

CURLY-LEAF PONDWEED TREATMENT PROGRAM SERVICES AGREEMENT

THIS CURLY-LEAF PONDWEED TREATMENT PROGRAM SERVICES AGREEMENT ("Agreement") made and entered into by and between the Bassett Creek Watershed Management Commission, a Minnesota joint powers organization (the "Commission"), and Lake Restoration, Inc. (the "Contractor"). The Commission and the Contractor may hereinafter be referred to individually as a "party" or collectively as the "parties."

1. **SERVICES.** The Contractor will provide all labor, materials, supplies, and equipment needed to perform the Curly-leaf pondweed treatment services as set out in the attached Exhibit 1 in accordance with the terms and conditions of this Agreement (collectively, the "Services").
2. **TIMING OF SERVICES.** The Contractor shall fully perform and complete delivery of the Services to the reasonable satisfaction of the Commission by June 1, 2019.
3. **PAYMENT FOR SERVICES.** The Contractor shall be paid based on the price in its quote, attached hereto as Exhibit 2, and in accordance with the provisions in Exhibit 1. The Contractor shall provide the Commission a detailed invoice for the completed Services in accordance with the requirements of Minnesota Statutes, section 471.38. The Commission shall pay the Contractor within 40 days of receipt of the invoice.
4. **INSURANCE.** The Contractor shall carry, during the entire term of this Agreement, insurance coverage in values indicated below and shall furnish a certificate of insurance to the Commission prior to commencing the Services. The Commission shall be named an additional insured on the Contractor's Commercial General Liability policy.

TYPE	MINIMUM LIMITS
Commercial General Liability	\$1,000,000
Automobile Liability	\$1,000,000
Workers Compensation	State of MN Statutory Limits
Employer's Liability	\$500,000

5. **INDEPENDENT CONTRACTOR.** The Contractor acknowledges and agrees that it is an independent contractor and that nothing herein shall be construed to create the relationship of employer and employee between the Commission and the Contractor. No employee related withholdings or deductions shall be made from payments due the Contractor. The Contractor shall not be entitled to receive any benefits from the Commission and shall not be eligible for workers' compensation or unemployment benefits. The Contractor shall at all times be free to exercise initiative, judgment, and discretion in how best to perform or provide the Services identified herein.
6. **COMPLIANCE WITH LAWS.** The Contractor shall comply with all applicable federal, state and local laws, regulations or ordinances in performance of the Contractor's duties hereunder, such laws including but not limited to those relating to non-discrimination in hiring or labor practices. The Contractor shall also be required to, at its own cost, obtain any permits, licenses, or

permissions that may be required to provide the Services, except that the Commission shall obtain, at its own cost, a permit from the MnDNR for the treatment. The Contractor shall adhere to the MnDNR permit issued for this project. Any violation of federal, state, or local laws, statutes, ordinances, rules or regulations, as well as loss of any applicable license, permit, or certification by the Contractor shall constitute a material breach of this Agreement, regardless of the reason and whether or not intentional, and shall entitle the Commission to terminate this Agreement effective as of the date of such violation, failure, or loss.

7. **TERM AND TERMINATION.** This Agreement shall be effective as of the date of the last party to execute it and it shall continue in effect until final payment by the Commission after satisfactory completion of the Services. The Commission may terminate this Agreement if the Contractor fails to make sufficient progress toward completion, or fails to complete, the Services in accordance with the timeline established herein. Either party may terminate this Agreement if the other party is in breach of any material term of this Agreement if the breaching party fails to complete the cure the breach within 20 days' written notice of breach provided by the non-breaching party.
8. **AMENDMENTS.** This document, together with the attached exhibits and quote (which are incorporated herein by reference), constitutes the entire Agreement between the parties and no modifications of its terms shall be valid unless reduced to writing and signed by both parties.
9. **DATA PRACTICES.** Any data created, collected, received, stored, used, maintained, or disseminated by the Contractor in performing the Services is subject to the requirements of the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, ("Act") and the Contractor must comply with those requirements as if it were a government entity. The Contractor does not have a duty to provide access to public data to the public if the public data is available from the Commission. The Contractor shall immediately notify the Commission if it receives a request under the Act and shall work with the Commission to ensure the response complies with the Act.
10. **AUDIT.** The Contractor agrees that for a period of six years after completion of the Services the Commission, the State Auditor, and the Legislative Auditor, or any of their duly authorized representatives, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, and records that are relevant to and involve transactions relating to this Agreement.
11. **INDEMNIFICATION.** Any and all claims that arise or may arise against the Contractor, its agents, servants, or employees as a consequence of any act or omission on the part of the Contractor or its agents, servants, or employees while engaged in the performance of the Agreement shall in no way be the obligation or responsibility of the Commission. The Contractor shall indemnify, hold harmless, and defend the Commission, its officers, agents, and employees against any and all liability, loss, costs, damages, expenses, claims or actions, including attorney fees which the Commission, its officers, agents, or employees may hereafter sustain, incur, or be required to pay, arising out of or by reason of any act or omission of the Contractor, its agents, servants or employee, in the execution, performance, or failure to adequately perform the Contractor's obligations pursuant to this Agreement. Nothing in this

