SERVICES AGREEMENT

This Services Agreement (the “Agreement”) is made and entered into this ___ day of __________ 2016, by and between the Yahara Watershed Improvement Network (the “Yahara WINS”) and Dane County, Wisconsin (the “County”).

RECITALS:

A. Yahara WINS is pursuing an approach to address reductions of phosphorus in the Yahara Watershed through an Adaptive Management project. For the purpose of this Agreement, the Yahara Watershed is broadly defined to include the Yahara River and Badfish Creek Watersheds.

B. 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.

C. Yahara WINS desires to obtain such assistance from the County to implement portions of the Adaptive Management project.

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 specified in the Scope of Work, which is attached hereto and incorporated herein as Attachment A-1 (the “Work” or the “Services”). The “Work” includes an identification of Roles and Responsibilities, Reporting, Deliverables, Performance Goals, Corrective Actions, Payment Schedules and other relevant information.

2. Term of Agreement. This Agreement covers a five (5) year period beginning January 1, 2017 and ending December 31, 2021, unless otherwise terminated per Section 7 (Termination for Cause) of this Agreement. The County shall commence the Work on January 1, 2017 and shall perform and complete the Work as required by Attachment A-1.
3. **Modification of the Agreement.** The terms of this Agreement, including Attachment A-1 may be modified by the written agreement of the County and Yahara WINS.

4. **Compensation.** Yahara WINS shall pay County at the times and in the amounts stated in Attachment A-1 (the “Contract Price”).

5. **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. The County shall also participate in meetings as stated in Attachment A-1.

6. **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.

7. **Termination for Cause.** The County may terminate this Agreement upon 90 days written notice (the “90 day Termination Period) to Yahara WINS if Yahara WINS fails to deliver payments by the schedule required in this Agreement.

   Yahara WINS may terminate this Agreement upon 90 days’ written notice to County (the “90 Day Termination Period”) upon the happening of the following events:

   (a) County fails to deliver any reports, drawings, designs, key project deliverables, documents or other materials in final form reasonably acceptable to Yahara WINS by the schedule required by this Agreement.

   (b) County fails to perform any services required by this Agreement in a timely and professional manner.

   (c) County does not achieve at least 80% of the cumulative phosphorus reduction goal for new pounds of phosphorus in any consecutive three calendar year period as specified in Attachment A-1.

   In the event that either party terminates this Agreement by giving the 90 day notice of termination, such termination shall be effective on the last day of the 90 Day Termination Period.

8. **Relationship of Parties.** 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.
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.** 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.

11. **Nonwaiver.** Neither an extension of time for any reason beyond the date fixed herein for the completion of the Agreement or acceptance of any Work shall be deemed to be a waiver or abandonment of Yahara WINS right to abrogate this Agreement or to enforce the provisions of this Agreement.

12. **Patent Guarantees.** County warrants its services covered by this Agreement will not infringe or contribute to the infringements of any patents, trademarks, or copyrights, either in the USA or foreign countries, excluding, however, any infringements solely related to concepts, designs, or ideas furnished in writing by Yahara WINS which, as between Yahara WINS and County, originated with Yahara WINS.

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 County or 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.

14. **Complete Agreement.** This Agreement constitutes the complete and entire agreement between the parties and supersedes any previous communications, representations, or agreement, whether oral or written, with respect to the subject matter hereof.

15. **Captions.** The captions in this Agreement are for convenience only and do not in any way limit or amplify the provisions of this Agreement.

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 Dane County: Dane County Executive, City County Building (Room 421), 210 Martin Luther King Jr. Blvd, Madison, WI 53703.

17. **Nondiscrimination.** In the performance of services under this Agreement, the Parties agree not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, handicap, nation origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs or student status.

