



LAKE MINNETONKA CONSERVATION DISTRICT

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REQUEST FOR PROPOSALS

Scientific Studies of Lake Minnetonka and Development of a Vegetation & AIS Master Plan

PROPOSALS DUE: March 26, 2019 at 4:30PM

QUESTIONS AND SUBMISSIONS

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To preserve and enhance the "Lake Minnetonka experience"

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I. PROJECT BACKGROUND AND DESCRIPTION

PURPOSE

The primary focus of this initiative is to develop a holistic and data-driven set of scientific studies culminating in a Lake Minnetonka Vegetation and AIS Master Plan (Master Plan). The program will include, in priority order, the following elements:

1. Proactive Starry Stonewort Protection Plan to prevent the introduction into Lake Minnetonka.
2. A review of the efficiency of the current harvesting program focusing on its ability to manage Eurasian watermilfoil and curly-leaf pond weed in the Lake. This review should also focus on the collateral impacts on and of other AIS species and Lake activities.
3. A review of the current harvesting program focusing on the equipment, management, staffing, training and safety of that program with recommendations for improving the program.
4. AIS inventory and mapping to support permitting, and to develop a historical data base of information to assist future Lake assessments.
5. AIS Master Plan including a threat assessment to identify threats, establish risks, establish methods to prevent AIS, develop a system to effectively respond to existing and new AIS, and to evaluate and establish current and potential methods to manage AIS.
6. AIS Emergency Action Plan Modules shall be developed based on existing and future threats. The starry stonewort emergency action plan module shall be included as part of the Proactive Starry Stonewort Protection Plan.
7. Provide ongoing assistance to the LMCD Board in maintaining the AIS management program.

Implementation of high priority items and a phased approach to complete lower priority items is also anticipated as part of this project, with the potential of a long-term implementation and monitoring program. The scope includes aquatic invasive species such as plants, animals, algae, and other organisms.

Stakeholder participation and support of other agencies, cities, businesses, neighborhood groups, and interested parties will be included to help facilitate a successful project.

GENERAL BACKGROUND

The Lake Minnetonka Conservation District (LMCD) has prepared and participated in numerous studies of aquatic invasive species (AIS) with emphasis on harvesting and chemical treatments of Eurasian watermilfoil and curly-leaf pondweed. The AIS picture has been changing as new threats appear in Minnesota waters and all treatment methods have come under scrutiny. The

most recent identification of starry stonewort in nearby Medicine Lake underscores the importance of minimizing the risk of exposure for Lake Minnetonka.

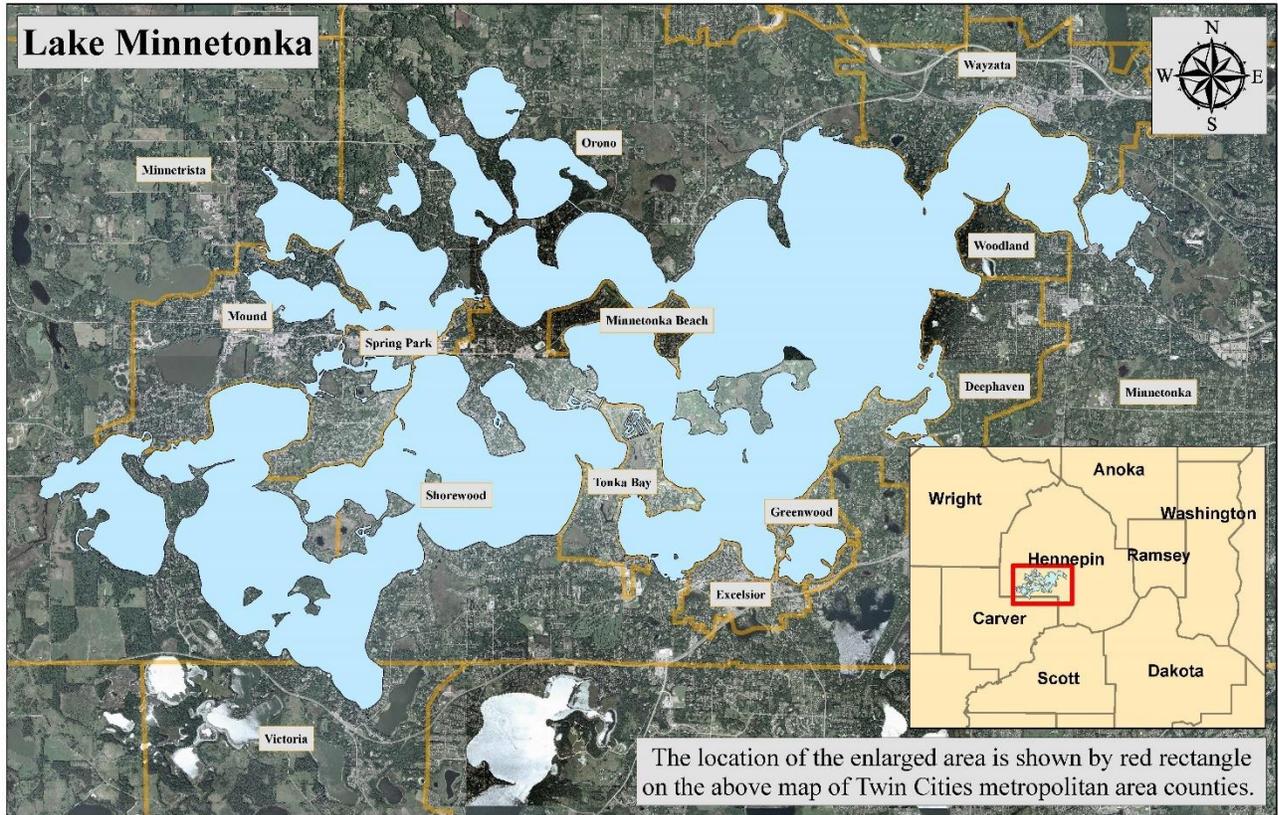
AIS vegetation often form dense mats that hinder boat traffic and other recreational activities and/or replace native vegetation which changes the natural environment of the lake. AIS can also disrupt the food chain and can change the lake characteristics as well as lake animal populations.

