Resolution 01-2017

Execution of a Service Agreement Between the Yahara Watershed Improvement Network ("Yahara WINS") and Rock County

WHEREAS, Yahara WINS consists of municipalities that have executed an Intergovernmental Agreement (IGA) for an Adaptive Management Plan designed to fulfill phosphorus compliance obligations under their respective WPDES permits; and

WHEREAS, the Intergovernmental Agreement created an Executive Committee which has the authority to execute contracts and other instruments of any name or type necessary or convenient for the exercise of the powers granted in the Intergovernmental Agreement; and

WHEREAS, Yahara WINS efforts are focused on achieving phosphorus and sediment reductions in the Yahara River Watershed, which is broadly defined to include the Yahara River and Badfish Creek Watersheds; and

WHEREAS, a part of the Yahara River Watershed is located in Rock County; and

WHEREAS, Rock County provides planning and technical assistance to agricultural landowners, producers and other individuals or entities for the implementation of conservation practices that reduce sediment and nutrients (including phosphorus) from entering waters as well as provides other conservation benefits; and

WHEREAS, Yahara WINS desires to obtain assistance from Rock County to implement portions of the Adaptive Management Plan that will achieve phosphorus and sediment reductions in parts of the Yahara River Watershed located in Rock County; and

WHEREAS, a Service Agreement (Exhibit A) has been developed between Yahara WINS and Rock County which includes a scope of work and other conditions under which Rock County will provide assistance to Yahara WINS; and

WHEREAS, the Service Agreement has been executed by Rock County;

NOW, THEREFORE, BE IT RESOLVED that the Yahara WINS Executive Committee authorizes the Executive Committee President and the Executive Committee Treasurer to execute the Service Agreement with Rock County on behalf of Yahara WINS.

Attested by:

David Taylor, President

Jeffrey Rau, Treasurer

Resolution adopted by the Yahara WINS Executive Committee on April 20, 2017
Exhibit A

SERVICE AGREEMENT

This Service Agreement (the “Agreement”) is made and entered into this 21st day of April 2017, by and between the Yahara Watershed Improvement Network (“Yahara WINS”) and Rock County, Wisconsin (the “County”).

RECITALS:

A. Yahara WINs consists of municipalities who have enacted the Intergovernmental Agreement for an Adaptive Management Plan in the Yahara Watershed (IGA) to jointly participate in an Adaptive Management Plan to fulfill their Yahara Watershed phosphorus compliance obligations under their Wisconsin Pollution Discharge Elimination System (WPDES) permit and the Rock River Total Maximum Daily Load (TMDL);

B. Yahara WINs desires to obtain assistance from the County to implement portions of the Adaptive Management project.

C. The County provides planning and technical assistance to agricultural landowners, producers and other individuals or entities for the implementation of conservation practices that reduce sediment and nutrients (including phosphorous) from entering waters as well as provides other conservation benefits.

AGREEMENT:

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other consideration, the receipt and sufficiency of which is hereby acknowledged, Yahara WINS and the County agree as follows:

1. Scope of Work. County shall perform the services and provide the deliverables noted below:

a) Work with landowners in the County’s portion of the Yahara Watershed to identify locations where conservation practices or engineered solutions can be implemented to achieve phosphorus reductions.

b) Provide implementation assistance to landowners interested in installing conservation practices or engineered solutions that result in phosphorus reductions. Internally drained areas of the watershed shall not qualify unless they are currently tile-drained and adding phosphorus to the Yahara basin.

c) Calculate modeled phosphorus reductions for installed practices based on SNAP Plus or other agreed upon models.
phosphorus reduction per year as calculated using SNAP Plus of other models agreed to by Yahara WINs and the County. For the length of this agreement, there is no specific phosphorus reduction goal; however, Yahara WINs modeling shows that 550 pounds of phosphorus reduction per year will be required in the County’s portion of the Yahara Watershed. Over the length of this Agreement, Yahara WINs and the County will assess the potential for the County to provide these pounds.

6. **Performance.** Unless otherwise agreed to in writing, the County shall furnish all services, supplies, tools, and equipment to accomplish the Work in a professional manner.

7. **Responsibility for Acts, Errors and Omissions.** 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 of joint liability, each party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, agents, boards, commissions, agencies, officers and representatives. It is not the intent of the parties to impose liability beyond that imposed by state statutes.

8. **Relationship of Parties.** The County is an independent consultant. Yahara WINs has direction and control only as to the end result to be accomplished, and the County has direction and control over the means and method of accomplishing that end result.

The County shall not subcontract or assign all or any portion of the Work without prior written approval of Yahara WINs. Notwithstanding the previous sentence, Yahara WINs acknowledges and agrees that the County intends to contract with agricultural producers, other government agencies, for the implementation of conservation practices.

9. **Permits, Laws, Regulations, and Public Ordinances.** The County shall comply with all federal, state, and local statutes, rules, regulations, and ordinances related to the County’s performance of the Work.

10. **Governing Law and Interpretation.** This Agreement shall be governed by laws of the State of Wisconsin. If any provision of this Agreement is held unenforceable, the remainder of these provisions shall be given effect to the maximum extent possible. The parties agree to reform this Agreement to replace any such invalid or unenforceable provisions that come as close as possible to the intention of the stricken provision.

