

**PROFESSIONAL SERVICES AGREEMENT**  
**Yahara WINS Cost Model Redevelopment**

**THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”)** is by and between the Yahara Watershed Improvement Network (the “**YWINS**”) and Emmons & Olivier Resources, INC (“**Consultant**”) to be effective on March 14, 2024 (“**Effective Date**”). The Consultant shall provide professional services for the YWINS Project (“**Project**”), which is generally described in **Exhibit A**, as set forth in this Agreement.

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## **AGREEMENT**

In consideration of the mutual covenants set forth in this Agreement and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the YWINS and Consultant agree as follows:

### **1. SERVICES OF CONSULTANT**

- 1.1 The professional services to be provided shall be those described in **Exhibit B**, attached hereto, and incorporated herein, which shall constitute the **"Scope of Services"** or **"Services"** for this Project. Services that are removed, reduced, exceeded or are in addition to the approved Scope of Services shall constitute amendments to the Scope of Services (**"Project Amendments"**). Services for Project Amendments shall be enumerated in a Project Amendment Work Order **Exhibit C** and shall require written pre-approval by the YWINS. The Consultant warrants and represents itself as qualified and equipped to furnish all necessary labor, supervision, methods, equipment, and tools required to provide the Services. The Scope of Services shall be governed by and provided in full compliance with the terms and conditions of this Agreement. The YWINS shall have the right to make any changes in the Scope of Services with the price being increased (subject to approval of additional expenditure, if required) or decreased accordingly, as agreed to by the parties hereto in writing as a Project Amendment Work Order **Exhibit C**. Changes to the Services shall be authorized only in writing, and no verbal order of any employee of the YWINS or any other person will permit the Consultant to claim any additional compensation for the performance of the Services.
- 1.2 The cost for Services is specified in the schedule set forth in **Exhibit D attached hereto and incorporated herein.**

### **2. YWINS RESPONSIBILITIES**

- 2.1 The YWINS shall provide the Consultant with the criteria and information as to the YWINS requirements for the Project, including objectives and constraints, performance requirements, and any budgetary limitations, as part of the Scope of Services.
- 2.2 The YWINS may furnish the Consultant reasonable information pertinent to the Project including relevant reports and data such as previous strategic plans, and existing conditions.
- 2.3 As reasonably requested by Consultant, the YWINS shall furnish or otherwise make available additional project-related information and data as is reasonably required to enable Consultant to complete the Project.
- 2.4 The Consultant may reasonably rely up on the accuracy and completeness of all information furnished by the YWINS. The Consultant may not rely on information furnished

by the YWINS that Consultant knows or has reason to believe is not accurate. The Consultant shall immediately inform the YWINS of any inaccurate or incomplete information.

3. **SCHEDULE FOR RENDERING SERVICES**

3.1 Consultant is authorized to begin services as of the Effective Date.

3.2 The specific periods of time for performing Services and/or specific dates by which Services are to be completed shall be as provided in Exhibit E attached hereto and incorporated herein (the "Schedule"), which Schedule is agreed to be reasonable and binding on the parties. The Schedule may be modified, but only for reasons set forth in this Agreement (see Sections 3.3 and 3.4), or by a written amendment to the Scope of Services executed by the YWINS and Consultant.

3.3 If the YWINS authorizes changes in the scope, extent, or character of the Project, then the time for completion of Consultant's services, and the rates and amounts of Consultant's compensation therefor, may be adjusted pursuant to a Project Work Order based on the fee schedule included in Exhibit D.

3.4 If the Consultant is hindered, delayed or prevented from performing the Services as a result of any act or neglect of the YWINS (or those for whom the YWINS is responsible) or force majeure, the Schedule may be extended by the period of the resulting delay and the rates and amounts of Consultant's compensation may be adjusted. Force majeure includes, but is not limited to acts of God, wars, terrorism, strikes, labor walkouts, fires, natural disasters, or requirements of governmental agencies. If Consultant believes that an adjustment to the schedule is appropriate for reasons set forth in this Section, Consultant must advise the YWINS in writing within one week of the event(s) giving rise to the need for the delay and/or change in the Schedule. Force majeure does not include: (a) shortages of supervisors, labor, or equipment; (b) delays by Consultant; (c) failure of Consultant to pay amounts due and owing under this Agreement; and (d) increased costs of the Services due to general economic or industry conditions.

4. **TERM OF AGREEMENT**. This Agreement shall commence on the Effective Date.

This Agreement shall expire on the date set forth in Exhibit E unless terminated earlier or extended through an Amendment pursuant to the terms set forth in this Agreement.

5. **COMPENSATION, INVOICES AND PAYMENTS**

5.1 The YWINS shall pay the Consultant for the Services properly performed or furnished pursuant to the terms and conditions of this Agreement and in conformance with any invoice dates specified in a Scope of Services or Schedule.

- 5.2 The Consultant may submit requests for periodic progress payments for Services rendered. Payments of undisputed invoiced amounts shall be due and owing by the YWINS within sixty (60) calendar days after receipt of the Consultants' invoice for services. Consultant may impose an additional late payment charge computed at an annual rate of six percent (6%) for undisputed invoiced amounts not paid without the sixty (60) day calendar day period and additionally, the Consultant may, after giving seven (7) days written notice to the YWINS, suspend services under this Agreement until the Consultant has been paid in full all undisputed amounts due for services, and late payment charges
- 5.3 Consultant shall maintain a system of internal controls to ensure efficient and proper processing and application of funds used and received from the YWINS related to this Project. Funds shall be applied by the Consultant for the purposes for which they have been paid by the YWINS.
- 5.4 The YWINS may, at any time, by written order, make changes to the Scope of Services or request a Project Amendment, which changes shall not become effective unless and until the YWINS and Consultant execute a written amendment to this Agreement as described herein.
- 5.5 To request a change to the Scope of Services, the YWINS shall issue a Project Amendment Work Order. The Project Work Order shall be executed by both parties to be effective.
- 5.6 If a change in scope causes an increase or decrease in the Consultant's fee or time required for performance, an adjustment may be made and set forth in a written amendment to this Agreement. Consultant shall not provide services for which added payment is to be made without first obtaining written authorization from the YWINS.

