CONTRACT

Between the

Madison Metropolitan Sewerage District
And

COUNTY OF DANE

THIS AGREEMENT is between the Madison Metropolitan Sewerage District hereinafter referred to as “MMSD,” acting as the contract administrator for Yahara WINs and the County of Dane, Land & Water Resource Department, hereinafter referred to as “Dane County.”

RECITALS

WHEREAS, MMSD, Dane County and other municipalities and entities are participants in the Yahara WINs Six Mile Creek Adaptive Management Pilot Project which seeks to achieve the goals of practical demonstrations of phosphorous control from farmland in the Six Mile Creek Watershed;

WHEREAS, Dane County has demonstrated a need for additional resources in order to complete its assigned responsibilities under the Yahara WINs Six Mile Creek Adaptive Management Pilot Project, and to expand the work to the entire Yahara River Watershed, including the Badfish Creek Watershed of the Rock River Basin;

WHEREAS, the Yahara WIN’s Adaptive Management Pilot Project wishes to provide financial resources to Dane County so that the Project can be completed, and has authorized MMSD, as its contract administrator to provide such resources;

WHEREAS, the Yahara WINs Adaptive Management Pilot Project also desires that Dane County conduct certain studies related to the project;

NOW THEREFORE, in consideration of the foregoing, the mutual covenants and obligations created in this Agreement and the benefits each party will derive and other valuable consideration, the receipt and sufficiency of which they acknowledge, MMSD and Dane County agree as follows:

I. RESPONSIBILITIES OF EACH PARTY:

A. DANE COUNTY WILL:

Provide the leadership, administration and staffing to ensure that its assigned responsibilities under the Yahara WINs Six Mile Creek Adaptive Management Pilot Project, as set forth in Section 7C of the Memorandum of Understanding (MOU) for an Adaptive Management Pilot Project in the Yahara Watershed which is incorporated herein as if fully set forth, are performed, and to expand the work to the entire Yahara River Watershed, including the Badfish Creek Watershed of the Rock River Basin.

1. Ensure that primary administrative functions and specific assignments are met in a timely and professional manner.

2. Provide quarterly progress reports regarding its work to MMSD.

3. Coordinate with MMSD on all news releases and information materials produced to publicize, announce, or promote the projects, activities, and events resulting from this Agreement. Acknowledge Yahara WINs partnership and MMSD support, where practicable, on any publications written or published or any audiovisual produced with Yahara WINs financial support and, if feasible, on any publication reporting the results of, or describing this supported activity.
4. Arrange for the completion of a Manure Digester Reverse Osmosis Study, including but not limited to selecting a consultant, in its sole discretion, to conduct the study. The parties agree that MMSD shall participate in the conduct of the study and shall have opportunities for input throughout the study.

5. Invoice MMSD on a quarterly basis for expenses incurred for any work authorized under this Agreement, along with supporting documentation that includes information regarding work performed, and a statement that the funds requested are necessary to meet planned activities. Dane County acknowledges that the total amount of reimbursement shall not exceed $150,000.00 in 2013 for work authorized under Section 7C of the MOU for an Adaptive Management Pilot Project in the Yahara Watershed.

6. Invoice MMSD within thirty (30) days of the completion and Dane County’s acceptance of the report resulting from the Manure Digester Reverse Osmosis Study. Dane County acknowledges that the total amount of reimbursement shall not exceed $30,000.00.

7. Designate the following individual as the liaison between Dane County and MMSD:

   Kevin Connors
   Director, Land & Water Resources Department
   5201 Fen Oak Ct, Rm 208
   Madison, WI 53718-8812
   Connors.kevin@countyofdane.wi.us

B. MMSD WILL:

1. Reimburse Dane County as set forth in Paragraph I.A., upon receipt and approval of a Dane County invoice with proper supporting documentation for any work conducted between January 1, 2013 to December 31, 2015. The maximum amount of reimbursement, including any expenses associated with the Manure Digester Reverse Osmosis Study shall not exceed $180,000.00 in 2013, not to exceed $150,000 for work authorized under Section 7C of the MOU for an Adaptive Management Pilot Project in the Yahara Watershed and not exceed $30,000 for work associated with the Manure Digester Reverse Osmosis Study in 2013.

2. Acknowledge that Dane County has performed work since January 1, 2013, in furtherance of the responsibilities set forth in Paragraph I.A.1, and reimburse Dane County for such work at the next quarterly invoice date or on June 30, 2013, whichever comes first. Thereafter, MMSD shall reimburse Dane County for work performed on a quarterly basis (i.e. September 30, December 31, March 31, and June 30).