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

**YAHARA WATERSHED IMPROVEMENT**

**DANE COUNTY, WISCONSIN NETWORK**

By: ____________________________  By: ____________________________

Title: ____________________________  Title: ____________________________

Date: ____________________________  Date: ____________________________

**Attachments:**

Attachment A-1 – Scope of Work, Performance Goals and Metrics, Reporting, Deliverables, Payment Schedule and Contract Price
Attachment A-1
Scope of Work

1. **Statement of Purpose:**
The purpose of this Scope of Work is to implement portions of the Adaptive Management Plan For The Yahara Watershed. This plan was developed by Madison Metropolitan Sewerage District (MMSD) with input from multiple stakeholders, including Dane County. The plan will be used by a broad coalition of municipal entities in the Yahara Watershed as a compliance strategy to meet phosphorus and total suspended solids (TSS) requirements related to the Rock River Total Maximum Daily Load (TMDL). These requirements have or will be placed in Wisconsin Pollutant Discharge Elimination System (WPDES) held by the municipal entities. These municipal entities have formed an intergovernmental group called Yahara WINS. Yahara WINS members are pooling resources to meet water quality goals related to the adaptive management plan, improving the overall health of the watershed. This Scope of Work focuses on phosphorus reductions. TSS reductions will also be monitored, and modeling of TSS reductions will be evaluated to the extent practicable by all parties. For the purpose of the Scope of Work, the Yahara Watershed is broadly defined to include the Yahara River and Badfish Creek Watersheds.

2. **Background**
Landowners and producers in the Yahara Watershed have a longstanding history of implementing conservation practices either on their own or with assistance from the County. Portions of the watershed have been targeted through the years for strategic implementation projects to address agricultural nonpoint sources of pollution including sediment and nutrients; such as the Priority Watershed Program (state) and Mississippi River Basin Imitative (federal). Most recently, MMSD and Yahara WINS worked with the County to conduct a pilot project for adaptive management implementation in the upper reaches of the Yahara Watershed (specifically Six Mile Creek). Based on this work, MMSD and Yahara WINS have opted to move forward with full scale implementation of an adaptive management plan for the entire Yahara Watershed and are seeking technical assistance from the County on implementation of agricultural conservation practices.

3. **Project Timeframe**
The adaptive management plan covers a 20 year period, beginning in 2017 and ending in 2036. Consistent with the time period specified in Section 2 of this Agreement, this Scope of Work covers the time period of January 1, 2017 through December 31, 2021.

4. **Roles & Responsibilities**
Dane County will be responsible for the following activities:
A) Inventorizing resource concerns

i. 

ii. A primary focus will be on completing inventory work in the Door Creek and Badfish Creek watersheds.

B) Practice implementation including:

i. Discuss and identify resource needs to address water quality standards and conservation goals through one-on-one conversations and farm walk-overs with landowners, producers, renters and consultants.

ii. Determine objectives by working with landowners to identify resource needs and values.

iii. Inventory resources including collecting information regarding the resource concerns and needs.

iv. Analyze resource data to establish current baseline conditions including estimated phosphorus losses using SNAP Plus or other agreed to methods.

v. Formulate alternatives for conservation practices to address resource concerns and needs and discuss with landowners.

vi. Evaluate alternatives to determine effectiveness in addressing resource concerns and needs.

vii. Consult with landowners to make conservation practice decisions to address resource concerns.

viii. Implement the plan with landowners for proposed conservation practice(s) including:

• Assist landowners with developing timelines to implement conservation practices.
• Develop cost estimates for planned and designed practices where the County is providing the technical assistance as well as identify potential funding sources and packages.
• Conduct survey and design work for conservation practices.
• Review third party construction plans when the County is not the primary technical assistance provider.
• Develop and review cost share agreements with landowners for approved conservation practices and funding sources.
• Conduct construction oversight of practice installation for structural practices.
• Verify and document conservation practices are installed in accordance with the design, cost share agreement and applicable technical standards.
• Process reimbursement payments in accordance with cost share agreements and contracts.

ix. Evaluate phosphorus reductions for installed conservation practices based on SNAP Plus or other agreed upon models.

x. Document phosphorus reductions in accordance with the reporting and deliverables section of the Scope of Work.
C) Verification
   i. Verify the status of installed phosphorus reducing practices by conducting follow-up visits with landowners consistent with the protocols identified in the Adaptive Management Plan.
   ii. Modify and update landowner’s conservation practice operation and maintenance plans as necessary to maintain compliance with contracts and applicable technical standards.
   iii. Develop and implement conservation plans for newly identified resource concerns or to address maintenance and repairs for existing practices.

