Yahara WINS Executive Committee  
February 14, 2018 Meeting

**Agenda Item:**  
5: Columbia County Service Agreement

**Background and Analysis:**  
Approximately 5% of the land base for the Yahara Watershed is in Columbia County. This is a small, but important percentage, given that the land is in the upper part of the watershed. Phosphorus losses from this part of the watershed can impact phosphorus delivery to the upper chain of lakes, which in turn have a cascading impact on phosphorus loads to downstream lakes and the lower Yahara River.

Yahara WINS included funds in its 2017 approved budget for a service agreement with Columbia County to support efforts by its Land and Water Conservation Department to work with landowners to implement phosphorus reduction practices. Although discussions with Columbia County occurred in early 2017 related to development of a service agreement, Columbia County asked to defer entering into a service agreement until 2018. The 2018 approved WINS budget includes $50,000 that can be directed to a service agreement with Columbia County.

WINS worked with Columbia County to develop draft language for a 2018 service agreement, using the existing WINS/Rock County service agreement as a model, with adjustments being made where appropriate (e.g. dollar amount, fund distribution, dates). Draft language was reviewed and approved by WINS Counsel and by Columbia County Counsel. The agreement is a two-year agreement which runs from April 1, 2018 through March 31, 2020 and provides $50,000 for 2018-2019 and $55,000 for 2019-2020.

Columbia County executed the service agreement on February 5th (see attachment). The service agreement is now being brought before the WINS Executive Committee.

**Options and Recommendation:**  

1. Authorize execution of the service agreement between Yahara WINS and Columbia County.
2. Authorize execution of the service agreement between Yahara WINS and Columbia County subject to changes identified by the Executive Committee.
3. Request that additional information be brought before the Executive Committee at the next scheduled Executive Committee meeting for use in making a decision regarding execution of a service agreement with Columbia County.

Option 1 is the recommended option. The service agreement language was reviewed and approved by both WINS counsel and Columbia County counsel, and the service agreement has already been executed by Columbia County. Funds for the are contained in the 2018 approved budget and in the WINS five-year budget.

Option 2 is similar to option 1 and could be adopted if the Executive Committee identifies changes to the service agreement language that it believes are necessary to strengthen the agreement. This option would delay full execution in that the changes to the service agreement would need to be reviewed and approved by Columbia County counsel and the revised service agreement would then need to be brought back to Columbia County for execution.
Option 3 should only be adopted if the Executive Committee has significant questions/concerns about working with Columbia County or questions/concerns regarding the service agreement language. Like option 2, this option would delay full execution of a service agreement with Columbia County.
This Service Agreement (the “Agreement”) is made and entered into this ___ day of __________ 2018, by and between the Yahara Watershed Improvement Network (“Yahara WINS”) and Columbia 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 or engineered solutions that reduce sediment and nutrients (including phosphorus) from entering waters as well as provides other conservation benefits. The Columbia County Land & Water Conservation Department will lead these implementation efforts on behalf of County.

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 technical 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 or solutions based on SNAP Plus or other agreed upon prediction methods.

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 and reimbursement of cost share funds received from Yahara WINS. This will include the development of a practice installation agreement.

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 31st of each year of this agreement 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, 2018, and ending March 31, 2020. The County shall commence the Work on April 1, 2018, 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 done by 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 and Project Cost Share Funds.

Yahara WINS shall make available the following maximum funds to the County:

<table>
<thead>
<tr>
<th>Agreement Year</th>
<th>Available Funds</th>
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<tbody>
<tr>
<td>2018-2019</td>
<td>$50,000</td>
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<tr>
<td>2019-2020</td>
<td>$55,000</td>
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Practice Specific Funds: At least 84% of the available funds shall be used for the installation of phosphorus reducing practices, with reimbursement being made 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 to by Yahara WINS and the County. The County shall invoice Yahara WINS following project installation with the invoice providing information related to the
practice, including practice type, location, calculated phosphorus reduction and other relevant project information. Reimbursement shall be made by Yahara WINS following acceptance of the invoice.

**Staff Support and Related Expense Funds**: A maximum of 16% of the available funds are eligible to be used to offset staff time and related expenses directly related with the Scope of Work. The County will submit a quarterly invoice to Yahara WINS which identifies staff hours and hourly rates, along with related expenses for each person performing work consistent with this Scope of Work. Reimbursement shall be made by Yahara WINS following acceptance of the quarterly invoice.

**Carry Over of Funds**: Yahara WINS may allow funds that are not used in any agreement year to be carried over to the next agreement year of this agreement. Funds may be carried over if the County makes a request to carry over funds in writing prior to the end the applicable agreement year and Yahara WINS agrees to this request.

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 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 280 pounds of phosphorus reduction per year will be needed in the County’s portion of the Yahara Watershed to meet long term water quality objectives. Over the length of this Agreement, Yahara WINS and the County will assess the potential for the County to provide for these pounds of reduction.

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 the laws of the State of Wisconsin and any applicable federal law. 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. **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.

12. **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 Columbia County: Director Land & Water Conservation Department, Columbia County Administration Building, 112 E. Edgewater Street, Portage, WI 53901.

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

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.

For COLUMBIA COUNTY, WISCONSIN:
Agriculture, Extension, Land & Water Conservation Committee

By: [Signature] 2/6/2018
Mike Weyh Date
Chair, Agriculture, Extension, Land & Water Conservation Committee
For Yahara WINS:

By: ________________________________
Martin Griffin
Yahara WINS Executive
Committee President

______________________________
Jeffrey S. Rau
Yahara WINS Executive
Committee Treasurer

______________________________
Date

______________________________
Date