

AGREEMENT

Between
Calumet County, WI,
Fond du Lac County, WI,
Winnebago County, WI,
and
Fox-Wolf Watershed Alliance

WINNEBAGO WATERWAYS PROGRAM

I PURPOSE

This Agreement is entered into by and between the Fox-Wolf Watershed Alliance (FWWA), Calumet County, Fond du Lac County and Winnebago County (hereinafter “Counties”) to effectuate the goals as noted below and in Attachment B.

II BACKGROUND

The Winnebago System is impaired due to excess phosphorus and sediment delivery from runoff which results in algal blooms and excessive vegetation. Due to the high energy levels found on the Winnebago System, excessive erosion and wetland loss are common throughout the system. Invasive species are also a threat to the system. A lack of coordination throughout the system has led to inconsistent development and implementation of practices and procedures.

The Counties recognize a desire and need to support and promote beautification, restoration, promotion and general upkeep of the waters that comprise the lakes of the Winnebago Waterways, commonly defined as Lake Winnebago and the associated pool lakes of Poygan, Butte des Morts and Winneconne and watershed tributaries within the five-county area including Calumet, Fond du Lac, Outagamie, Waushara and Winnebago Counties (hereinafter Winnebago System).

This effort is the Counties’ Winnebago Waterways Program (hereinafter “Program”). The Program is expected to coordinate projects spanning multiple counties and local units of government to ensure regional efforts are concerted in addressing nonpoint pollution, aquatic invasive species, and public outreach. The Program will develop relationships and partnerships to address issues in the system. The goals of the program are shown in Attachment B.

It is expected that the goals and activities will be phased over several years and will require additional funding beyond the initial amount specific in this agreement. The Winnebago Waterways Committee will guide priorities by approving an annual Work Plan based on need and funding. For FY2020, the Committee is dedicated to advance implementation of the lake management plan and will do so by contracting a Coordinator to provide the services outlined in the FY2020 Work Plan (attachment A).

The Winnebago Waterways Steering Team (hereinafter “Steering Team”) is comprised of representatives of the member counties as well as representatives from other governmental agencies, the public, higher education, and other organizations. The Steering Team coordinates activities with the Fox-Wolf

Watershed Alliance in support of the Winnebago Waterways Program. The Winnebago Waterways Steering Team receives direction from the Winnebago Waterways Committee.

The Counties wish to contract with FWWA for the general benefit of the people who live, work and play in the Counties as well as for future generations to enjoy the natural and cultural resources of the Winnebago Waterways system.

The FWWA is uniquely qualified in programs related to resource conservation and is willing to facilitate stakeholders in the coordination of Lake Management Plan implementation for the Winnebago Waterways Program.

III TERMS OF AGREEMENT

This Agreement shall commence beginning on the day the last signature of the parties is affixed to this Agreement and terminate upon completion of the annual workplan or on December 31, 2023 unless renewed.

For FY 2020 through 2023, funds not to exceed \$20,000 per year per county will be available to FWWA for purposes of conducting the specified tasks described in annual workplans that will be approved annually by the Winnebago Waterways Committee. The 2020 workplan to be completed no later than December 31st 2020 can be found in Attachment A. Future work plans will be based upon annual priorities guided by Program Goals and Objectives defined in Attachment B and can be amended as approved by the Winnebago Waterways Committee.

If any provision of this Agreement is held unenforceable, then such provision will be modified to reflect the Parties' intentions. To the extent legally feasible, all remaining provisions of this Agreement shall remain in full force and effect.

IV NO PARTNERSHIP OR JOINT VENTURE

It is mutually understood and agreed, and it is the intent of the parties hereto, that an independent relationship be and is hereby established under the terms and conditions of this Agreement. All employees of FWWA or its subcontractors shall remain the employees of FWWA and shall not become employees of the Counties under this Agreement. No tenure or any rights or benefits, including worker's compensation, unemployment insurance, medical care, sick leave, vacation leave, severance pay, withholding taxes or other benefits available to County employees shall accrue to FWWA or any subcontractors of FWWA performing services under this Agreement.

V DISPUTE RESOLUTION

All Parties agree to a good faith commitment to resolve any disputes over the interpretation of the terms of this Agreement. Failing such efforts, the Parties shall be entitled to submit to a state court of located in the state of Wisconsin.