Often AIS are not effectively eradicated, but rather become species that require expensive management to control. The costs of management are significant due to the size of Lake Minnetonka--more than 14,000 acres. Further, since Lake Minnetonka is one of the busiest lakes in the state, the risk of spread to other lakes increases. Lake Minnetonka has been infested by AIS such as common carp, Eurasian watermilfoil, curly-leaf pondweed, flowering rush, purple loosestrife, zebra mussels and potentially others.

Certain items are to be addressed within this plan as summarized by a motion passed by the LMCD Board in December 2018:

1. Contract with an AIS trained specialist/researcher to accomplish a review of the harvesting program, acre delineation, and develop a monitoring program as part of a starry stonewort plan, including a response plan to other introductions.
2. Board review of the harvesting operation by an independent party to include the entire procedures, personnel qualifications, costs, safety, emergency equipment needs and shortfalls to be in compliance and consider personnel professional certifications that are applicable.
3. Initiate program cost analysis of the program, funding at appropriate level, and determine where revenues come from.

The project location involves 42 bays of Lake Minnetonka, within the Minnehaha Creek Watershed District. It borders 14 cities and 2 counties. It is surrounded by mostly residential properties but has a significant amount of commercial entities along the Lake. While many residents enjoy the Lake, the Lake is also a source of recreational enjoyment of the general public. It draws thousands of lake enthusiasts each year from around the country for fishing, regattas, and many other activities. The Lake also provides economic benefits to local businesses, the communities, and the region.



II. PROJECT SCOPE

The primary scope of this project includes preparing a Vegetation and AIS Master Plan for Lake Minnetonka (Master Plan). This Master Plan includes, but is not limited to, an assessment of the types of risks to Lake Minnetonka; identification of methods for prevention; effective response plans to new AIS introductions; assessment of current management methods; and providing a scientific review of the benefits of the various treatment options as it relates to the threats.

It is expected that a multitude of prevention and management options will be considered in development of the Master Plan, including but not limited to chemical, mechanical, physical, biological, and other control or prevention strategies. This may involve the compilation of existing data from various regulatory agencies, as well as assessing new approaches to lake management. The following items are some expected components of the Master Plan.

1.0 Proactive Starry Stonewort Protection Plan (Priority 1)

- 1.1 Develop and prepare a fact sheet or position paper with an understanding of the biology of the starry stonewort threat, its travel mechanism, treatment options, prevention, and management options. This document will form the basis for the LMCD

AIS Committee recommendations and begin the development of a permitting and action plan.

