties hereto with regard to the matters addressed herein. All prior oral or, except to the extent provided herein, written understandings and agreements with regard to the matters addressed herein are specifically merged herein. The captions in this Contract are for convenience only and shall not be considered as a part of this Contract or in any way to amplify or modify the terms and

provisions hereof. This Contract shall be enforceable only by the parties hereto and their successors in interest by virtue of an assignment which is not prohibited under the terms of this Contract, and no other person shall have the right to enforce any of the provisions contained herein. All Exhibits attached hereto are incorporated herein by reference as though fully stated herein.

IN WITNESS WHEREOF, the parties have executed this Contract as of the day and year first written above.

TOWNSHIP OF SILVER CREEK

By Bill Saunders
Bill Saunders
Supervisor

By Lorri Behnke
Lorri Behnke
Clerk

STATE OF MICHIGAN)
)
COUNTY OF CASS)

Acknowledged before me in Cass County, Michigan, this 18th day of February, 2021, by Bill Saunders and Lorri Behnke, the Supervisor and Clerk, respectively, of the Township of Silver Creek, a Michigan general law township, for and on behalf of the Township.

Signature Lindsay R. Krohne Printed name Lindsay R. Krohne

Notary Public, State of Michigan, County of Cass

My commission expires: 9/25/2027

MAGICIAN LAKE IMPROVEMENT
ASSOCIATION, LLC

Todd Tirota
Signature

Todd Tirota
Printed Name

Board member
Title

STATE OF MICHIGAN)
)
COUNTY OF CASS)

Acknowledged before me in Cass County, Michigan, this 18th day of February,
2021, by Todd Tirota of Magician Lake Improvement Association, LLC, a
Michigan non-profit entity, for and on behalf of it.

Signature Lindsay R. Krohne

Printed name Lindsay R. Krohne

Notary Public, State of Michigan, County of Cass

My commission expires: 9/25/2027