D) Meetings:
   i. Attend and participate in Yahara WINS Executive Committee meetings and meetings of the Yahara WINS Group as a whole. These meetings will be held at least on a quarterly basis and Dane County will report on progress and challenges related to successful implementation of this service agreement.
   ii. Attend and participate in bi-monthly job progress meetings during 2017. The purpose of these meetings is to build and enhance strong working relationships between Yahara WINS and Dane County and to track project progress at a high level. This is critical during the early stages of the project. Beginning in January, 2018 the frequency of progress meetings can be adjusted based on mutual agreement between Yahara WINS and the County, but shall in no case be less frequent than quarterly.
   iii. Attend and participate in meetings with state and federal agencies as may be required.
   iv. Attend and participate in other miscellaneous meetings as may be required.

E) Miscellaneous support
   i. Provide on-going support for the cost/implementation model. The cost/implementation model is used to help inform future adjustments to phosphorus reduction goals and other important implementation factors. The model will be updated as necessary in collaboration with Yahara WINS.
   ii. Provide on-going technical, administrative and management including development of maps and other presentation materials, data analysis, participation in various outreach meetings, and other relevant support.
   iii. Provide administrative and recordkeeping activities associated with disbursement of cost share funds received from Yahara WINS.

5. Practice Cost Share Funds Available from Yahara WINS
Yahara WINS will notify Dane County by September 1st of each year regarding the projected amount of cost share dollars that Yahara WINS will make available to Dane County to support practice implementation. These funds are supplemental to cost share practice funds routinely included in the Dane County Capital and Operating budgets, and the County agrees that
practice funds made available by Yahara WINS will not result in a corresponding decrease in practice funds included in the Dane County Capital and Operating budgets. Access to the Yahara WINS practice funds will be made through written requests by Dane County to Yahara WINS, and the requests will be subject to Yahara WINS Executive Committee approval. Funding requests will be project specific, although similar projects can be grouped together in a single request. For example, harvestable buffers for multiple landowners can be grouped in a single request.

6. **Phosphorus Reduction Goals**

The following phosphorus reduction goals are adapted from the Adaptive Management Plan and the cost/implementation model for the adaptive management project.

Conservation practices voluntarily implemented by eligible landowners with assistance from the County will have phosphorus reductions calculated annually using methods identified in the MMSD Adaptive Management Plan for agricultural practices and reported in accordance with the reporting and deliverables section. Annual phosphorus reduction goals for new and cumulative total (new plus carryover) pounds of are listed in Table 1. These reduction goals are based on information in the Adaptive Management Plan and associated cost/implementation model, and are prorated to address estimated reductions within the boundaries of Dane County associated with agricultural land uses. Phosphorus reductions shall be reported by TMDL stream reach.

**Table 1: Annual Phosphorus Reduction Goals and Corrective Actions**

<table>
<thead>
<tr>
<th>Year</th>
<th>Annual Goal (new lb)</th>
<th>Cumulative Goal (new lb)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>3,300</td>
<td>3,300</td>
</tr>
<tr>
<td>2018</td>
<td>4,300</td>
<td>7,600</td>
</tr>
<tr>
<td>2019</td>
<td>5,300</td>
<td>12,900</td>
</tr>
<tr>
<td>2020</td>
<td>6,300</td>
<td>19,200</td>
</tr>
<tr>
<td>2021</td>
<td>7,300</td>
<td>26,500</td>
</tr>
</tbody>
</table>

The phosphorus reduction goal for new pounds of phosphorus in any year shall be considered met if the new pounds of verified phosphorus reduction reported by Dane County for that year is within 15% of the value shown in Table 1. If the annual phosphorus reduction goal for new pounds is not met for any given year, Dane County will include a corrective action section in its annual report to Yahara WINS identifying potentially contributing factors and the need (if any) for new or revised approaches in the following year(s). Consistent with the termination clause in Section 7 of the Agreement, Yahara WINS may terminate the Agreement if Dane County fails to meet at least 80% of the phosphorus reduction goal for new pounds in any consecutive three calendar year period.