- 1.1.1 Contact the University of Minnesota Aquatic Invasive Species Research Center (MAISRC) to determine its interest and input.
- 1.1.2 Contact other relevant agencies such as Minnesota Department of Natural Resources (MNDNR), Minnehaha Creek Watershed District (MCWD), United States Geological Survey (USGS), Three Rivers Park District (TRPD), and Hennepin County (HC) to obtain their respective inputs into a proactive approach to controlling starry stonewort to and from Lake Minnetonka. Assist the LMCD in communications with cities, businesses, residents, Lake Minnetonka Association (LMA), and the general public as needed to obtain any additional feedback.
- 1.1.3 Develop implementable proactive options available to the LMCD to protect public and private boat launches, tributaries, and other AIS travel mechanisms identified above.
 - 1.1.3.1 Evaluate herbicide and other chemical means of proactive protection options.
 - 1.1.3.2 Evaluate mechanical means of proactive protection options.
 - 1.1.3.3 Evaluate biological means of proactive protection options including but not limited to native plant restoration, plant specific organisms, etc.
 - 1.1.3.4 Evaluate physical and other means of proactive protection options.
 - 1.1.3.5 Evaluate a mixture of chemical, mechanical, biological, physical and other option combinations.
 - 1.1.3.6 Identify the impact the various treatments have on each other including any existing treatments. Contact current chemical applicators for their input.
 - 1.1.3.7 Identify the permits needed to operate a proactive starry stonewort protection plan.
 - 1.1.3.8 Identify the first year and following year costs to implement the options identified.
 - 1.1.3.9 Present identified options to the LMCD AIS Committee for discussion and development of recommendations to the LMCD Board of Directors.
- 1.1.4 Identify any funding options, including local, state and federal grants; Legislative Citizen Commission on Minnesota Resources; Environment and Natural Resources Trust Fund; university grants; and other potential sources.
- 1.1.5 Prepare a proactive work plan to be approved by the LMCD AIS Committee.

2.0 Assessment of Existing Harvesting Program (Priorities 2 and 3)

- 2.1 Provide an assessment of current mechanical harvesting programs and management activities.
 - 2.1.1 Provide a scientific review of the benefits and liabilities of the current LMCD harvesting program methods and procedures and determine the program's effectiveness in meeting its goals.
 - 2.1.1.1. Provide an evaluation of harvesting impacts on native plants and animals including milfoil weevils and other macroinvertebrates.
 - 2.1.1.2. Provide options and costs for the restoration of native plant communities.
 - 2.1.2 Provide an experienced review of the harvesting program focusing on staffing and qualifications, training, equipment, maintenance, safety, field supervision and implementation of the existing program.
 - 2.1.3 Provide the information needed for the LMCD Board to determine whether to continue the LMCD harvesting program in its current form.
 - 2.1.4 Provide an analysis of expanding, reducing, or maintain the current scope of the LMCD Harvesting Program.
 - 2.1.5 Provide a financial summary that accurately reflects all costs associated with the current AIS program (including weighted salaries, equipment depreciation, etc.).
 - 2.1.6 Provide a cost comparison (showing current, 5-year, 10-year, and 20-year) of actual costs to implement an LMCD harvesting program with the proposed changes to the cost of hiring private contractors.
 - 2.1.7 If the recommendation is to continue the program, recommend changes to the existing program and assist in determining the funding necessary to implement those changes.

3.0 Mapping (Priority 4)

3.1 Identification and Mapping of AIS and Vegetation

- 3.1.1 Provide mapping of each bay using Hennepin County GIS as a base map.
- 3.1.2 Obtain AIS delineations (current and historical) on file with MNDNR, MCWD, HC, lake service providers, LMA, LMCD, and other parties to develop initial delineation map.
- 3.1.3 Convert existing LMA bathymetric model to GIS Shape File.
- 3.1.4 Maintain historical information in GIS.
- 3.1.5 Provide GIS system capability to include protected vegetative species as well as AIS.

- 3.1.6 Provide fees and scopes for two levels of delineation such as visual survey of AIS at 10-foot contour intervals and GPS based point-intercept survey (50-meter grid) similar to a Lake Vegetation Management Plan or Core of Engineer study.
- 3.1.7 Provide a map of vegetation that will satisfy MNDNR permit requirements for AIS control.

4.0 Vegetation and AIS Master Plan (Priority 5)

4.1 Develop a Module based format to allow the Management Plan to be continuously updated without revising the entire document.

4.1.1 For example, based on the “2012 Comprehensive Eurasian Watermilfoil and Curly-Leaf Pondweed Management Plan”

4.1.1.1 General Information Module

4.1.1.2. Bay Information Modules (Update)

4.1.1.2.1 Key Features

4.1.1.2.2. Vegetation Mapping

4.1.1.3. AIS Threat Assessment

4.1.1.3.1. AIS Threat Fact Sheets

4.1.1.4. Treatment Alternatives and Evaluations

4.1.1.4.1. Include the no treatment and no harvesting option

4.1.1.4.2. Include assessments of likelihood of success for each bay or lake segment.

4.1.1.5. Treatment Alternatives Evaluation

4.1.1.6. Report Summary

4.2 Provide a cost comparison (showing current, 5-year, 10-year, and 20-year) of actual costs to implement an LMCD harvesting program with the proposed changes to the cost of hiring private contractors.

4.3 Provide an assessment and scientific review of the chemical treatments, costs, benefits, and long-term impact to the lake.

4.3.1 Develop a recommendation for chemical/herbicide treatment and associated benefits and liabilities in meeting its goals.