6. **CONSULTANT'S PERFORMANCE**

- 6.1 The standard of care for all professional and related services performed or furnished by the Consultant and Consultant's personnel under this Agreement will be the professional standard of care and practice defined as the practice ordinarily used by members of Consultant's profession practicing under similar circumstances at the same time and in the same locality on similar projects.
- 6.2 The Consultant shall furnish all services, supplies, tools, and equipment appropriate and necessary to accomplish the Services in a professional and expeditious manner consistent with and limited to the Standard of Care. The Consultant will prepare and submit regular reports to the YWINS, as the YWINS may require, during the performance of the Services as specified in a Scope of Services. Other reports not identified in the Scope of Services may be prepared and submitted to the YWINS at the YWINS request and following the Amendment provisions pursuant to this Agreement.

- 6.3 Consultant shall be responsible for the technical accuracy of its services and its instruments of service resulting therefrom, and YWINS shall not be responsible for discovering deficiencies, if any, in them. Consultant shall correct known deficiencies in its instruments of service without additional compensation.
- 6.4 The Consultant will comply with applicable laws, regulations, and YWINS-mandated standards in effect as of the Effective Date of this Agreement. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to the YWINS responsibilities or to Consultant's Scope of Services, times of performance, or compensation, which may be adjusted equitably.
- 6.5 Consultant may employ sub-consultants to provide Services and to assist in the performance or furnishing of the Services, but only as follows:  
(1) Consultant shall give the YWINS prior written notice of its intent to employ sub-consultants; (2) the YWINS shall have an opportunity to make reasonable, timely, and substantive written objections to the proposed sub-consultant (and if such objection is made, Consultant shall not engage the proposed sub-consultant); and, (3) Consultant shall ensure that any sub-consultant shall be subject to the confidentiality and all other provisions of this Agreement. The use of sub-consultants does not relieve Consultant from its responsibilities to the YWINS for performance in accordance with this Agreement.
- 6.6 Consultant is not acting as a municipal advisor as defined by the Dodd-Frank Act. Consultant shall not provide advice or have any responsibility for municipal financial products or securities.
- 6.7 Consultant shall be responsible for Consultant and Consultant's own agents, employees, and sub-consultants and shall not be responsible for the acts or omissions of the YWINS or YWINS agents, employees and sub-consultants who are furnishing or performing any work on the Project; or for any decision made regarding the Project, other than those made by the Consultant.
- 6.8 Consultant warrants that any associated physical items furnished in connection with providing the Services shall (i) be free from all latent and patent defects in materials and workmanship; (ii) be of good merchantable quality, fit and suitable for its intended purpose as specified in this Agreement; (iii) achieve all performance requirements specified in this Agreement; (iv); include only materials furnished or purchased by Consultant or is suppliers which are new, unused, and undamaged, unless otherwise expressly authorized by the YWINS in writing; (v) be in full conformance with all the requirements of this Agreement; and (vi) be in compliance with all applicable laws.

## 7. **INSURANCE**

7.1 For the duration of the Project, the Consultant shall procure and maintain the following insurance coverage. The insurance required shall provide coverage for not less than the following amounts, and shall be greater where required by law:

(1)	Worker's Compensation	Statutory Limits
(2)	General Liability	
	Per Claim/Aggregate/ Products-completed operations	\$1,000,000/\$2,000,000/ \$2,000,000
(3)	Automobile Liability	
	Combined Single Limit	\$1,000,000
(4)	Excess Umbrella Liability	
	Per Claim/ Aggregate	\$5,000,000/\$5,000,000
(5)	Professional Liability	
	Per Claim and Aggregate	\$5,000,000/\$5,000,000

General liability insurance shall contain contractual liability coverage covering all liabilities assumed or created by virtue of this Agreement and specifically naming the YWINS as being covered by the contractual liability coverage.

All policies of insurance required by this Agreement, except workers' compensation and professional liability, shall specifically name the YWINS as an additional insured as evidenced by an additional-insured endorsement acceptable to the YWINS. All policies shall be underwritten by insurer(s) with a minimum A.M. Best Ratings of A-VII. Each policy of insurance shall provide that it will not be canceled by the insurance company or the Consultant, except upon thirty (30) days' written notice to the YWINS, such notice to be delivered by registered mail to the authorized representative who executes this Agreement. In addition, all insurance maintained by the Consultant, including any excess or umbrella policy(ies), shall be primary with respect to the interest of the YWINS, with any other insurance maintained by the YWINS being excess and not contributory with the Consultant's insurance. The certificates of insurance and endorsements shall be delivered to the YWINS upon execution of this Agreement but in no event later than fifteen (15) days prior to commencement of the services. Certificates of insurance for new or renewed policies of insurance issued pursuant to this paragraph shall be provided to the YWINS within fifteen

(15) days of their issuance.