VI INDEMNIFICATION

FWWA and its agents and designees agree to indemnify, defend, and hold harmless Counties, their agents, officers and/or employees from all costs, losses, damages, claims and suits including court costs, attorneys' fees and other expenses arising from any negligent act or omission of counties and their agents, its employees, agents, designees or employees of agents or designees.

Counties and their agents and designees agree to indemnify, defend, and hold harmless, FWWA, its agents, officers and/or employees from all costs, losses, damages, claims and suits, including court costs, attorneys' fees and other expenses arising from any negligent act or omission of FWWA, its employees, agents, designees or employees of said agents or designees.

VII GOVERNING LAWS

This Agreement shall be construed in accordance with and governed by the laws of the state of Wisconsin and suit, if any, must be brought in state courts residing in Wisconsin.

VIII REPORTING REQUIREMENTS

Under this Agreement and so long as Counties supply it with the requisite form in advance thereof, FWWA shall submit a monthly progress report in the form of monthly Steering Committee meeting notes by email to designated County staff as a Word document. Said reports are required even if no activity has taken place during the reporting period. Additional material such as pictures and news articles may also be included at FWWA's discretion unless otherwise directed by Steering Team. Verbal or written reports shall be given at Lake Management Planning Steering Team meetings as scheduled, County Land and Water Conservation Committee Meetings and Winnebago Waterways Committee as requested.

IX FINANCIAL AND COMPENSATION INFORMATION

- A. FWWA hereby agrees that all costs incurred, including service fees and expenses, for the Term of this Agreement shall not exceed the amount of funds allocated annually by the Counties. Indirect charges shall not exceed 10% of contract total.
- B. Partial payments shall be provided as FWWA submits invoices. Invoices will be paid within 30 days of invoice date. Invoice requests may be made monthly to Fond du Lac County after monthly progress reports have been submitted and Fond du Lac County will invoice Calumet and Winnebago Counties. After reviewing FWWA's progress report referred to in Section VIII of this Agreement and the corresponding invoice form referred to herein (collectively, "Reports") for satisfactory progress and cost coverage, counties shall disburse the monthly invoiced amount to FWWA.
- C. FWWA reserves the right to suspend or terminate this Agreement with written notice, should any invoice not be paid in full within 45 days of the date of the invoice.
- D. Any award beyond the current fiscal year is subject to availability of funds and will warrant annual Work Plan updates set by the Winnebago Waterways Committee and agreed upon by all parties. Funds may be provided in subsequent fiscal years if project work is satisfactory

X ADVANCE PAYMENT

An advance payment is not available.

XI RESPONSIBILITIES AND DUTIES OF THE PARTIES

General:

- The Winnebago Waterways Committee has final decision on all Project administration and activities. Counties are responsible to notify FWWA of any assignments hereunder.

Counties agree to:

- Provide financial assistance as provided for in Article IX;
- Give clear guidance to program and workload priorities and project expectations;
- Respond to all questions and/or inquiries from FWWA, whether by phone, via e-mail, or in writing in a timely manner;
- Provide FWWA with the names and contact information of any partners, liaisons, entities and/or other parties associated with the Project, along with the manner, if any, in which FWWA shall coordinate, correspond and/or associate with said partners, liaisons, entities and/or other parties hereunder;
- Attend project meetings;
- Work with and provide assistance to FWWA as needed to advance Work Plan in a timely and efficient manner;
- Provide logistical and facility support to FWWA personnel as available and necessary;
- Assign an appropriate county staff representative(s) to monitor the ongoing work, to respond to questions about the nature and goals of the project and to act as a project liaison between FWWA and individual county committee members;
- Confirm or deny, in writing, all requested changes to this Agreement.

FWWA agrees to:

- Hire or assign a staff member to be the day-to-day Program Coordinator in the administration and execution of the Work Plan and shall send the name and contact information of said staff member to Counties as soon as possible;
- Carry out the assigned portions of the Work Plan, approved annually by the Winnebago Waterways Committee;
- Conduct all work in a lawful and safe manner, consistent with the standards and level of care normally provided under similar profession(s);
- Submit monthly invoice forms to Fond du Lac County in the manner prescribed by Section IX (B) of this Agreement;
- Request changes to the Work Plan in writing and on a formal letterhead to Counties; and
- All other duties as mutually agreed upon in writing by Counties and FWWA.

