

**YAHARA WATERSHED IMPROVEMENT NETWORK SERVICE  
AGREEMENT WITH COLUMBIA COUNTY**

This Service Agreement (the "Agreement") is made and entered into this 16<sup>th</sup> day of March 2021, by and between the Yahara Watershed Improvement Network ("Yahara WINS") and Columbia County, Wisconsin (the "County")."

**RECITALS:**

1. 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);
2. Yahara WINS desires to obtain assistance from the County to implement portions of the Adaptive Management project.
3. 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 phosphorous) from entering waters as well as provides other conservation benefits. The Columbia County Land and Water Conservation Department will lead these implementation efforts on behalf of the County.

**AGREEMENT:**

4. **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:
5. **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 River 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 River basin. If further information becomes available on any internally drained area and the

internally drained area is found to be a contributor of phosphorus to the Yahara River basin, practices may be installed if agreed upon by both parties;

- c. Calculate modeled phosphorus reductions for installed practices or solutions based on SNAP Plus or other agreed upon prediction models;
- 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 funds received from Yahara WINS;
- f. Attend at least two Yahara WINS meetings each year and provide participants with updates on phosphorus reduction activities being conducted in the County's portion of the Yahara Watershed; and
- 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.

6. **Term of Agreement.** This Agreement shall begin on January 1, 2021, and end at 11:59 p.m. on December 31, 2022.
7. **Modification or Termination of the Agreement.** The terms of this Agreement may be modified by the written agreement of both parties. Either party 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 90-day notice. In the event of termination, the County will be compensated for services rendered and expenses incurred to the date of the termination notice in accordance with the terms set forth in this Agreement.
8. **Compensation for Projects, Staff Support and Related Expenses.** Yahara WINS shall reimburse the County for staff support costs and related expenses associated with the scope of work using the following process: Columbia County shall provide a request in the current year for the anticipated following year funds for planned installation of phosphorus reducing practices, associated staff support and related expenses to Yahara WINS by December 15<sup>th</sup> of the current year. Yahara WINS shall provide notice of the amount of funds available to Columbia County for the following year for phosphorus reducing practices, staff support and related expenses by November 1<sup>st</sup> of the current year, if the amount of funds is anticipated to be different from the available funds listed below.
  - a. County will submit a pre-project summary report of the planned individual projects to Yahara WINS for its final review and approval. Once Yahara WINS approves each project, the County will proceed with project contracting, installation, certification and payment.

- b. To receive funding, the County will submit an invoice to Yahara WINS which identifies projects, staff support costs and related expenses. Reimbursement will be made by Yahara WINS within 60 days of receipt and approval of the invoice. Yahara WINS shall make available the following maximum fund to the County:

Agreement Year	Available Funds
1. 2021	\$40,000
2. 2022	\$50,000

- c. If during the current year costs are expected to exceed the maximum annual funding under this service agreement, the County always has the ability to request additional funding from Yahara WINS before projects are completed. Any requests for funding of cost over the amount of funds available through the service agreement would need to be approved prior to the work being completed.

9. **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 or other models agreed to by Yahara WINS and the County. The running average total cost per pound of total phosphorus reduction shall not exceed \$50.00 per pound.
10. **Performance.** Unless agreed to herein or otherwise in writing, the County shall furnish all services, supplies, tools, and equipment to accomplish the Work in a professional manner.
11. **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.

In order to secure the parties' obligations under this provision, each party shall procure and maintain general liability insurance sufficient to cover its potential risks resulting from the project. Upon the request of the other, each party shall provide a copy of its certificate of insurance to the requesting party.

It is not the intent of the parties to impose liability beyond that imposed by state statutes. Nothing within this provision shall be construed to waive any defense or statutory right available to either party.

12. **Relationship of Parties.** The County is an independent consultant. Yahara WINS has direction and control only as to the result to be accomplished, and the County has direction and control over the means and method of accomplishing that end result.
13. **Assignment and Subcontracting.** Neither party may assign its duties or rights to a third party without written consent of the other party. Neither party may subcontract, sell, transfer, or otherwise dispose of any portion of the contract without the prior written consent of the other party. No subcontractor shall, under any circumstance, relieve either party of its obligations under this contract. 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.
14. **Safety Requirements.** Each party shall fully comply with all safety requirements set forth by the Wisconsin Department of Safety and Professional Standards, OSHA, and as otherwise applicable to each party's role and duties under this Agreement, and each party shall be responsible for training its own employees on such requirements.
15. **Permits, Laws, Regulations, and Public Ordinances.** Both parties shall comply with all federal, state, and local statutes, rules, regulations, and ordinances related to the County's performance of the Work.
16. **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 utilize reasonable efforts 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.
17. **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.
18. **Confidentiality.** As applicable, each party shall secure and protect confidential information received, maintained, or produced as a result of this Agreement from any party not allowed access to such information.
19. **Public Records.** Each party shall maintain all records subject to a valid and appropriate public records request in accordance with applicable law.

- 20. Giving Notice.** Whenever any provision of this Agreement requires the provision 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:
- a. For Yahara WINS: Yahara WINS Executive Committee President, Madison Metropolitan Sewerage District, 1610 Moorland Road, Madison, Wisconsin 53713.
  - b. For Columbia County: Director Land and Water Conservation, Columbia County Administration Building, 112 E. Edgewater Street, Portage, WI 53901.
- 21. Nondiscrimination/Affirmative Action.** Each party agrees to act, in accordance with all applicable State and Federal law, to not discriminate against any person, whether an applicant or recipient of services or an employee or applicant for employment, on the basis of age, race, ethnicity, religion, color, gender, disability, marital status, sexual orientation, national origin, cultural differences, ancestry, physical appearance, conviction record, military participation or membership in the national guard, military participation in the state defense force or any other reserve component of the military forces of the United States, or political beliefs. Each party shall provide a harassment-free work environment.
- 22. Taxes.** Columbia County and its departments are exempt from payment of all federal tax and Wisconsin state and local taxes on its purchases except Wisconsin excise or occupation tax on its purchase of motor vehicle fuel.
- 23. Complete Agreement.** This Agreement represents and embodies the complete agreement and understanding of the parties and supersedes and preempts any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in anyway.
- 24. Force Majeure.** Neither party shall be in default by reason of any failure in performance of a contract in accordance with reasonable control and without fault or negligence on its party. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics or pandemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather where in every case the failure to perform such must be beyond the reasonable control and without the fault or negligence of the party.
- 25. Use of Titles and Headings.** Titles and headings herein are inserted for convenience only and shall not affect the construction

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

**YAHARA WATERSHED IMPROVEMENT NETWORK**

By: *Monte Gup*

Title: Yahara WINS executive committee president

Date: 3/16/2021

By: *J. S. Far*

Title: WINS EXECUTIVE TREASURER

Date: 3/19/21

**COLUMBIA COUNTY, WISCONSIN**

By: *James E. Falor*

Title: Vice Chair

Date: 3-22-2021