4.3.1.1. Provide an evaluation of chemical impacts on native plants and animals.

- 4.3.1.2 Provide options and costs for the restoration of native plant communities
- 4.3.2 Provide a risk assessment regarding chemical treatments and hybrid AIS and new AIS.
- 4.4 Provide information regarding the scope and types of AIS management (mechanical, chemical, physical, etc.) that is occurring through private parties such as residents, businesses, and others; and the impact to the Lake, AIS, and vegetation.
- 4.5 Provide “what if” scenarios regarding elimination of current activities and alternative options.
- 4.6 Provide an assessment of potential and new methods and activities that could be used to better manage AIS on Lake Minnetonka.
- 4.7 Explore options for integration of existing and/or new methods.

5.0 AIS Emergency Action Plans (Priority 6)

- 5.1 Prepare a starry stonewort Emergency Action Plan that can be used as a framework for starry stonewort and other AIS threats observed in Lake Minnetonka.

6.0 AIS PROGRAM ASSISTANCE (Priority 7)

- 6.1 Provide ongoing assistance to the LMCD Board in maintaining the AIS management program.

III. SUMMARY OF DELIVERABLES

It is the intent of this RFP to develop brief modules surrounding existing information and the scope elements of this RFP to allow the Master Plan to be updated on a continuous basis so that it becomes an evolutionary document and not a static document. The following is a list of the deliverables anticipated by this RFP.

1. Starry Stonewort Fact Sheet and Emergency Action Plan
2. Technical Assessment of the Harvesting Program
3. Effectiveness Assessment of the Harvesting Program
4. Mapping Shape Files for insertion into LMCD Hennepin County GIS Mapping System
5. Vegetative and AIS Master Plan
6. Emergency Action Plans
7. In support of this effort provide ongoing assistance to the LMCD Board in maintaining the AIS program including, but not limited to, the following:

- a) Provide minutes of any meetings with committees, stakeholders, etc. conducted as part of the process.
 - b) Memos and statements of understanding required to complete the work.
 - c) Prepare draft Master Plan for review by the LMCD AIS Committee.
 - d) Support required permit applications with technical information as needed. LMCD will make application and prepare documentation.
 - e) Deliver presentation suitable for the LMCD Board, e.g., PowerPoint, etc.
8. Prepare and present recommendations for implementation requirements, costs, timelines, and an implementation plan to the LMCD AIS Committee.

IV. HIGH-LEVEL TIMELINE & SCHEDULE

The consultant will prepare a Vegetation and AIS Master Plan for Lake Minnetonka. This plan includes, but is not limited to, an assessment of the types of risks to Lake Minnetonka; identification of methods for prevention, effective response plans to new AIS introductions, assessment of current management methods; and providing a scientific review of the benefits of the various treatment options as it relates to the threats.

Public Meetings are anticipated throughout this process. For proposal definition, anticipate six AIS Task Force Meetings, four Public or Board Meetings and two public presentation meetings.

Elements of the Master Plan may be implemented simultaneously depending on the proposal, recommendations, and needs. A few desired deliverables of the plan implementation are highlighted in the tentative timeline. The LMCD will work with the consultant regarding the final timeline and schedules.

To move forward the overall plan and implementation of high priority items during the 2019 recreational boating season, a threat assessment and proactive starry stonewort plan is desired to be completed in the initial phases.

The work of vegetation inventory and mapping is likely to occur over multiple annual budget periods due to its nature and vegetation lifecycle.

Additional ongoing AIS consulting is anticipated through December 2019, with the potential to add additional years to the scope for implementation of the plan and at a mutually agreed level of funding.

Tentative High-Level Timeline & Schedule	
Submission Deadline	03/26/019
Committee Review of Top Candidates	03/29/2019
Committee Meeting with Top Candidates	Week of 04/01/2019
Board Award of Professional Services Agreement	04/10/2019
Professional Services Agreement Start Date	As soon as possible
Starry Stonewort Prevention & Response Plan	06/15/ 2019
Harvesting Program Review	06/31/2019
Vegetation/AIS Inventory & Mapping	09/30/2019
Master Plan Prepared	12/15/2019
Implementation of Master Plan Begins	Phases To Be Determined

V. PROFESSIONAL SERVICES AGREEMENT & COST ESTIMATES

The LMCD intends, but is not obligated, to award a professional services agreement to complete the development of the Vegetation and AIS Master Plan for Lake Minnetonka. Initial funding and reimbursement will be based on hourly rates and expenses for the development of the plan and implementation of priority phases of the plan. The implementation of the Master Plan will likely occur over multiple budget cycles.

Options, alternatives, and proposed timelines are acceptable for each section of the proposed Master Plan. The proposal shall outline costs for each section and alternatives of the plan. This also includes the vegetation identification and mapping activities. The timeline may change based on applicant recommendations.