XII DEDICATED STAFF

Dedicated staff are essential to ensure maximum coordination and communications between

the parties and the work being performed. They are:

1. For Fond du Lac County:

a. Agreements Technical Representative/Program Resource

Erin Gerred, Director of Administration
Fond du Lac County
160 S. Macy Street
Fond du Lac, WI 54935
E-mail: erin.gerred@fdlco.wi.gov
Telephone: 920-929-3156

b. Program Resource

Paul Tollard, County Conservationist
Fond du Lac County Land & Water Conservation Department
W6529 Forest Avenue
Fond du Lac, WI 54937
Email: paul.tollard@wi.nacdnet.net
Telephone: 920-923-3033 ext. 4658

2. For Calumet County:

a. Agreements Technical Representative/Program Resource

Dani Santry, Water Resource Specialist
Calumet County Land and Water Conservation Department
206 Court St
Chilton, WI 53014
Email: Santry.Danielle@co.calumet.wi.us
Telephone: 920-849-1493 x241

3. For Winnebago County:

a. Agreements Technical Representative/Program Resource

Chad Casper, Resource Conservationist
Winnebago County Land and Water Conservation Department
625 E County Road Y
Suite 100
Oshkosh, WI 54901
Email: ccasper@co.winnebago.wi.us
Telephone: 920-232-1955

4. For the FWWA:

a. Agreements Technical Representative

Jessica Schultz, Executive Director
Fox-Wolf Watershed Alliance
309 E. Kimberly Avenue
Kimberly, WI 54136
Email: jessica@fwwa.org
Telephone: 920-858-4246

b. Program Resource

Korin Doering, Winnebago Waterways Program Coordinator
Fox-Wolf Watershed Alliance
309 E. Kimberly Avenue
Kimberly, WI 54136
Email: korin@fwwa.org

Telephone: 920-851-0948

Any communication regarding this Agreement will be sent to the Agreements Technical Representatives. The FWWA will address communications that relate solely to routine operational matters described in the current work plan directly to the Program Resources.

Neither the Counties nor the FWWA may make any permanent change in a key official without written notice to the other party. Notice in advance of the proposed change is preferred.

XIII INSURANCE

Prior to commencing work, FWWA shall, at its own cost and expense, furnish to Counties a Certificate of Insurance indicating proof of the following insurance from companies licensed to do business in the State of Wisconsin:

- a) Workers Compensation and Employer's Liability – Statutory – in compliance with the Compensation law of the State where the Consultant regularly does business and Employer's Liability insurance with a limit not less than \$100,000 each accident.
- b) General Liability Insurance – with a minimum limit of \$1,000,000 per occurrence/\$2,000,000 aggregate combined single limit for bodily injury and property damage. This insurance shall include, but not be limited to, the following coverage:
 - 1) Premises – Operations
 - 2) Products and Completed Operations
 - 3) Broad Form Property Damage
 - 4) Contractual
 - 5) Personal Injury
- c) Professional Liability – if applicable, with a minimum of \$1,000,000 per occurrence/\$1,000,000 aggregate combined single limit.
- d) Automobile Liability – Insurance with a minimum limit of \$1,000,000 per occurrence combined single limit for bodily injury and property damage unless otherwise indicated. This insurance shall include bodily injury and property damage for the following coverages:
 - 1) Owned Automobiles
 - 2) Hired Automobiles
 - 3) Non-Owned Automobiles

The insurance certificate shall include a 30-day notice prior to cancellation or material policy change, which notice shall be given to Counties. All notices will name the FWWA and identify this Agreement.

XIII SUBCONTRACTS AND PROCUREMENT PROCEDURES

All subcontractors hired by FWWA pursuant to this Agreement, shall be subject to the provisions hereof and shall be qualified to perform the duties for which they were hired hereunder. FWWA acknowledges that it will provide Counties, upon written request, with proof (i.e., a certificate of coverage) showing that each subcontractors hired by FWWA hereunder has met the minimum insurance requirements specified in Section XV, above. FWWA further agrees that each subcontractors it hires hereunder will limit Counties' financial obligations to actual Funds received and will indemnify Counties for any illegal acts performed by that subcontractors, its employees, agents and/or assignees.

XIV TAXES

As counties, the Counties are exempt from payment of all federal tax and Wisconsin state and local taxes on its purchases except Wisconsin Excise Taxes.