The Consultant agrees that any dispute that arises between the Consultant and the insuring agent regarding coverage relating to Services performed under this Agreement shall solely be a dispute between the Consultant and the insuring agent or insurance company and should be resolved by the Consultant and the insuring agent or insurance company. The Consultant agrees that any dispute and associated costs, including reasonable attorneys' fees, regarding insurance coverage pursuant to the terms of this Agreement will be the sole responsibility of the Consultant. Any damage to property, personal injury, or other injury or damage for which Consultant is responsible to indemnify the YWINS under the Agreement shall not be affected by the coverage or lack of coverage by any insurance obtained by Consultant, or by any coverage dispute between Consultant and its insurer.

## 8. **INDEMNIFICATION**

- 8.1 To the extent permitted by law, Consultant shall indemnify and hold harmless the YWINS and its officers, insurers, directors, agents, and employees (collectively, the "Indemnified Parties" and individually, an "Indemnified Party") from and against claims, costs, losses, expenses and damages (including but not limited to all reasonable fees and charges of Consultants, architects, attorneys, and other professionals, and all court, mediation, or other dispute resolution costs) because of bodily injury, sickness, disease, or death, or injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by the Consultant's negligent or intentional acts or omissions.
- 8.2 In the event one or more of the Indemnified Parties is made a party to any suit or litigation because of injury or damage or alleged injury or damage to person, life, or property or injury or alleged injury resulting in the death of any person or persons arising out of or in connection with a Project, performance of this Agreement, or progress of the Services to be done hereunder, the Consultant shall defend such action on behalf of the Indemnified Party or Parties by counsel chosen by the applicable Indemnified Party or Parties being defended and shall pay all damages, costs, expenses, and reasonable attorneys' fees incurred in connection with such defense. If judgment shall be obtained or claim allowed in any of such proceedings against any of the Indemnified Parties or a settlement is reached, the Consultant shall pay and satisfy such judgment, claim, or settlement, except the portion thereof that shall be determined or mutually agreed to be caused by the negligence of one or more of the Indemnified Parties. In the event claims, losses, damages, or expenses are caused by the joint or concurrent fault of the Consultant and the YWINS, they shall be borne by each party in proportion to their respective fault, as determined by a mediator or court of competent jurisdiction.
- 8.3 Additional Indemnity. Consultant also agrees to indemnify and hold harmless the Indemnified Parties from and against all claims, damages, losses, forfeitures, penalties, and expenses including, but not limited to, reasonable attorneys' fees and court,

mediation, or other dispute resolution costs arising out of or resulting from:

8.3.1 Claims growing out of lawful demands of any Consultant employee arising from or related to wages or benefits including, without limitation, all expenses and attorneys' fees incurred by any Indemnified Party in discharging any such demands, liens, or similar encumbrances.

8.3.2 Any breach by Consultant of any applicable laws including, without limitation, the Fair Labor Standards Act, ERISA, Wisconsin's Fair Employment Law, Wisconsin's wage and hour laws, and immigration laws; and any claim or action by any Consultant employees against the YWINS alleging any violation by the YWINS of any applicable laws including, without limitation, the Fair Labor Standards Act, ERISA, Wisconsin's Fair Employment Law, Wisconsin's wage and hour laws and immigration laws.

8.4 To the extent permitted by law and to the extent this section does not waive the protections provided to the YWINS under Wis. Stat. § 893.80(3), the YWINS shall indemnify and hold harmless the Consultant and its officers, directors, employees, agents and consultants from and against all claims, costs, losses, and damages (including but not limited to all reasonable fees and charges of Consultants, architects, attorneys, and other professionals, and all court, mediation, or other dispute resolution costs) provided that any such claims, costs, losses, or damages are attributable to bodily injury, sickness, disease, or death of, or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by the negligent acts or omissions of the YWINS.

## 9. **TERMINATION**

9.1 This Agreement may be terminated, in whole or in part, by either party if the other party fails to fulfill its obligations under this Agreement through no fault of the terminating party. However, no such termination will be effective unless the terminating party gives the other party (1) not less than ten (10) business days written notice of intent to terminate, and (2) an opportunity for a meeting with the terminating party to resolve the dispute before termination.

9.2 The YWINS may immediately terminate this Agreement without penalty, in whole or in part, with written notice to Consultant, if funds are no longer available from anticipated sources of revenue. The YWINS may also immediately terminate this Agreement without penalty for its convenience and with written notice to Consultant if the YWINS elects not to further pursue the Project.

9.3 In addition, upon the occurrence of one or more of the following events, either party may, after giving the other party written notice, terminate this Agreement:



- 9.3.1 If the other party commences a voluntary case under any chapter of the Bankruptcy Code as now or hereafter in effect or takes any equivalent or similar action by filing a petition or otherwise relating to bankruptcy, receivership, or insolvency.
  - 9.3.2 If a petition is filed against the other party under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing or if a petition is filed seeking any such equivalent or similar relief against Contractor under any applicable laws in effect at the time relating to bankruptcy, receivership, or insolvency.
  - 9.3.3 If the other party makes a general assignment for the benefit of creditors.
  - 9.3.4 If the other party admits in writing an inability to pay its debts generally as they become due.
- 9.4 If this Agreement is terminated, the Consultant shall be paid for Services properly performed to the effective date of termination, including reimbursable expenses. In the event of termination, the YWINS will receive electronic files of all Project Deliverables (defined below) within the Scope of Services or Project completed by the Consultant up to the date of termination. Electronic files shall be in a mutually agreed upon format that is usable by the YWINS and shall be subject to Section 10 below.

