

RESOLUTION NO. _____ - 2020

APPROVING A WATER QUALITY BROKERING AGREEMENT WITH THE VILLAGE OF LOGANVILLE AND AUTHORIZING THE LAND RESOURCES AND ENVIRONMENT DIRECTOR TO EXECUTE THE AGREEMENT

Background: In Wisconsin, municipal and industrial wastewater dischargers hold Wisconsin Pollutant Discharge Elimination System permits that are issued through the Wisconsin Department of Natural Resources (DNR). Permit holders must demonstrate compliance with water quality-based effluent limitations (WQBELs) by making upgrades to their facilities or participating in adaptive management or water quality trading. Water Quality Trading (WQT) provides permit holders with the flexibility to acquire pollutant reductions from other sources in the watershed to offset their discharge load so that they will comply with their own permit requirements. The village of Loganville has requested assistance from the Sauk County Land Resources and Environment Department to act as a broker and credit generator and assist with the development of a water quality trading plan. A Water Quality Brokering Agreement is attached and outlines the responsibilities of the county and the village.

Fiscal Impact: [] None [X] Budgeted Expenditure [] Not Budgeted

WHEREAS, the Water Quality Brokering Agreement must be developed in order for the county to be compensated for assistance provided to the Village of Loganville to establish conservation practices that address requirements of the Village's WPDES Permit; and,

NOW, THEREFORE, BE IT RESOLVED, by the Sauk County Board of Supervisors met in regular session, approves the Water Quality Brokering Agreement (Exhibit A); and,

BE IT FURTHER RESOLVED, by the Sauk County Board of Supervisors that the Land Resources and Environment Director is hereby authorized to sign the Water Quality Brokering Agreement with the Village of Loganville.

For consideration by the Sauk County Board of Supervisors on October 20, 2020.

Respectfully submitted,

SAUK COUNTY LAND RESOURCES AND ENVIRONMENT COMMITTEE

MARTY KRUEGER, CHAIR

PETER KINSMAN, VICE CHAIR

ROSS CURRY

ROB NELSON

BRANDON LOHR

DENNIS POLIVKA

RANDY PUTTKAMER

VALERIE MCAULIFFE

Fiscal Note: The proposed 2021 budget will show \$7,500 collected from the Village of Loganville to compensate for 40% of the cost of LRE staff time utilized. Staff is conducting work for this project that it would normally be part of the department's responsibility. However, given that this work is attributed to WPDES Permit, the County is able to enter into an agreement to recoup some County costs.

MIS Note: No new MIS impact.

Exhibit A

COUNTY OF SAUK

WATER QUALITY BROKERING AGREEMENT

This Water Quality Brokering Agreement (“Agreement”) is entered into between the County of Sauk, Wisconsin, a Wisconsin quasi-municipal corporation (“County”) and Village of Loganville, a Wisconsin municipal corporation (“Loganville”).

WHEREAS, County and Loganville (collectively “Parties”) wish to collaborate in the development and implementation of a Water Quality Trading Plan.

WHEREAS, Loganville is seeking authorization as part of its Wisconsin Pollution Discharge Elimination System (“WPDES”) permit to discharge total phosphorus and above levels otherwise authorized in their permit by entering into this Agreement with County as authorized by Wis. Stat. § 283.84(1)(c).

WHEREAS, County is willing to serve as a broker and credit generator, and will have in place conservation practices that reduce total phosphorus pollution in the Watershed HUC 12 # 070700040302.

NOW THEREFORE, for the mutual promises, obligations and benefits provided hereunder, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. TERM. The term of this Agreement shall commence as of the date by which all Parties hereto have executed this Agreement and shall have no fixed expiration date. Either party may terminate this Agreement without cause on 90 days’ advance written notice, provided that the requirements of this paragraph do not apply to a termination under paragraph 8.