Comment [DT1]: Numbers are a placeholder and will need final confirmation.
7. **Performance Metrics**

The following performance metrics will be tracked on an annual basis aggregated for the entire Yahara watershed unless otherwise noted below or specified in the reporting and deliverables section of the scope of service:

- Number of landowners/operators contacted
- Number of cost share agreements signed (county, state, federal, other)
- Number of planned conservation practices
- Number by unit of completed conservation practices (reported by TMDL reach)
- Number by unit of practice verification checks completed (reported by TMDL reach)
- Number of acres tracked with nutrient management (reported by TMDL reach)
- Total dollars allocated for cost share agreements (county, state, federal, other)
- Narrative summary of innovative practices
- Carryover and total pounds of phosphorus.

8. **Deliverables**

The County shall develop and submit the following reports and updates to Yahara WINS:

- Annual work plan submitted by January 31\(^{st}\) of each year highlighting activities and focus areas for the relevant calendar year.
- Draft annual report submitted to Yahara WINS by March 31\(^{st}\) of each year covering activities conducted during the previous calendar year including all activities specified in the Scope of Work for Attachment A-1 of this Agreement.
- Final annual report submitted to Yahara WINS by May 15\(^{th}\) of each year.
- Progress updates presented at Yahara WINS quarterly meetings and during job progress meetings. These updates are less formal and can be given verbally and/or in other forms (e.g. via PowerPoint presentations).
- Maps and other presentation materials, data analysis, and other relevant materials.

9. **Payments**

i. **Fixed Cost Payments**

Dane County agrees to provide an annual base staffing level of 5,200 hours from the Dane County Land and Water Resources Department to support conservation activities in the Yahara Watershed. Yahara WINS will make an annual fixed cost payment for three additional staff positions (2 previously funded by MMSD to jump start the full scale project, and 1 new position that will start in 2017) that are dedicated to support conservation activities in the Yahara Watershed. The annual fixed cost payment shall be made in four equal installments of $75,000 in accordance with the dates and key deliverables shown below:
<table>
<thead>
<tr>
<th>Installment</th>
<th>Amount</th>
<th>Date</th>
<th>Associated Key Deliverable</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$75,000</td>
<td>March 31</td>
<td>First draft of annual report</td>
</tr>
<tr>
<td>2</td>
<td>$75,000</td>
<td>May 15</td>
<td>Final draft of annual report</td>
</tr>
<tr>
<td>3</td>
<td>$75,000</td>
<td>August 31</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>$75,000</td>
<td>November 30</td>
<td></td>
</tr>
</tbody>
</table>

Fixed payments in 2017 will be prorated using a standard monthly prorating to reflect the actual start date for the newly hired position.

ii. Performance Based Payments

Yahara WINS will make additional payments based on Dane County performance related to annual phosphorus reduction goals for new pounds of phosphorus as identified in Table 1. The performance based payment will be a lump sum annual payment made upon receipt and acceptance of the verified phosphorus reductions achieved in the preceding year.

<table>
<thead>
<tr>
<th>% of annual P reduction goal met</th>
<th>Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 10%</td>
<td>$0</td>
</tr>
<tr>
<td>10% to 24.9%</td>
<td>$10,000</td>
</tr>
<tr>
<td>25% to 39.9%</td>
<td>$30,000</td>
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<tr>
<td>40% to 54.9%</td>
<td>$60,000</td>
</tr>
<tr>
<td>55% to 69.9%</td>
<td>$90,000</td>
</tr>
<tr>
<td>70% to 84.9%</td>
<td>$120,000</td>
</tr>
<tr>
<td>85% to 114.9%</td>
<td>$150,000</td>
</tr>
<tr>
<td>115% to 129.9%</td>
<td>$180,000</td>
</tr>
<tr>
<td>130% to 144.9%</td>
<td>$210,000</td>
</tr>
</tbody>
</table>