## 10. **USE OF DOCUMENTS AND ELECTRONIC FILES**

- 10.1 Consultant may retain its documentation related to the Project, including work papers, documents, spreadsheets, and electronic data, provided that all such documentation remains confidential and is not disclosed to third parties except where disclosure is expressly required by law and subject to the confidentiality provisions of Section 11 below. The YWINS acknowledges that Consultant may have a responsibility to retain the documentation for a period of time sufficient to satisfy any applicable legal or regulatory requirements for records retention. If required by law, regulation, or professional standards to make certain documentation available to Consultant's regulators, the YWINS authorizes Consultant to do so but only after providing prior written notice of such disclosure to the YWINS.
- 10.2 Notwithstanding the foregoing, Consultant shall provide the YWINS with copies or originals of all work papers, documents, spreadsheets, and electronic data in a mutually agreed upon format that is usable by the YWINS, spreadsheet financial models in a mutually agreed upon format that is usable by the YWINS and any and all keys or passwords needed for the YWINS

to access same (collectively herein, “**Project Deliverables**”). It is expressly understood that the Project Deliverables are intended to be and shall remain the property of the YWINS. Consultant shall provide the Project Deliverables to the YWINS in a mutually agreed upon standard format (such as, for example, Excel) so that the YWINS can use the Project Deliverables independently from the Consultant.

- 10.3 Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data’s creator, the party receiving electronic files agrees that it will perform acceptance tests and/or procedures within sixty

(60) calendar days of receipt, after which the receiving party shall be deemed to have accepted the transferred data as transmitted. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.

- 10.4 Following Project closeout, the Consultant shall act in a manner that ensures and maintains confidentiality of information obtained during the course of the Project. Consultant’s document retention policies shall ensure that Project Deliverables are retained for a minimum of seven (7) years from Project closeout. Upon the request of the YWINS, Consultant shall certify to the YWINS that all materials shall be destroyed and deleted in a manner that ensures confidentiality.

## 11. **CONFIDENTIALITY AND TRADE SECRETS**

- 11.1 As used in this Agreement, the term “Confidential Information” shall mean and include all information disclosed by the YWINS to Consultant verbally, electronically, visually, or in written or other tangible form which is either identified as confidential or should be reasonably understood by Consultant to be confidential or proprietary, including but not limited to ideas, concepts, theories, designs, approaches, improvements, methods, techniques, procedures, processes, communications, financial information, business information, rate or economic data, trade secrets, hardware, software, IT security information, customer information, billing or collection information, account information, employee information, correspondence, memoranda, data, reports, forecasts, projections, customer lists, potential customer lists, business requirements, strategy or plans, or any discussions or negotiations which incorporate, include, or refer to Confidential Information described in this paragraph.

- 11.2 Consultant agrees for itself and its employees, agents, and sub-consultants to keep confidential and not to disclose to any person or entity the Confidential Information that the YWINS provides to Consultant or to which Consultant gains access in the course of performing the Services, without the YWINS prior written consent, which consent may be granted, withheld, or conditioned in the YWINS sole discretion. The confidentiality obligations set forth in this section shall not apply to information and materials (i) that are

or subsequently become publicly available without Consultant's breach of this confidentiality provision, (ii) that were known to Consultant prior to the YWINS disclosure to Consultant, (iii) that became known to Consultant from a source other than the YWINS and other than by the breach of an obligation of confidentiality owed to the YWINS, (iv) is independently developed by Consultant, or (v) is a public record required to be disclosed by the YWINS pursuant to Subchapter II of Chapter 19 of the Wisconsin Statutes. Consultant shall notify the YWINS prior to making any disclosure so that the YWINS can dispute whether disclosure pursuant to (i) through (v) above is appropriate. Consultant shall indemnify, defend, and hold the YWINS harmless from all damages, claims, losses, and costs (including attorneys' fees) related to or arising from Consultant's breach of these confidentiality provisions. The confidentiality obligations and indemnities contained in this section shall survive for a period of three (3) years following the expiration or termination of this Agreement.

11.3 All copies of all materials relating to the Services whether constituting Confidential Information or not, must be returned to the YWINS upon completion of the Project. Regarding documents including Confidential Information, Consultant shall comply with Section 10.4 above. The Consultant may not publish, release, disclose, or disseminate to anyone other than the YWINS employees the results of any Services performed or any information obtained from Services performed under this Agreement unless required to do so in accordance with litigation or applicable state law or unless the YWINS grants written approval to publish, release, disclose, or disseminate such information. Materials which are reviewed by the Consultant in the course of this Agreement may contain trade secrets which are the property of the YWINS, or which have been purchased or leased for use by the YWINS. The Consultant may not reveal any trade secrets to any person in any form and may not use any such trade secrets itself for any purpose.

11.4 All Confidential Information in whatever form provided shall remain the property of the YWINS. The Consultant agrees to take all necessary and appropriate actions to protect and maintain the confidentiality of the Confidential Information. The Consultant shall cooperate with the YWINS in regard to disclosure of Confidential Information that may be required to respond to a public records request.

11.5 The Consultant agrees not to use the YWINS name, logo, or trademark or refer to the YWINS in any advertising; promotion; announcement; marketing literature; or other type of publication, marketing effort, or advertisement, whether written or oral, without the express prior written approval of the YWINS.

11.6 Consultant shall require personnel provided to the YWINS to comply with the

confidentiality provisions set forth in this Section 11. By signing this Agreement, Consultant certifies that its employees, agent, and sub-consultants shall each comply with this Section 11.