Agreement shall constitute a waiver by the Commission of any statutory limits or immunities from liability.

12. **APPLICABLE LAW.** The law of the State of Minnesota shall govern all interpretations of this Agreement, and the appropriate venue and jurisdiction for any litigation that may arise under this Agreement will be in and under those courts located within the County of Hennepin, State of Minnesota, regardless of the place of business, residence, or incorporation of the Contractor.
13. **NO AGENCY.** The Contractor is an independent contractor and shall not be considered to be the agent or servant of the Commission for any purpose and shall have no authority to enter into any contracts, create any obligations, or make any warranties or representations on behalf of the Commission.
14. **NOTICES.** Any notice or demand, authorized or required under this Agreement shall be in writing and shall be sent by certified mail to the other party as follows:

To the Contractor: Chad Hadler
 Lake Restoration, Inc.
 12425 Ironwood Circle, Rogers MN 55374

To the Commission: Chairperson
 Bassett Creek Watershed Management Commission
 City of Golden Valley
 7800 Golden Valley Road
 Golden Valley, MN 55427
15. **AUTHORITY.** Each of the undersigned parties warrants that it has the full authority to execute this Contract, and each individual signing this Contract on behalf of a corporation hereby warrants that he or she has full authority to sign on behalf of the corporation and that he or she represents and binds such corporation thereby.
16. **NO WAIVER.** The waiver by any party of a breach or violation of, or failure of any party to enforce, any provision of this Contract shall not operate or be construed as a waiver of any subsequent breach or violation or as a relinquishment of any rights hereunder.
17. **SERVERABILITY.** If any part of this Contract is invalid or unenforceable under applicable law, that part shall be ineffective only to the extent of such invalidity or unenforceability without in any way affecting the remaining parts of the provision or this Contract.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date of the last party to execute it.

CONTRACTOR

By: 

Its: Vice President

Date: April 9, 2019

**BASSETT CREEK WATERSHED
MANAGEMENT COMMISSION**

By: _____
Chairperson

Date: _____

By: _____
Secretary

Date: _____

EXHIBIT 1
General Service Requirements

1. LOCATION & SCOPE OF SERVICES

The purpose of the Services is to do follow up control of Curly-leaf pondweed regrowth. The location of the Services shall only be on Medicine Lake within the Cities of Plymouth and Medicine Lake, Minnesota. The Services shall include furnishing and applying herbicide, furnishing and installing signage throughout the project area during the spring of 2018. The work shall be done in accordance with Minnesota Department of Natural Resources (MnDNR) guidelines for herbicide application.

2. MATERIALS

- A. Herbicide. The herbicides used will be Diquat at locations and at a concentration specified in MnDNR herbicide application permit.
- B. Signage. The Contractor will place all necessary signage in the project area according to approved MnDNR standards.

3. APPLICATION

- A. MnDNR Guidelines. The Contractor shall follow all of MnDNR's guidelines for herbicide application and will install all necessary signage throughout the project area and public access areas.
- B. Treatment Times. The herbicide treatment, if feasible, will be conducted during mid-week (Tuesday-Thursday) to minimize impact on lake users. Once the herbicide application has begun, it must be completed within seven days. Treatment should be done between 4/1/2019 and 6/1/2019. No treatment should be done 5/25/19 to 5/27/19 for the Memorial Day holiday.

4. TREATMENT AREA

Specific locations for treatment will be determined by an early spring aquatic vegetation survey. Total treated areas will not exceed 62 acres on Medicine Lake. There will be no treatment of the lake closer than 150 feet off the shore.