XV NON-DISCRIMINATION POLICY AND OTHER LEGAL REQUIREMENTS

FWWA, its agents and designees agree to comply with all applicable federal, state and local statutes, regulations, Executive Orders, and policies on nondiscrimination including, but not limited to, Title VI and Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, the Americans with Disabilities Act, and the Fair Housing Act. Specifically, no person in the United States shall, on the ground of race, color, national origin, handicap, age, religion, sex or sexual orientation, be excluded from participation in, be denied the benefits of, or be subject to discrimination under this Agreement. FWWA will take affirmative action to ensure that its employees are treated without regard to their race, religion, color, sexual orientation, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training.

XVI MODIFICATION OR TERMINATION

This Agreement may be modified in writing upon mutual agreement by Winnebago Waterways Committee and Fox-Wolf Watershed Alliance.

Through this Agreement, FWWA agrees to abide by all terms and obligations as expressed in this Agreement. If FWWA fails to materially comply therewith, Counties shall promptly provide written notice to FWWA outlining which corrections to be made. If FWWA fails to make the corrections within thirty (30) days of receiving notice, Counties may, by subsequent written notice to FWWA, terminate this Agreement in whole or in part at any time thereafter, so long as the effective date of said termination is specified therein. In the event it receives such termination notice, FWWA shall immediately discontinue all service affected (unless the notice directs otherwise) and deliver to Counties all information and materials within its possession that FWWA has accumulated in performing this Agreement, whether completed or in progress and so long as not prohibited by law or court order within 10 days of notice. Payments made by or recoveries made by Counties hereunder shall be in accord with the legal rights and liabilities of the Parties hereto.

This Agreement may be terminated by any Party upon written notice to the other at least thirty (30) days in advance of the effective date of said termination.

XVII UNFINISHED WORK

In the event the Counties exercise their right to terminate this Agreement for cause, all finished or unfinished documents, services, papers, data, products, or the like prepared, produced or made by the FWWA under this Agreement shall become the property of the Counties, and the FWWA shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents, services, papers, data products or the like.

However, it is agreed upon by all parties that the FWWA’s Winnebago Waterways website enhanced as part of this Agreement will continue on past any termination of this Agreement and become the property of the Watershed Alliance. Each County must approve in writing any continued County link within the website at the time of termination. If an agreement is not reached regarding the continued inclusion of County links, the Watershed Alliance will remove any such links from the website.

XVIII NON-APPROPRIATION

If during the term of the Agreement, the elected governing bodies of Counties shall fail to appropriate sufficient funds or approve necessary revenue amounts to carry out Counties’ financial obligations under this Agreement, this Agreement shall be terminated as of the date existing funds have been exhausted and no funds are available and such suspension under this non-funding provision becomes effective immediately, without penalty to the County.

The provisions of this article control over any other provisions or terms set forth in other articles of this Agreement.

XIX – ATTACHMENTS

The following documents are attached to and made a part of this Agreement:

- A. Work Plan for Contract Period January 2020 – December 2020
- B. Counties’ Winnebago Waterways Program Overview

XX AUTHORITY TO BIND

The undersigned attest under penalties of perjury that the signatory is the cooperating Party, or that the signatory is the representative, agent, member or officer of the cooperating Party, that the signatory has not, nor has any other member, employee, representative, agent or office of the firm, company, corporation, or partnership represented by the signatory, directly or indirectly, to the best of their knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that the signatory has not received or paid, any sum other than that which appears upon the face of this Agreement.

Notwithstanding anything in this Agreement to the contrary, the signatories for the Parties represent that they have been duly authorized to execute contracts on behalf of their respective organizations.

IN WITNESS WHEREOF, having read and understood the terms of the Agreement, the Parties do by their respective signatures dated below hereby execute this Agreement in three (3) originals as of the effective date hereof. One (1) original shall be retained by each Party. If there is any controversy among the documents, the document on file with Fond du Lac County shall control.

County Signature Date

Print Name

Title

Organization

County Signature Date

Print Name

Title

Organization

County Signature Date

Print Name

Title

Organization

FWWA Signature Date

Jessica Schultz
Print Name

Executive Director
Title

Fox-Wolf Watershed Alliance
Organization

ATTACHMENT A

Work Plan for Contract Period January 2020 – December 2020

Goals and Activities: *The percentages are a guide based on current priorities of the Winnebago Waterways Committee. Workplan is subject to change with guidance from the Winnebago Waterways Steering Committee and approval of Fox-Wolf Watershed Alliance (FWWA).*

Workplan is based on a fulltime coordinator averaging 40 hours/week. Costs not covered by this contract will be funded through the FWWA and/or grants secured by FWWA.