**12. COPYRIGHT AND PATENT GUARANTEES.**

12.1 The Consultant warrants its Services covered by this Agreement will not infringe or contribute directly or indirectly to the infringements of any patents, trademarks, inventions, or copyrights, either in the USA or foreign countries. Consultant **(i)** shall indemnify and hold the YWINS harmless from and against any and all claims, liabilities, causes, damages, costs or expenses, including attorneys' fees of any kind involving any actual or alleged infringements (excluding, however, any infringements solely related to concepts, designs, or ideas furnished in writing by the YWINS which, as between the YWINS and the Consultant, originated with the YWINS) or (ii) at the YWINS option, shall reimburse the YWINS for all damages, costs, and expenses of any kind including reasonable attorneys' fees incurred by the YWINS in defending any such suits or proceedings. In addition to the foregoing, Consultant shall save the YWINS harmless against and shall pay all awards of damages assessed and all costs of suit adjudged against the YWINS in such suits or proceedings, provided the YWINS gives Consultant reasonable notice in writing of the institution of any such suit or proceeding; permits Consultant to defend it; and gives Consultant all such information, assistance, and authority as shall be reasonably necessary to enable it to do so. In case any part of the Services is held in any such suit or proceeding to constitute infringement and its use is enjoined, Consultant shall, at the YWINS option, within a reasonable time either (i) secure for the YWINS the perpetual right to continue the use of such part of the Work by procuring for the YWINS a royalty-free license or such other permission as will enable Consultant to secure the suspension of any injunction, (ii) replace at Consultant 's own expense such part of the Services with an adequate noninfringing part, or (iii) modify it so that it becomes noninfringing.

**13. SUCCESSORS, ASSIGNS AND BENEFICIARIES**

13.1 The YWINS and Consultant are hereby bound, as are their respective successors, employees, and representatives to the other party to this Agreement with respect to all covenants, terms, promises, and obligations contained herein.

13.2 Neither the YWINS nor Consultant may assign, sublet, subcontract or transfer any rights or obligations under or interest (including, but without limitation, monies that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is required by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement.

13.3 Unless expressly provided otherwise in this Agreement, nothing contained shall be construed to create, impose, or give rise to any duty owed by the YWINS or Consultant to any third party, or other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken to this Agreement will be for the sole and exclusive benefit of the YWINS and Consultant and not for the benefit of any other party.

14. **DISPUTE RESOLUTION**

14.1 The YWINS and Consultant agree to negotiate all disputes between them in good faith for a period of 30 calendar days from the date of notice prior to invoking other provisions of the Agreement, or exercising their rights underlaw.

15. **MISCELLANEOUS PROVISIONS**

15.1 This Agreement is to be governed by the laws of the State of Wisconsin without regard to Wisconsin's or any other state's conflict of laws principles. The parties agree that any judicial action arising under this Agreement shall be brought exclusively in a Wisconsin court in Dane County, Wisconsin, with subject matter jurisdiction. The parties irrevocably consent to personal jurisdiction of the Dane County state courts for judicial actions arising under this Agreement.

15.2 Any notice required under this Agreement will be in writing, addressed to the designated party at its address in the signature page and served personally, by email, by facsimile, by registered or certified mail (postage prepaid), or by a commercial courier service. All notices shall be effective upon the date of receipt.

15.3 All express representations, waivers, and indemnifications in this Agreement will survive its completion and/or termination.

15.4 Any provision or part of the Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the YWINS and Consultant, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that expresses the intention of the stricken provision.

15.5 A party's non-enforcement of any provision shall not constitute a waiver of the provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

15.6 To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of substantial completion of the Project, which is the point where the Project

can be utilized for the purposes for which it was intended.

15.7 This Agreement constitutes the entire agreement between the YWINS and Consultant and supersedes all prior and/or oral understandings. This Agreement may only be amended by a mutually agreed and executed written instrument. Oral understandings are not binding.


15.8 Consultant is an independent contractor and not an employee of the YWINS.

15.9 Facsimile and electronic signatures shall have the same effect as original signatures. Execution in counterparts shall have the same effect as execution in a single document.

15.10 With the execution of this Agreement, Consultant and the YWINS shall designate specific individuals to act as Consultant's and YWINS representatives with respect to the services to be performed or furnished by Consultant and responsibilities of the YWINS under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of the respective party whom the individual represents.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

**CONSULTANT:**  
**Emmons & Olivier Resources, Inc.**

By:   
\_\_\_\_\_  
Patrick Conrad  
Title: Sr. Partner  
Date Signed: 3/14/2024

**Address for giving notices:**  
1919 University Ave. Suite 300, St. Paul MN 55104  
**Designated Representative:**  
Patrick Conrad  
**Phone Number:** 651 324-6359:

**Email Address:**  
Pconrad@eorinc.com

**YWINS:**  
**Yahara Watershed Improvement Network**

By:   
\_\_\_\_\_  
Martin Griffin  
Title: Executive Committee President.  
Date Signed: 3/20/2024  
By: \_\_\_\_\_  
Jeff Rau  
Title: Executive Committee Treasurer.  
Date Signed: \_\_\_\_\_

**Address for giving notices:**  
1610 Moorland Road, Madison, WI 53713-3398  
**Designated Representative:**  
Mike Gilbertson  
**Phone Number:** 608.949.4463

**Email Address:**  
mikeg@madsewer.org

**EXHIBIT A.**  
**PROJECT**

The Consultant shall provide an analysis and cost model re-development based on a “cradle to grave” approach for assessing the costs, including outreach to generate public interest, planning, design, permitting, implementation/ construction, quantification, and verification that BMPs have been installed and maintained for the life of the practice. The analysis will consider the specific characteristics of each TMDL reach and apply the appropriate phosphorus controlling practices for each. Other inputs that may be considered for the development of the cost model include, but are not limited to the following (also described in the (Yahara WINS Adaptive Management Plan): Phosphorus management practices and associated phosphorus reduction (lb/year) will achieve phosphorus reduction targets.