5. WEATHER AND TEMPERATURE LIMITATIONS

The treatment must happen when the lake water temperature is between 50 and 60 degrees Fahrenheit. The Contractor is responsible to take lake water temperature readings at approximately 2-3 feet depth, at least once every day starting April 18, 2019 and each day until the project is completed. If the temperature of the lake water is at 50 degrees Fahrenheit and there is a risk that it may decrease below 50 degrees Fahrenheit, then the herbicide application must be postponed. All water temperature readings must be provided to the Commission on a daily basis. The decision to

begin, postpone, or continue the herbicide application will be made by the Bassett Creek Watershed Management Commission in consultation with the MnDNR. There will be no herbicide application if the water temperature stays over 60 degrees Fahrenheit over four consecutive days.

6. GPS DOCUMENTATION

The Contractor must have Global Positioning System (GPS) technology to record all areas of the lake that are treated and provide the records to the Commission.

7. QUESTIONS

Any questions with regard to these requirements should be directed to Laura Jester, Administrator, Bassett Creek Watershed Management Commission, (952) 270-1990, laura.jester@keystonewaters.com. All questions should be in writing, if time permits. Verbal interpretations shall not be considered binding.

8. PAYMENT

- A. Basis. Payment for Curly-leaf pondweed treatment shall be made based on the total number of acres treated, which shall include all labor, equipment, signage, and application.
- B. The amounts shown in the quote are estimates only. Final payment for the Services shown in the quote will be determined by final amount of acres treated.
- C. Subcontractors. The Contractor shall pay any subcontractors in accordance with Minnesota Statutes, section 471.25, subdivision 4a.

Exhibit 2

QUOTE FORM

QUOTE FOR THE 2019 CURLY-LEAF PONDWEED
TREATMENT PROGRAM ON MEDICINE LAKE

Bassett Creek Watershed Management Commission
Laura.jester@keystonewaters.com

To: Laura Jester, Bassett Creek Watershed Management Commission

The undersigned, being familiar with your local conditions, having made the field inspection and investigation, I/we deem necessary, having studied the plans and specifications for the work and being familiar with all factors and other conditions affecting the work and cost thereof, hereby propose to furnish all labor, tools, materials, skills, equipment and all else necessary to complete the treatment in accordance with the instructions to quoters and the service agreement. To be considered, such quotes must be received by **Friday April 3, 2019** by 4:30 p.m.

CURLY-LEAF TREATMENT

TOTAL QUOTE Total cost, inclusive of tax, to treat one (1) surface acre on
Medicine Lake, assuming up to Sixty Two (62) acres* \$ 116.00
maximum application, based on an estimated quantity of Per Acre
DIQUAT applied per acre of 1.0 gals/acre.

*NOTE: Total actual acres to be treated as determined by early spring aquatic vegetation survey.

FIRM NAME: Lake Restoration, Inc.
CONTACT NAME: Chad Hadler
ADDRESS: 12425 Ironwood Circle, Rogers, MN 55374
PHONE NO.: 763-428-9777
EMAIL: chad@lakerestoration.com
SIGNATURE: [Signature]
DATE: March 29, 2019

HERBICIDE SUPPLIER

FIRM NAME: Lake Restoration, Inc. Dibrox - Herbicide
ADDRESS: 12425 Ironwood Circle, Rogers, MN 55374
PHONE NO.: 763-428-9777



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
04/09/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER James M King & Associates, Inc. 200 W 98th St. Ste 100 Minneapolis, MN 554203822	CONTACT NAME: Debra J Sorensen	
	PHONE (A/C, No, Ext): (952) 881-2685 x106 FAX (A/C, No): (952) 881-5286 E-MAIL ADDRESS: debbie@jamesmking.com	
INSURED Lake Restoration Inc 12425 Ironwood Circle Rogers, MN 55374	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: Scottsdale Indemnity Co	A0125
	INSURER B: Western National Mutual	15377
	INSURER C: Starstone Specialty Insurance	A0440
	INSURER D: Wesco	A0183
	INSURER E:	
	INSURER F:	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GENL AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:	Y		CPS3100992	12/05/2018	12/05/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	AUTOMOBILE LIABILITY ANY AUTO OWNED AUTOS ONLY ☒ SCHEDULED AUTOS NON-OWNED HIRED AUTOS ONLY ☒ AUTOS ONLY			CPP 1174302	12/05/2018	12/05/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB CLAIMS-MADE DED RETENTION \$	Y		83958E175ALI	12/05/2018	12/05/2019	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WWC3345314	05/01/2018	05/01/2019	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Bassett Creek Watershed Management Commission

CERTIFICATE HOLDER

CANCELLATION

Bassett Creek Watershed Management Commission
City of Golden Valley
7800 Golden Valley Road
Golden Valley, MN 55427

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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