

Action Request



Committee: Board of Commissioners

Meeting Date: 12/10/2024

Requesting Department: Administration

Submitted By: Ben Wetmore

Agenda Item: Crockery Lake Contract With Chester Contract

Suggested Motion:

To approve and authorize the Board Chair and Clerk/Register to sign the Agreement for the Care, Management, and Maintenance of Land Located at Crockery Lake, and to appropriate \$563,404.00 from the General Fund balance, Monsanto reserve for the purpose of funding this Agreement.

Summary of Request:

This grant provides funding for Chester Township to engage in community revitalization efforts consistent with the attached contract. This effort will include work to rehabilitate Crockery Lake, and also provide funding for the oversight and management of these operations by the local jurisdiction. This effort will revitalize an economically vulnerable part of the County and serve to boost the economic performance of the area, which will have the net effect of increasing tax revenues.

Financial Information:

Total Cost: \$563,404.00	General Fund Cost: \$563,404.00	Included in Budget:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> N/A
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If not included in budget, recommended funding source:

General Fund, Monsanto Reserve

Action is Related to an Activity Which Is: Mandated Non-Mandated New Activity

Action is Related to Strategic Plan:

Goal:

Objective:

Administration: Recommended Not Recommended Without Recommendation
County Administrator:

Committee/Governing/Advisory Board Approval Date: 12/3 F&A

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

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

RECITALS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNTY OF OTTAWA

TOWNSHIP OF CHESTER

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

By: _____
Troy Goodno, Supervisor

Date: _____

Date: _____

EXHIBIT A

Table 28. Crockery Lake proposed lake restoration program costs. NOTE: Items with asterisks are estimates only and are likely to change based on acquisition of formal quotes from qualified vendors.

Proposed Crockery Lake Improvement Item	Year 1 Costs	Years 2-5 (Annual) Costs⁴
Systemic herbicides ¹ for EWM treatment	\$11,520	\$10,580
PrO2 System ² (includes annual lease cost and electrical for each year as well as maintenance)	\$ --	\$70,000
Drain filters ³ for drains Note: maintenance for future years	\$5,000	\$3,000
Framework for septic system maintenance program; implementation ⁴	\$7,000	\$1,500
Professional services (limnologist management of lake, oversight, EGLE compliance, implementation of restoration program, farm round-table discussions, BMPs recommendations, education) ⁵	\$25,000	\$25,500
Contingency ⁶	\$4,852	\$11,058
Administration/TWP/Clerical	\$4,696	\$4,696
Total Annual Estimated Cost	\$58,068	\$126,334
TOTAL OVERALL COST = \$563,404		

¹ Herbicide treatment scope may change annually due to changes in the distribution and/or abundance of aquatic plants. This item is paid for in the existing weed control Special Assessment District (SAD) which is separate from this proposed program.

² Oxygenation system is based on lease option (no purchase is available). The first year more testing is required by EGLE and thus the system will begin operations in 2026. If permitting issues arise, other comparable methods will be utilized to reduce legacy phosphorus for nutrient reduction.

³ Drain filters include individual, retrofitted biologically activated filters for nutrient and solid reductions. In future years, maintenance of the filters will be required.

⁴ Septic system framework cost based on record gathering needed and time allocated for development. Future years, maintenance of records is expected at reduced cost.

⁵ Professional services includes comprehensive management of the lake with two annual GPS-guided, aquatic vegetation surveys, pre and post-treatment surveys for aquatic plant control methods, oversight and management of the aquatic plant control program and all management activities, all water quality monitoring and evaluation of all restoration methods, review of all invoices from contractors and others billing for services related to the improvement program, education of local riparians through attendance at up to three regularly scheduled annual board meetings, meetings with farmers on BMP's and collaboration with the local Conservation District or other partners. Also included are focus group collaborations and development of a potential county-wide framework using the CCF.

⁶ Contingency is 10% of the total project cost, to assure that extra funds are available for unexpected expenses. Note: Contingency may be advised and/or needed for future treatment years. Contingency funds may also be used for other water quality improvements and watershed management.

⁷ Administration and legal fees are used for Chester Township to allocate and release funds as needed for the improvements over a five-year period.