The party that is chosen will be required to sign a Professional Services Agreement similar to the agreement attached to this RFP, and it may be modified depending on the specifics of the proposal.

The selected consultant will be required to provide comprehensive general liability, and worker's compensation insurance, property and automobile coverage and errors and omissions insurance with the LMCD listed as a named insured. Levels of insurance shall be as stated in the Professional Services Agreement.

REFERENCE MATERIALS

The following references are available to obtain current and background information.

1. LMCD Comprehensive Eurasian Watermilfoil and Curly-Leaf Pondweed Management Plan 2013.
2. Additional historical reports and studies can be found at LMCD website, www.lmcd.org.

VI. LMCD BOARD INVOLVEMENT

The LMCD Board will review and approve the scope of work, the procurement process, the proposals, the results of each scope item and the conclusions of the work. Any follow-up work, or work out of scope of the project, must be approved by the Board prior to commencing the work.

VII. PROPOSAL AND SELECTION PROCESS

PROPOSALS

Proposals must be submitted digitally and identify the following:

1. The experience and qualifications of the company, agency, or lead scientist with a brief explanation of their relevance to this project.
2. The experience and qualifications of the project manager, if different than the person identified in paragraph 1, with a brief explanation of the relevance to this project.
3. An assessment of the proposer's ability to complete the work in the timeframe of the RFP.
4. Any scope suggestions, alternatives, or options made by the proposer to increase the value of this work.
5. An hourly budget for each task item in the scope of work and anticipated total costs.
6. Hourly rates for the lead scientist and project manager and anticipated total costs.
7. Subcontracted scope of items and estimated costs for those items.
8. Proof of insurance and W-9 and corporate/individual licenses necessary to conduct this type of work in Minnesota.
9. References of at least three individuals or organizations that can provide feedback about past projects.

INITIAL SCREENING

Upon receipt of the proposals, the LMCD Selection Committee will rank them based on the following in priority order. Interviews will be held with at least the top two to four applicants.

1. The experience and qualifications of the proposer relevant to this project.
2. Clarity and completeness of the proposal.
3. The soundness of the consultant's proposed methods and approach to the work, e.g., consultant's plan for stakeholder engagement, coordinating existing data with new data.
4. Positive scope suggestions that add value and will benefit the LMCD mission of "preserving and enhancing the Lake Minnetonka experience."
5. The hourly budgets for each task item and estimated total costs.
6. The ability to complete the work in the schedule provided or agreed upon.

The LMCD will conduct initial screening of the applicants, obtaining comments from various agencies and entities relative to the RFP.

INTERVIEWS

Applicants that are chosen from the initial screening will be interviewed by the LMCD Selection Committee. The selection Committee may include each of the LMCD Board officers (4), the Executive Director (1), a non-officer Board member (1) a member from the public (1), a member of the Minnehaha Creek Watershed District Staff or other possible parties.

RECOMMENDATION TO THE BOARD

Based on the proposals, the interviews and any additional information requested and received by the LMCD, the selection committee will make its recommendation to the LMCD Board.

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made by and between the Lake Minnetonka Conservation District (“LMCD”), a Minnesota joint powers organization, and the following consultant (“Consultant”):

Consultant Name/ Organization:	Federal EIN:
Mailing Address:	Telephone Number:
Contact Person:	Email:

The following person is designated the administrator of this Agreement for the LMCD (“Administrator”):

Name:	Email:
Mailing Address:	Telephone Number:

The LMCD and the Consultant may hereinafter be referred to individually as a “party” or collectively as the “parties.” In consideration of the mutual promises and agreements contained herein, and intending to be legally bound, the LMCD and the Consultant hereby agree as follows:

1. **Agreement Documents.** This Agreement, which includes the General Provisions attached as Exhibit A and the Description of Services attached as Exhibit B, sets out the entire understanding between the parties and it supersedes any prior written or oral discussions or agreements between the parties regarding the same subject matter. This Agreement also includes the LMCD’s Request For Proposals for Scientific Studies of Lake Minnetonka and Development of a Vegetation & AIS Master Plan and the proposal submitted by the Consultant, both of which are incorporated herein by reference. The provisions of the documents constituting the Agreement shall be read together and reconciled in the documents to the greatest extent reasonably possible. To the extent there are any conflicting provisions that cannot be reconciled, the more specific provision shall generally be controlling. In the event that a material conflict is found between provisions of the documents, the provisions in the following rank order shall take precedence: (1) the Descriptions of Services in Exhibit B; (2) this Professional Services Agreement document; (3) the General Provisions in Exhibit A; (4) the Consultant’s proposal; and last (5) the LMCD’s Scientific Studies of Lake Minnetonka and Development of a Vegetation & AIS Master Plan.
2. **Services.** The Consultant agrees to perform services as described in the attached Exhibit B (“Services”) in accordance with the terms and conditions of this Agreement. The Consultant

shall provide the services in a manner consistent with industry standards for similar Services and in accordance with the standards, requirements, and timelines set out in Exhibit A.