3. Provide Dane County with an estimate of the total dollar amount of reimbursement through Yahara WINs for the ensuing year by September 30 of each year the Agreement remains effective. The estimate will be based on consultation with the Yahara WINs Executive Committee.

4. Designate the following individual as the liaison between MMSD and Dane County:

   David S. Taylor
   Director of Special Projects
   Madison Metropolitan Sewerage District
   1610 Moorland Road
   Madison, WI 53713
   Phone: 608-222-1201, ext. 276
   Fax: 608-222-2703
   Email: davet@madsewer.org

II. MISCELLANEOUS:

A. Term. The term of this Agreement will commence upon the date that this Agreement is fully executed, and shall expire on January 1, 2016.

B. Termination. This Agreement may be terminated by either party by written notice to the other party at least 30 days in advance of the effective date of the termination.

C. Reimbursement Amounts for 2014 and 2015. MMSD and Dane County shall mutually determine the total dollar amount that MMSD shall reimburse Dane County for work performed under this Agreement in 2014 and 2015 by
no later than October 31 of each preceding calendar year. If the parties cannot mutually agree to an amount, either party can terminate the Agreement by following the procedures set forth in Paragraph II.B.

D. **MMSD Obligations Contingency.** The furnishing of financial or other assistance by MMSD is contingent upon funds being available under the Yahara WIN’s MOU and the Yahara WINS Executive Committee authorizing expenditure of funds in the amount specified in Paragraph I.B. for 2013, and determined under Paragraph II.C. for 2014 and 2015. If MMSD learns it cannot fulfill its obligations because of a lack of funds, MMSD shall immediately notify Dane County to cease any work being performed and terminate this agreement following the procedures set forth in Paragraph II. B.

E. **Breach of Agreement.** MMSD, after notice of a violation and a reasonable period of time to cure, may terminate this agreement in whole or in part if MMSD determines that Dane County has failed to comply with any of the conditions of this agreement. MMSD shall follow the procedures set forth in Paragraph II.B, and promptly notify Dane County in writing of the determination and reasons for the termination, together with the effective date.

F. **Reimbursement After Termination.** Upon termination for any reason, MMSD agrees to reimburse Dane County for all expenses that were the result of its work under this Agreement, which were incurred through the date of termination subject to the financial contingency provision in Paragraph II.D.

G. **Suspension.** This Agreement may be temporarily suspended by MMSD or Dane County if either determines that corrective action by either party is needed to meet the provisions of this Agreement. Further, either party may suspend this agreement when it is evident that a termination is pending.

H. **Modification.** This Agreement may be amended in writing by mutual consent of the parties to this Agreement.

I. **Representations.** By signing this agreement, Dane County represents that the program or activities provided for under this Agreement will be conducted in compliance with all applicable laws, rules and regulations.

J. **Affirmative Action/Equal Employment.** During the term of this Agreement, each party agrees to abide by its own equal employment and non-discrimination policies and affirmative action plan.

K. **No Indemnification.** Each party shall be responsible for the consequences of its own acts, errors or omissions and those of its employees, boards, commissions, agencies, officers and representatives and shall be responsible for any losses, claims and liabilities which are attributable to such acts, errors or omissions including providing its own defense. In situations including joint liability, each party shall be responsible for the consequences of its own acts, errors or omissions as provided for herein. It is not the intent of the parties to impose liability beyond that imposed by federal or state statutes, or to waive or modify the provisions of Wis. Stat. § 893.80 or any other immunity, protection or limitation of liability that may be available. The obligations of the parties under this paragraph shall survive the expiration or termination of this Agreement.

L. **Dane County Employees.** Employees of Dane County shall remain its employees while carrying out their duties under this agreement and shall not be considered as MMSD employees for any purpose under this Agreement.

M. **MMSD Employees.** Employees of MMSD shall participate in efforts under this Agreement solely as representatives of MMSD. To this end, they shall not participate as directors, officers, employees, or otherwise serve or hold themselves out as representatives of Dane County.

N. **Third Party Beneficiary.** No one who is not a party to this Agreement shall be entitled to or have the right to claim to be a third party beneficiary hereunder or otherwise be entitled to enforce or seek the benefit of any of the terms or provisions of this Agreement.
Madison Metropolitan Sewerage District
By: ____________________________
    (Signature)
Title: Chief Engineer & Director
Date: 7/17/2013
Tax ID Number: 39-6005609

DANE COUNTY
By: ____________________________
    (Signature)
Title: County Executive
Date: 8-16-13