Project activities include: 1) Continue to build the Winnebago Waterways brand, building a personal connection with shoreline property owners, watershed residents and lake users to increase support for protecting the lakes; 2) Create a portal for Lake Management Planning documents to be archived; 3) Facilitate Winnebago Waterways Steering Committee meetings to advance implementation coordination; 4) Serve as an aquatic plant and shoreline restoration resource for property owners throughout the system; 5) Facilitate meetings of priority implementation teams including but not limited to: Agricultural Implementation Team, Water Level Assessment Team and the Community Engagement Team; 6) Seek out, apply or aid others in applying for grant funding for implementation, as opportunities arise; 7) Create a means to track lake plan implementation; 8) Report out program success to stakeholders. 9) Update plan as needed.

90% Advance Lake Management Plan Implementation Efforts

20% Public Outreach & Engagement

- Be the public face for outward communication for the Winnebago Waterways recovery efforts
- Build relationships with external partners to accomplish projects, provide education, and build support for implementation
- Utilize communication channels including web content, print media, online blog articles and social media to communicate implementation successes and needs
- Organize, publicize, and hold public meetings to engage the community, advance implementation efforts and/or build public awareness
- Respond to requests for information
- Promote Lake Management Plan adoption with local governments, state and federal agencies, community groups, NGOs, colleges, universities, and other potential implementation partners

10% Aquatic Plant and Shoreline Restoration Resource

- Provide resources to shoreline property owners regarding shoreline restoration as requested
- Attend channel association and other group meetings as requested

50% Implementation Coordination

- Facilitate Winnebago Waterways Steering Committee
Committee will meet monthly to guide LMP Implementation Coordination.
- Facilitate Water Level Assessment Team
Team will work with Army Corp of Engineers to evaluate the water level management performance of the previous year, evaluate ecological response and impact to human interests and develop recommendation for future management.
- Facilitate Agricultural Implementation Team
Initial Team is anticipated to be made up of County Land Conservation Department staff, WDNR, NRCS and UW-Extension Ag Agents. Team will work together to move agricultural implementation forward, seeking and applying for grants, where appropriate.
- Facilitate Community Engagement Team
Team will work to engage shoreline property owners, watershed residents and lake users to build support of the Winnebago Waterways program. It is anticipated this team will seek support through business sponsorship and/or grants to host public events and create other forums to increase public engagement.
- General Coordination Efforts
FWWA will work within our own organization or with other entities as needs arise to build capacity to advance elements of the LMP not addressed above.

10% Track Plan Implementation

- Create a means to track implementation. Projects may be implemented by many partners. Create a system for partners to communicate intent to complete a project and report project completion. This system may also be set up to allow for submission of site-specific plans (i.e. aquatic plant management plans).
- Track plan implementation progress
- Report implementation success to funders and public

10% Administration

- Prepare and submit monthly steering committee notes and invoices to the Winnebago Waterways Committee appointed representatives (former county steering team members)
- Provide in-person updates to Winnebago Waterways Committee, County Land Conservation Committees and County Boards as requested

ATTACHMENT B

Winnebago Waterways Program

The Winnebago Waterways Program (hereinafter “Program”) was created based on the desire and need to support and promote beautification, restoration, promotion and general upkeep of the waters that comprise the lakes of the Winnebago Waterways, commonly defined as Lake Winnebago and the associated pool lakes of Poygan, Butte des Morts and Winneconne and watershed tributaries within the five-county area including Calumet, Fond du Lac, Outagamie, Waushara and Winnebago Counties (the “Winnebago Waterways Program”);

The purpose of the program is to coordinate, communicate, facilitate and partner on projects relating to the advancement of water quality efforts or other efforts as directed by the Winnebago Waterways Committee on the Winnebago system. The Program is expected to coordinate projects spanning multiple counties and local units of government to ensure regional efforts are concerted in addressing nonpoint pollution, aquatic invasive species, and public outreach. The Program will develop relationships and partnerships to address issues on the system.

The goals of the program are:

- Public outreach and education
- Develop a Lake Management Plan for the Winnebago Lakes
- Provide Support to advance implementation of the goals identified in the Upper Fox and Wolf TMDL (Total Maximum Daily Load) report (currently under development by the Wisconsin Department of Natural Resources)
- Coordinate system-wide projects
- Grant pursuit and management for projects addressing the problem statement above

Should the Program contract with an entity to advance work, annual workplans will be developed for each contract year to advance one or more of the goals identified above.