3. **Compensation**. The LMCD shall compensate the Consultant for the Services as provided in Exhibit A. Unless expressly provided otherwise in Exhibit A, the total amount or rate of compensation is an all-inclusive amount that includes all expenses, costs, taxes, and other amounts the Consultant incurs or pays to provide the Services. The LMCD shall not be responsible for paying any amounts for the completion of the Services other than those expressly provided for in Exhibit A.
4. **Term**. This Agreement shall commence on the date below and shall terminate upon the completion of, and payment for, the Services, unless terminated earlier as provided in this Agreement.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Agreement effective as of the year and date indicated below.

Effective date of this Agreement: _____.

FOR THE CONSULTANT:

FOR THE LMCD:

By _____

By _____

Its _____

Its _____

Date _____

Date _____

By _____

By _____

Its _____

Its _____

Date _____

Date _____

EXHIBIT A
General Provisions

These General Provisions apply to the Agreement to which it is attached and all capitalized terms of the Agreement shall apply to these General Provisions. These General Provisions are made part of the Agreement as if fully set out therein.

1. **Invoices.** The Consultant shall submit itemized invoices for the Services actually provided under this Agreement no more than once a month during the term of this Agreement. If the reimbursement of expenses is expressly authorized in Exhibit B, no such expenses shall be reimbursed unless they are detailed in writing and accompanied by receipts. All invoices are subject to verification by the LMCD's Executive Director or the Administrator. The LMCD has thirty (30) days from the receipt of invoice to pay the Consultant. However, if, in the LMCD's reasonable determination, an invoice does not contain sufficient detail to verify the delivery of the Services for which payment is being sought, the LMCD may withhold payment on the invoice until the Consultant provides the requested additional detail. Such withholding shall not constitute a breach of this agreement. No more than 90% of the amount due under this Agreement shall be paid to the Consultant until the deliverables and final deliverables to be produced by the Consultant as part of the Services have been reviewed and accepted by the LMCD.
2. **Independent Contractor.** The Contractor and its employees are not employees of the LMCD. Nothing in the Agreement is intended or should be construed in any manner as creating or establishing the relationship as employer/employee, co-partners, or a joint venture between the LMCD and the Contractor. It is agreed that the Consultant and its employees will act as an independent Contractor and acquire no rights to tenure, workers' compensation benefits, unemployment compensation benefits, medical and hospital benefits, sick and vacation leave, severance pay, pension benefits or other rights or benefits offered to employees of the LMCD. The manner in which the Services are performed shall be controlled by the Consultant; however, the nature of the Services and the results to be achieved shall be specified by the LMCD.
3. **No Agency.** Consultant, as an independent Contractor, shall not be considered an agent or servant of the LMCD 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 LMCD. To the extent applicable and contemplated in the delivery of the Services, the Consultant may apply for and obtain needed permits on behalf of the LMCD at Consultant's own cost.
4. **Deliverables.** If the Consultant is required to produce specific deliverables to the LMCD as part of the Services to be provided under this Agreement, such deliverables shall be identified in Exhibit B of the Agreement.
5. **Ownership and Use of Work Product.** All data notes, working papers, reports and other work products prepared or developed in connection with the provision of Services under the Agreement (hereinafter "Work Product") shall become upon creation, the exclusive property of the LMCD. Consultant may not use the Work Product or any other deliverables under this

Agreement for any purpose other than fulfilling its obligations under this Agreement without prior written consent of the LMCD. The LMCD may grant or deny Consultant's application for such consent or may condition its consent on the payment of compensation or the imposition of such other conditions as the LMCD deems appropriate. The Consultant may use the Work Product as an example of their work in their portfolio and may reuse standard portions of such Work Product in the normal course of its business. The Consultant represents and warrants that the Work does not and will not infringe upon any intellectual property rights of other persons or entities.