2. RESPONSIBILITIES OF COUNTY. The County shall:

- a. Provide Water Quality Trading Plan Assistance.
 - i. Provide conservation practice and credit generator related information to Loganville for completion and approval of Loganville’s Wisconsin Department of Natural Resources (“WDNR”) WPDES required Water Quality Trading Plan.
- b. Provide Conservation Practice Planning Services.
 - i. Assist Loganville with finding landowners and potential projects that reduce nutrient and sediment runoff.
 - ii. Work with landowners to establish and implement objectives that reduce phosphorus discharges.
 - iii. Identify and evaluate alternative conservation practices and/or engineered solutions that could result in total phosphorus and total suspended solids reductions as determined through one-on-one conversations and farm walk-overs with landowners, producers, renters, or consultants.
 - iv. Analyze available information to establish current baseline conditions including estimated total phosphorus and total suspended solid losses.
 - v. Formulate options for installing conservation practices and/or structural practices to address total phosphorus and total suspended solids discharged and evaluate the effectiveness of these options with landowners.
 - vi. Consult with landowners to make conservation practice implementation plans that may reduce total phosphorus and total suspended solids and address other resource concerns as appropriate.
 - vii. Assist landowners with developing timelines to implement conservation practices.
 - viii. Asssist Loganville and landowners develop a WQT Agreement.

- ix. Develop cost estimates for planned and designed practices where the County is providing the technical services.

c. Technical Services

- i. Conduct survey and design work for conservation practices.
- ii. Review third party construction plans when the County is not the primary technical service provider.
- iii. Bid the construction work and report the reports to Loganville for approval.
- iv. Conduct construction oversight of conservation practice installation.
- v. Verify and document that conservation practices are installed in accordance with the design and applicable technical standards.
- vi. Calculate and quantify nutrient and or sediment reductions.

d. Annual Inspections and Certifications

3. PAYMENT FOR SERVICES AND PROJECT COSTS. Loganville shall be responsible for all construction costs associated with implementing conservation practices under this Agreement. County shall monitor construction projects and review the contractor's pay applications. Loganville shall make payments directly to the construction contractor within 30 days.

Loganville shall reimburse County for County's labor costs under this Agreement, including planning, review, travel time, and any other labor costs incurred by the County, at rates referenced below.

- a. \$37.24 per hour, pro-rated for fractions of an hour to the nearest 1/10th hour for fiscal years 2020 and 2021.
- b. For future years, said hourly rate will increase to accommodate annual salary and benefit costs to the County.
- c. Loganville's obligation for payment shall not exceed \$7,500.00 without amendment to this Agreement.

County shall invoice Loganville monthly by the 15th day of the month. Billable hours will be documented with time, date, and service provided. Invoices shall be due and payable by Loganville to County within 60 days of Loganville's receipt of the invoice. Unpaid balances which remain outstanding after the due date shall be assessed a penalty at the rate of one percent (1%) per month on the outstanding balance as of the last day of the month. All payments shall be made payable to Sauk County Treasurer. Payments shall be mailed to Sauk County Land Resources and Environment Department, 505 Broadway, Baraboo, WI 53913.

4. COUNTY REPORTING OF WATER POLLUTION CREDITS. County shall provide Loganville with the following:

- a. Written notice of any potential conservation practices resulting from services provided under this Agreement. Written notice shall include:
 - i. Location and name of potential conservation practice(s) to be implemented;
 - ii. Name of landowner and/or operator implementing the conservation practice(s);
 - iii. Estimated phosphorus reductions by practice;
 - iv. Estimated costs for conservation practice(s) implementation; and
 - v. Estimated staff time and costs.
- b. Written Notice of Credit Generation to Loganville as to the total phosphorus credits that can be used by Loganville as a result of conservation practice implementation. Written notice shall include:
 - i. Pounds of total phosphorus credits available;
 - ii. Conservation practices implemented that are generating credits;
 - iii. Data of credit generation;
 - iv. Models used to calculate credits; and
 - v. Trade ratios applied to credit calculations provided to Sauk County by Loganville.