13. **Use of Documents.** Documents and plans provided by the County pursuant to this Agreement are for the benefit and use of Yahara WINs. Except for documents and plans subject to confidentiality requirements of federal funding programs, County shall provide to Yahara WINs complete copies of all final documents and plans, in paper and electronic form as requested by Yahara WINs.
d) Verify the status of installed conservation practices or engineered solutions that result in phosphorus reductions by conducting follow-up visits with landowners.

e) Provide administrative and recordkeeping activities associated with disbursement of cost share funds received from Yahara WINS.

f) Attend at least two Yahara WINS meetings each year and provide participants updates on phosphorus reduction activities being conducted in the County's portion of the Yahara Watershed.

g) Provide an annual report to Yahara WINS by March 31 of each year of this agreement that summarizing activities conducted in the previous year, including the locations of installed phosphorus reducing practices, the type of practices installed, and other relevant information.

2. **Term of Agreement.** This Agreement covers a two (2) year period beginning April 1, 2017 and ending March 31, 2019. The County shall commence the Work on April 1, 2017 and shall perform and complete the Work.

3. **Modification or Termination of the Agreement.** The terms of this Agreement may be modified by the written agreement of the County and Yahara WINS. The County or Yahara WINS may terminate the agreement at any time, with or without cause. In the event that either party desires to terminate the agreement, this can be completed with written 60-day notice. In the event of termination the County will be compensated for services rendered and expenses incurred prior to the date of the termination notice in accordance with the terms set forth in this Agreement.

4. **Compensation for Staff Support and Related Expenses.** Yahara WINS shall reimburse the County for staff time and related expenses associated with this scope of work. The County will submit a quarterly invoice to Yahara WINS which identifies staff hours and costs for each person performing work consistent with this Scope of Work, along with any related expenses. Reimbursement will be made by Yahara WINS following acceptance of the quarterly invoice. Yahara WINS shall make available a maximum of $22,000.00 for aforesaid costs to support these initiatives from April 1, 2017 through March 31, 2018 and an additional $27,500 from April 1, 2018 through March 31, 2019.

**Yahara WINS Cost Share Funds:** Yahara WINS shall make available a maximum of $18,000 available from April 1, 2017 through March 31, 2018 and an additional $22,500 from April 1, 2018 through March 31, 2019 for the installation of phosphorus reducing practices. Cost share funds will be reimbursed on a project specific basis. To be eligible for reimbursement, the practice must be installed and the resulting phosphorus reduction must be verified using SNAP Plus or other models agreed up by Yahara WINS and the County.

5. **Phosphorus Reduction Goal.** The goal of the agreement is to install conservation practices and/or engineered solutions in the Yahara River Watershed that result in
16. **Giving Notice.** Whenever any provision of this Agreement requires the giving of written notice, it shall be deemed to have been validly given if delivered in person to or if delivered at or sent by registered or certified mail postage prepaid to:

For Yahara WINS: Yahara WINS Executive Committee President, Madison Metropolitan Sewerage District, 1610 Moorland Road, Madison, Wisconsin 53713.

For Rock County: Land Conservation Committee Chair, Richard Bostwick, Rock County Courthouse, 51 South Main Street, Janesville, WI 53545.

18. **Miscellaneous.** This Agreement has been executed by an authorized representative of both parties.

---

**YAHARA WATERSHED IMPROVEMENT NETWORK**

By: [Signature]

Title: President - Yahara WINS Executive Committee

Date: 4/20/17

---

**ROCK COUNTY, WISCONSIN**

By: [Signature]

Title: Chair - Rock County Land Conservation Committee

Date: March 23, 2017

---

**By: [Signature]**

Title: Treasurer - Yahara WINS

Date: 4/21/17
Hi Dave,

Some comments on the agreement, below.
Please call with any questions.
Comment #3 was a significant discussion item at the SWTAC meeting this week.

Gary

COMMENTS

1. par 1. “Scope of Services” instead of “work”
2. par 1.b): Clarify what “assistance” means: Advice, funding, staff?
3. par 1.b): Provide definition for “Internally drained areas.” Minimum ponded area; minimum basin area; minimum ponded depth; as applies to which recurrence interval storm or flood. Clarify whether a non-navigable-stream culvert outlet also negates definition as internally drained.
4. par 1.d): Specify minimum frequency of follow-up visits. Clarify whether visits are one-time or periodic. If latter, for how many years?
5. par 1.e): “… and provide copies of such records to Yahara WINS upon request.”
6. par 1.g): “… by March 31 of the succeeding year…”
7. par 1.g): Check wording: “… agreement that summarizing activities…”
8. par 1.g): “… including… costs of installed practices…”
9. par 2.: “Services” rather than “Work.”
10. par 3.: Capitalize all instances of “Agreement” where it refers to this agreement.
11. par 4.: “Scope of Services.”
12. par 4.: Shall reimburse … within 30 days?
13. par 4.: Criteria for acceptance of invoices?
14. par 6: Wording is ambiguous: What is the intent? To provide services? To provide in professional manner? Or both? If both, use two sentences or compound sentence to remove ambiguity. To illustrate structural issue: Who would agree in writing to provide services in a non-professional manner?
attached. Also attached is a map showing the meeting location. Arrangements can be made for you to participate by telephone if need be—please notify me if you would like to do so.

Dave

David S. Taylor  
Director of Ecosystem Services  
Madison Metropolitan Sewerage District  
1610 Moorland Road  
Madison, WI 53713  
Phone-Direct: 608-709-1867  
Phone-Alternate: 608-222-1201, ext. 276  
Fax: 608-222-2703  
Email: davet@madsewer.org