- Cost effectiveness regarding phosphorus reductions to prioritize practices that provides the most reduction relative to their cost.
- New technologies or other practices not considered in the original model that could impact cost or effectiveness.
- Other economic incentives for the practices that could offset the cost of implementation. • Long vs short term costs as some practices cost more upfront but less to maintain and vice versa.
- Implementation strategy that prioritizes maximum phosphorus reductions with each practice and considers the effectiveness of practices.
- Practice shelf life.
- Practice cost by unit (e.g., per acre of cover crop). Note that Practice costs can include a variety of things including, but not limited to, input costs, equipment costs, infrastructure costs, maintenance costs, land costs, etc.
- Staff cost by practice for implementation.
- Phosphorus reduction requirements by TMDL stream reach.
- Ramp-up period to achieve phosphorus reductions and annual targets.
- Anticipated staffing efficiencies in delivering phosphorus reduction practices during the life of the adaptive management project.
- Water quality monitoring cost.
- Inflation factor.

Information describing the process used in the cost analysis (including the model input variables) and the results of the “new” cost model proposal for the YWINS should synthesized into a written final report and supported with numerical data as model outputs, including but not limited to the following:

- Total project cost and annual costs, both with and without inflation.
- The cost per pound of phosphorus reduced.
- Annual phosphorus reduction (pounds) by stream reach based on total project phosphorus reductions and ramp-up periods.
- Staffing needs based on current and anticipated staffing efficiencies for practice implementation.
- Allocation of adaptive management cost for project participants.

Consultant will also be expected to give a presentation to a group of YWINS staff and other Yahara WINS members working on the Yahara WINS Cost Model Redevelopment Team.



**EXHIBIT B.**  
SCOPE OF SERVICES PROVIDED BY CONSULTANT

THE SCOPE OF SERVICES SHALL BE CONSISTENT WITH THIS EXHIBIT B OR OTHERWISE AGREED IN A WRITTEN AMENDMENT EXECUTED BY THE PARTIES. THE SCOPE OF SERVICES CANNOT BE CHANGED BY VERBAL AGREEMENT.

**Task 1 - Review Existing Cost Model**

Immediately upon notice to proceed, EOR will hold a kick-off meeting with YWINS Staff and key Yahara WINS members. The intent of the kickoff meeting will be to review the proposed scope of work, refine the timeline, establish lines of communication, and set expectations of the overall project. The kick-off meeting will also be used to define a technical advisory committee (TAC) which will be used throughout the project. EOR will facilitate a discussion to identify desired outcomes from the perspective of each group involved in the project.

Following the kickoff meeting, EOR will compile all reports and documentation related to the Rock River TMDL and the existing Cost Model. The TMDL report will be reviewed with an emphasis on the modeling approach used to determine aerial loading rates within the various subwatersheds (reaches) within the watershed and the allocations established for each of the permitted entities. The review will be performed to validate the existing approach being used to set implementation levels within the watershed and to determine if a variation from that approach should be considered for the updated cost model. At a minimum, we will pursue developing separate approaches for each of the subwatersheds but there may be additional nuances to the TMDL that are worth investigating. The existing Cost Model will be reverse engineered to pull out all of the assumptions used in its development including P-removal effectiveness and cost assumptions by practice type.

This task will conclude with a summary memorandum (Data-Gaps Analysis) identifying the limitations of the existing approach and areas for potential improvement. The summary memo will be distributed to the project team one week ahead of TAC Meeting #1 at which time the memo will be discussed and its findings will be agreed upon by the group. The findings of the memo will be used to set the framework for the actual update to the Cost Model.

**Task 2 - Client Communication/Outreach**

The EOR team strongly believes that communication with the project team and partners will be vital in delivering a useful product. We are proposing to make use of a Technical Advisory Committee (TAC) made up of staff at the YWINS, representatives of Yahara WINS, and others TBD. The TAC will provide direction throughout the process, including on the overall objectives for the project as well as specific feedback on matters of technical approach. Ultimately, the involvement of the TAC will ensure buy-in on the final deliverables.

In addition to the TAC, EOR proposes to facilitate three (3) additional meetings with key stakeholders in the watershed. The primary objective in consulting with these stakeholder groups will be to get local input on the conservation practices to be included in the Cost Model so we can best factor in existing and likely adoption rates, applicability to setting, and information on costs to implement. This will be of particular importance for practices which require an education/outreach or cost-share elements. It is anticipated that at least one stakeholder meeting will be facilitated with professionals within the agricultural sector and one with representatives of the urban/developed sector.

NOTE: Timing of the individual meetings is noted within the tasks description in bolded text.

**Task 3 - Develop Cost Model Structure**

Following review and concurrence on the Task 1 Data-Gaps Analysis memo, EOR will embark on developing the overall structure of the revised Cost Model. The first component to be fleshed out will be the conservation

practices to be included. The review of the existing Cost Model conducted in Task 1 will serve as a starting point but the EOR team will propose additional conservation practices for consideration. This is an area where we believe our team will be a great asset to the project. We have built a reputation throughout the Midwest for developing innovative approaches to stormwater management. We have tremendous experience working with conservation practices in agricultural and urban settings. Agricultural conservation practices will be based on the conservation pyramid: soil health practices forming the base of the pyramid, in-field and edge of field practices forming the center, and riparian area management practices forming the top. Urban and developed area conservation practices will include retrofit projects, programmatic approaches, and policy initiatives.

More critical than the listing of practices to be included in the Cost Model, will be determining phosphorus reduction effectiveness. Through our past work, we have developed an approach to determining phosphorus reductions attributable to various conservation practices individually as well as the reductions achieved through combinations of multiple practices, or 'suites' of conservation practices. Key factors in our approach are establishing treated areas for each practice and accounting for practice order. The former is important when assessing removal rates of in-field conservation practices or urban good-housekeeping practices while the latter is a vital consideration for conservation practices that are installed in series.