6. **Naming Rights and Acknowledgements.** To ensure that appropriate credit for funding and other contributions of the LMCD and its staff members is given for their participation in producing any deliverables as part of the Services, and to the extent applicable, the LMCD shall have their name and logo represented in the materials that are developed and will be acknowledged in printed materials, publications, presentations and other uses and materials developed under this Agreement. The LMCD retains and shall have the right to control the title, citations, acknowledgments, attributions, cover design, logos and credits of the deliverables produced as part of the Services.
7. **Termination.** The LMCD may cancel this Agreement upon thirty (30) days written notice, except that if the Consultant is in default and fails to cure the default within the period provided in the written notice of default as provided in this Agreement, the LMCD has the right to terminate this Agreement immediately upon written notice of termination. Consultant will be paid for Services properly rendered prior to the effective date of termination. The following provisions of this Agreement shall survive expiration, termination, or cancellation of this Agreement: Indemnification; Insurance; Applicable Law; Audit; and Data Practices.
8. **Legal Compliance.** The Consultant shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances in providing the Services and shall obtain all permits and permissions that may be required. This contract shall be governed by and construed according to the Laws of the State of Minnesota
9. **Indemnification.** The Consultant agrees to defend, indemnify and hold harmless, the LMCD, its officials, officers, agents and employees from any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including reasonable attorney's fees, resulting directly or indirectly from any act or omission of the Consultant, its offices, employers, agents, contractors or subcontractors or anyone directly or indirectly employed by them, or anyone volunteering for them, or anyone for whose acts or omissions they may be liable in the performance of the activities specified in this Agreement and against all loss by reason of the failure of the Consultant to perform fully, in any respect, all obligations under this Agreement. Nothing in this Agreement shall constitute a waiver by the LMCD of any limits on or exclusions from liability available to it under Minnesota Statutes, chapter 466 or other law.
10. **Insurance.** Consultant agrees to at all times during the term of this Agreement, have and keep or cause to have and be kept in force, and to cause all Contractors and subcontractors to do likewise, the following insurance coverages with at least the following limits:

- (a) Commercial General Liability on an occurrence basis with Contractual Liability Coverage:

	<u>Limits</u>
General Annual Aggregate	\$2,000,000
Products-Completed Operations	\$1,500,000
Personal and Advertising Injury	\$1,500,000
Each Occurrence –	
Combined Bodily Injury and Property Damage	\$1,500,000
 (b) Commercial Automobile Liability – Combined single limit each occurrence for bodily injury and property damage covering owned, non-owned, and hired automobiles.	 \$1,000,000
 (c) Workers’ Compensation and Employer’s Liability:	
(1) Workers’ Compensation	Statutory
If the Consultant is based outside the State of Minnesota, coverage must apply to Minnesota laws.	
(2) Employer’s Liability. Bodily Injury by:	
Accident – Each accident	\$500,000
Disease – Policy Limit	\$500,000
Disease – Each Employee	\$500,000
 (d) Professional Liability	
Per Claim or Event	\$1,500,000
Annual Aggregate	\$2,000,000

The required coverage limits may be achieved through an excess or umbrella policy, provided such policy provides the same scope of coverages as the underlying policy. The insurance must be maintained continuously for a period of at least one year after the termination of this Agreement. The Consultant shall have the LMCD named as an additional insured on its commercial general liability policy. The Consultant shall provide the LMCD a certificate of insurance showing the required coverages, insurance limits, and additional insured endorsement before undertaking any Services under this Agreement. The Consultant will require that any subcontractors furnish certificates of insurance to the Consultant of the insurance coverages listed above, and provide updated certificates as coverages expire. It is the sole responsibility of the Consultant to determine the need for and to procure additional insurance that may be needed to satisfy its indemnification obligation or other obligations in connection with this Agreement. Copies of policies will be submitted to the LMCD upon written request.

11. **Consultant Representations.** The Consultant represents and warrants, as inducement to the LMCD to enter into the Agreement, as follows: (a) it has the legal authority to enter into this Agreement; (b) the person(s) executing this Agreement on behalf of the Consultant is duly authorized to enter into this Agreement and to bind the Consultant to its terms; (c) all of the documents that constitute this Agreement are valid and binding on the Consultant; (d) it will comply with the terms and conditions of this Agreement; (e) it has the necessary licenses, personnel, experience, skill, tools, and equipment to complete the Services in accordance with the standards and timelines established in this Agreement; and (f) it is not involved in or aware of any action, claim, suit, or proceeding that is reasonably anticipated to interfere with Consultant's ability to provide the Services in accordance with the terms of this Agreement.
12. **Conflict of Interest.** Consultant agrees that it will not, during the term of this Agreement, enter into a contract or otherwise accept employment for the performance of any work or service with any individual, business, partnership, corporation, government, governmental unit, or any other organization that would create a conflict of interest in the performance of its obligations under this Agreement.
13. **Not Exclusive.** This Agreement does not constitute an exclusive contract between the LMCD and the Consultant. The LMCD remains free to contract for similar services from other consultants and the Consultant remains free to contract to provide similar services to others, provided that any such contracts do not interfere with the delivery of Services under this Agreement.
14. **Amendments.** No modification, amendment, deletion, or waiver in the terms of this Agreement, or any expansion in the scope of the Services, is valid unless it is in writing and signed by the parties.
15. **Notices.** Any notice or demand authorized or required under this Agreement shall be in writing and shall be sent by certified mail to, with respect to the LMCD, the Administrator and, with respect to the Consultant, to the Consultant's contact person, each as identified at the outset of the Agreement.
16. **Substitution of Personnel.** The Services shall be provided by the person or persons identified in Exhibit B. Upon prior approval by the LMCD, the Consultant may substitute other persons to perform the Services. If substitution is permitted by the LMCD, the Consultant shall furnish information to the LMCD to allow proper review of the qualifications of the substituted person.
17. **Subcontracting and Assignment.** Consultant shall not enter into any subcontract for performance of any Services contemplated under this Agreement, nor assign any interest in the Agreement, without the prior written approval of the LMCD and subject to such conditions and provisions as the LMCD may deem necessary or desirable in its sole discretion. Consultant shall be responsible for the performance of all of its subcontractors. If the LMCD permits the use of subcontractors, the Contract shall, pursuant to Minnesota Statutes, section 471.425, subdivision 4a, pay any subcontractors within 10 days of the Consultant's receipt of payment from the LMCD for undisputed services provided by the