- c. Annual inspections and certifications that installed practices are functioning and generating reported total phosphorus and total suspended solids credits. Certification shall include:
 - i. Date of Credit Generation/Inspection;
 - ii. Statement of finding indicating that the practices are functioning and being maintained according to the operation and maintenance plan;
 - iii. Any deficient items identified in the operation and maintenance plan if applicable;
 - iv. Remedies as to how, who, and in what timeframe corrections will be made for identified deficient items;
 - v. Amount of total phosphorus and total suspended solids credits available to Loganville; and
 - vi. Duration of the availability of the total phosphorus and total suspended solids credits based on the design life expectancy and maintenance of the practices implemented.
- d. An annual report submitted by February 1st containing inspection and certification information.

5. RESPONSIBILITIES OF LOGANVILLE. Loganville or its designee shall:

- a. Meet with the County a minimum of twice per year to discuss conservation project progress and conditions set forth in this Agreement.
- b. Assist County in identifying willing conservation project participants and work with the County on identifying viable phosphorus reducing conservation projects.
- c. Make landowner conservation practice funding decisions after receiving a funding request from a landowner for the implementation of conservation practices that reduce phosphorus. Loganville shall make funding decisions within (60) days of being notified of the funding request.

6. LOGANVILLE DESIGNATION. Loganville shall designate an employee or official to serve as its authorized agent for purposes of implementing this Agreement. Loganville shall notify County of any change in its authorized agent.

7. TERMINATION WITH CAUSE. If a party shall fail to fulfill in timely and proper manner its obligations under this Agreement, or if a party shall violate any of the covenants or stipulations of this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving a thirty (30) day written notice to the defaulting or breaching party of such termination and specifying the effective date thereof. Except for the procedures specified in Section 1, this Agreement may only be terminated for cause.

- a. In the event a party exercises its right to terminate this Agreement under this Section, the defaulting or breaching party shall not be relieved of liability to the terminating party for damages sustained by the terminating party by virtue of any default or breach.
- b. If during the term of this Agreement, the Sauk County Board of Supervisors or the State or Federal Governments fails to appropriate sufficient funds to carry out County's obligations hereunder, that shall result in automatic termination of this Agreement as of the date funds are no longer available, provided, however that County has given Loganville not less than sixty (60) days' notice prior to the effective date of any termination under this paragraph.

8. LIABILITY. 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 loss, claims, and liabilities which are attributed 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 and omissions and those of its employees, agents, boards, commissions, agencies, offers and representatives. It is not the intent of the parties to impose liability beyond that imposed by state statutes.

9. MISCELLANEOUS

- a. Loganville Personnel. Loganville agrees to secure, at Loganville' own expense, all personnel necessary to carry out its obligations under this Agreement. Such personnel shall not be deemed to be employees of County nor shall they or any of them have or be deemed to have any direct contractual relationship with County.
- b. Controlling Law and Venue. It is expressly understood and agreed to by the Parties hereto that in the event of any disagreement or controversy between the Parties, Wisconsin law shall be controlling. Venue for any legal proceedings shall be in the Sauk County Circuit Court.
- c. Assignment. Except as permitted or provided for herein, neither Party shall assign or transfer interests in this Agreement without prior written consent of the other Party hereto.
- d. Limitation of Agreement. This Agreement is solely between the Parties hereto and for their benefit only. No part of this Agreement shall be construed to add to, supplement, amend, abridge or repeal existing duties, rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the parties.
- e. Entire Agreement. The entire agreement of the Parties is contained herein and this Agreement supersedes any and all oral agreements and negotiations between the Parties relating to the subject matter hereof. This Agreement shall not be amended in any fashion except in writing, executed by both Parties.
- f. Counterparts. The Parties may evidence their agreement to the foregoing upon one or several counterparts of this instrument, which together shall constitute a single instrument.

IN WITNESS WHEREOF, the Parties have executed this Water Quality Brokering Agreement.

VILLAGE OF LOGANVILLE

– Director of Public Works

Date: _____

SAUK COUNTY

Lisa Wilson, Director Land Resources and Environment

Date: _____

ATTEST

Becky Evert, County Clerk

Date: _____