Determining the actual cost of conservation practices is another area where our experience will be of great use to the project! Understanding the potential long-term costs of projects and comparing the benefits and associated costs of different types of practices is important in making informed decisions. Our current methodology standardizes practice life-cycle costs over an operational period by adjusting for inflation to compare various practices on an equalized basis in today's dollar. Costs associated with implementation of projects starting with planning and design, through permitting & construction, and into operations & maintenance are accounted for in our calculations. We have recently applied practice cost to impairment reduction rates to provide a unit of measurement that can compare dollar per unit of nutrient reduction. We look forward to opportunities to continue to evolve our conservation cost methods to better meet our clients' ever-evolving needs for accountability and funding reporting.

This task will culminate in a technical memorandum (Cost Model Structure Memo) summarizing our proposed approach for calculating phosphorus reductions and costs for our recommended suite of conservation practices. The memo will be distributed to TAC members a week ahead of TAC Meeting #2, at which time the findings of the memo will be reviewed. Following revisions, if needed, the Cost Model Structure Memo will be endorsed as the accepted approach to executing construction of the revised Cost Model.

#### **Task 4 - Finalize Cost Model**

After consensus has been reached on the Cost Model Structure, the EOR team will begin executing the approach. The primary objective will be to develop an optimal suite of conservation practices tailored to each specific subwatershed. The strategy will be to maximize implementation of the most cost-effective practices before moving on to less cost-effective practices until the necessary phosphorus reduction is achieved. This will be an iterative process that will factor in conservation practice topology to account for the diminishing reductions that occur for practices built downstream of other practices. Our approach will also account for the specific characteristics of each subwatershed as it pertains to determining the potential for adoption/implementation of each conservation practice type.

Early in the development phase, EOR will facilitate up to three (3) meetings with stakeholder groups within the watershed. At least one meeting will be held with professionals within the agricultural sector. This group would include representatives/staff of NRCS, SWCD, local sustainable farmers, non-profits and others that are involved in agricultural conservation. The purpose of the meeting will be to gather information on existing adoption rates for various conservation practices and 'maximum-likely' adoption rates, both of which are critical considerations when developing a watershed-scale implementation to meet a defined nutrient reduction target. For example, if 100% of row-crop fields are already using nitrification inhibitors, there is no

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additional opportunity for N reduction from this practice in the watershed. Similarly, local professionals will have a good understanding of the potential maximum growth in acceptance for a practice like cover crops. We will also solicit input on local implementation costs from the group. A similar meeting will be held with stormwater professionals representing the urban areas within the watershed to solicit their input on stormwater BMPs, programmatic approaches, and policy initiatives.

Once we have firm, locally vetted cost information, we will be able to run our Conservation Practice Scenario Generator tool to determine the optimal suite of practices for each subwatershed and to quantify the total costs needed to achieve the phosphorus reductions set in the TMDL. Figure 1 shows an example of the Conservation Practice Scenario Generator tool. Key elements of the Scenario Generator tool that will be useful in developing the cost model include:

- Customization to the specific conditions of each TMDL subwatershed area including land cover, land use, topography, nutrient loading dynamics, and existing conservation practice adoption rates.
- Integrated watershed loading models including SWAT and the BMP siting tool ACPF.
- Optimization (most cost-effective) of the suite of conservation practices to meet pre-defined nitrate and phosphorus reduction targets.
- Standardized practice life-cycle costs over an operational period by adjusting for inflation to compare various practices on an equalized basis in today's dollar.

In addition to the total cost number, we will provide breakdowns to assist in implementing the Yahara WINS adaptive management plan. These breakdowns would be discussed with the team but are likely to include pieces such as the costs for staff & consulting resources time, education/outreach, planning, design, permitting, implementation, cost-share and other funding mechanisms, and cost savings to farmers.

This task will culminate in a 90% Cost Model and draft report which will be distributed to the TAC 10 days ahead of TAC Meeting #3. The Cost Model will be reviewed during TAC Meeting #3 and EOR will revise and finalize as needed.

### **Exhibit C.**

#### **PROJECT AMENDMENT WORK ORDER**

All Project Amendments require a written Project Amendment Work Order EXECUTED PRIOR TO COMMENCEMENT OF THE PROJECT AMENDMENT that enumerates changes to the services to be provided, the schedule adjustment for the change in services, and a reasonable estimate of fees and costs (if any). Professional services for Project Amendments shall be provided in accordance with the terms and conditions of the Agreement.

A blank Project Amendment Work Order is attached to this Exhibit C. The form may be used, modified, or supplemented as necessary to convey all required project amendment information.

**PROJECT AMENDMENT WORK ORDER**

Project: Yahara WINS Cost Model Redevelopment

Project Amendment Work Order No.: \_\_\_\_\_

Expand, reduce, or modify fields as required.

- A. Purpose and description of project amendment:
  
- B. Services added/subtracted as part of this amendment:
  
- C. Schedule adjustment required for this project amendment:
  
- D. Adjustment in fees/costs for this project amendment:

Additional Comments:

Provide attachments as necessary and list here:

- a)
- b)
- c)

**Approved by:**

\_\_\_\_\_  
Consultant's Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
YWINS Authorized Representative

\_\_\_\_\_  
Date

Effective Date of Amendment: \_\_\_\_\_

**Exhibit D.**  
**COMPENSATION AND FEE SCHEDULE**

COMPENSATION FOR SERVICES DESCRIBED IN EXHIBIT B SHALL BE ON AN HOURLY RATE BASIS PLUS EXPENSES FOR A TOTAL ESTIMATED FEE OF **\$60,000**. A BREAKDOWN OF THE COMPENSATION IS INCLUDED ON THE FOLLOWING PAGES AND IS PROVIDED AS AN INDICATION OF CONSULTANT'S ANTICIPATED HOURS AND FEES FOR THE SERVICES. HOWEVER, THE BREAKDOWN OF ACTUAL HOURS, EXPENSES, AND TOTAL COMPENSATION FOR EACH TASK MAY VARY FROM THAT SHOWN, SO LONG AS THE TOTAL ESTIMATED FEE INDICATED HEREIN IS NOT EXCEEDED.

The fee schedule shall be as set forth herein. All hourly services shall be invoiced to Owner in 1/4 hourly increments. Descriptions of services provided, and time spent shall be described on the invoice.

The Consultant's Hourly Rate Schedule for the services follows. This list includes employees of the Consultant and Consultant's sub-consultants that will be providing services for the Project as planned at the time of the Agreement. It may not include all support staff and it is understood that changes in staffing may occur as the result of unforeseen events. To that extent, employees not listed will be identified on invoices and will be billed at their standard billable hourly rates.

Team Member: Billing Category: Hourly Rate:	Pat Conrad Professional 4 227	Anne Wilkinson Professional 3 199	Bill Yu Professional 2 167	Steve Gaffield Professional 4 227	Ryan Fleming Professional 4 227	TOTAL EOR LABOR						
Review Existing Cost Model	hrs	\$	hrs	\$	hrs	\$	hrs	\$	hrs	\$	hrs	\$
Assemble & review past reports	4	\$908			8	\$1,336					12	\$2,244
Reverse Engineering Existing Tool	2	\$454			12	\$2,004			4	\$908	18	\$3,366
Gaps Analysis Memo	5	\$1,135			5	\$835	2	\$454			12	\$2,424
Phase 1 Total:	11	\$2,497			25	\$4,175	2	\$454	4	\$908	42	\$8,034
Client Communication/Outreach	hrs	\$	hrs	\$	hrs	\$	hrs	\$	hrs	\$	hrs	\$
Kick-off Meeting at Project Onset	4	\$908	2	\$398							6	\$1,306
TAC Meeting 1 - Review Past Model & Data Gaps Analysis	4	\$908	2	\$398	8	\$1,336					14	\$2,642
TAC Meeting 2 - Review Proposed Model Structure	4	\$908	2	\$398	8	\$1,336			4	\$908	18	\$3,550
Stakeholder Meetings (3)	12	\$2,724	12	\$2,388							24	\$5,112
TAC Meeting 3 - Review 90% Draft Model	4	\$908	2	\$398	8	\$1,336			4	\$908	18	\$3,550
Phase 2 Total:	28	\$6,356	20	\$3,980	24	\$4,008			8	\$1,816	80	\$16,160
Develop Cost Model Structure	hrs	\$	hrs	\$	hrs	\$	hrs	\$	hrs	\$	hrs	\$
Identify BMPs to include	2	\$454	2	\$398	2	\$334					6	\$1,186
Determine Approach for P Reductions by Practice Type	4	\$908	8	\$1,592	12	\$2,004	4	\$908			28	\$5,412
Determine BMP Cost Estimation Approach	4	\$908			12	\$2,004	2	\$454	8	\$1,816	26	\$5,182
Develop Cost Model Structure Memo	4	\$908	4	\$796	8	\$1,336	2	\$454	2	\$454	20	\$3,948
Phase 3 Total:	14	\$3,178	14	\$2,786	34	\$5,678	8	\$1,816	10	\$2,270	80	\$15,728
Finalize Cost Model	hrs	\$	hrs	\$	hrs	\$	hrs	\$	hrs	\$	hrs	\$
Develop Optimized BMP Suite by Reach	6	\$1,362	6	\$1,194	32	\$5,344					44	\$7,900
Calculate Costs by Reach	2	\$454			19	\$3,173			12	\$2,724	33	\$6,351
Develop Summary Memo	3	\$681	5	\$995	12	\$2,004					20	\$3,680
Revise & Finalize	2	\$454			8	\$1,336					10	\$1,790
Phase 4 Total:	13	\$2,951	11	\$2,189	71	\$11,857			12	\$2,724	107	\$19,721

Total Budget **\$59,643**

**Exhibit E.**  
**PROJECT SCHEDULE**

The Schedule for the Scope of Services described in Exhibit B shall commence upon the Effective date of this agreement and continue until October 30, 2024 unless modified by a written project amendment.

The following table includes significant project tasks and milestones and the anticipated order and timing. Both Consultant and YWINS agree to advise the other as early as possible regarding scheduling or completion date concerns/issues.

	4/24	5/24	6/24	7/24	8/24	9/24
<b>Review Existing Cost Model</b>						
Assemble & review past reports						
Reverse Engineering Existing Tool						
Gaps Analysis Memo						
<b>Client Communication/Outreach</b>						
Kick-off Meeting at Project Onset	X					
TAC Meeting 1 - Review Past Model & Data Gaps Analysis		X				
TAC Meeting 2 - Review Proposed Model Structure			X			
Stakeholder Meetings (3)				X	X	
TAC Meeting 3 - Review 90% Draft Model						X
<b>Develop Cost Model Structure</b>						
Identify BMPs to include						
Determine Approach for P Reductions by Practice Type						
Determine BMP Cost Estimation Approach						
Develop Cost Model Structure Memo						
<b>Finalize Cost Model</b>						
Develop Optimized BMP Suite by Reach						
Calculate Costs by Reach						
Develop Summary Memo						
Revise & Finalize						