subcontractor. Any undisputed amounts not paid to a subcontractor within 10 days shall be subject to, and the Consultant shall pay, interest of 1-1/2 percent per month. The minimum monthly interest penalty the Consultant shall pay for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the Consultant shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from the Consultant must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

18. **Default by Consultant.** Unless excused by LMCD's default, the occurrence of an uncontrollable circumstance, or LMCD issuing a written waiver of default, each of the following shall constitute default on part of the Consultant:
- (a) The written admission by Consultant that it is bankrupt; or filing by Consultant of a voluntary petition under the Federal Bankruptcy Act; or the filing of an involuntary petition under the Federal Bankruptcy Act against the Consultant unless dismissed within ninety (90) days. The Notice of Default and cure provision of this Agreement do not apply to this paragraph;
 - (b) The making of any arrangement with or for the benefit of Consultant's creditors involving an assignment to a trustee, receiver or similar fiduciary. The Notice of Default and cure provisions of this Agreement do not apply to this paragraph;
 - (c) Making a material misrepresentation in any of the documents submitted by the Consultant or in any other provisions or conditions relied upon in the making or modification of the Agreement;
 - (d) The Consultant is found to persistently disregard laws, ordinances, rules, regulations or orders of any public authority having jurisdiction;
 - (e) Failure to make satisfactory progress towards completion of the Services; or
 - (f) Failure to perform any other material provision of the Agreement.
19. **Default by the LMCD.** Unless excused by Consultant's default or the occurrence of uncontrollable circumstances or Consultant waiver of default, each of the following shall constitute a default on the part of the LMCD:
- (a) The persistent or repeated failure or refusal by LMCD to pay or prevent payment of any uncontested amount to the Consultant timely and properly submitted as required by this Agreement;
 - (b) Making a material misrepresentation in any of the documents provided by the LMCD or in any other provisions or conditions relied upon in making the Agreement; or
 - (c) Persistent or repeated failure to perform any other material provision of this Agreement.

20. **Written Notice of Default.** Unless otherwise provided, no event shall constitute a default giving rise to the right to terminate unless and until written Notice of Default is given to the defaulting party, specifying the particular event, series of events, or failure constituting the default and a reasonable cure period.
21. **Cure Period.** If the party in default fails to cure the specified circumstances as described by the Notice of Default within ten (10) days or such longer period as may be provided in the Notice of Default, then this Agreement may immediately be terminated by the party not in default providing a written notice of termination to the party in default.
22. **Withholding of Payment.** Notwithstanding any other provision of the Agreement, the LMCD may, after giving Notice of Default, withhold, without penalty or interest, any payment which becomes due after Notice of Default is given, until the default is excused, waived in writing, cured, or the Agreement is terminated. The LMCD shall not be responsible for paying any portion of the withheld funds upon translation for the Consultant's default if the services for which payment is being sought were deficient or are not usable by the consultant hired to complete the Services.
23. **Preservation of Other Remedies.** The rights and remedies of the LMCD provided in the Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Agreement.
24. **Duty to Mitigate.** Both parties shall use their best efforts to mitigate any damages that might be suffered by reason of any event giving rise to a remedy hereunder.
25. **Cost of Termination.** In the event this Agreement is terminated by reason of default by the Consultant, LMCD may recover the necessary costs of termination, including but not limited to, administrative costs, attorney's fees and legal costs, from the Consultant.
26. **Reperformance.** The LMCD may require the Consultant, at the Consultant's sole expense, to reperform any of the Services provided for in this Agreement that do not meet the established standards.
27. **Set-Off.** Notwithstanding any other provision of the Agreement to the contrary, upon the Consultant's breach of this Agreement the LMCD may withhold any payment due Consultant for purposes of set-off until such time as the exact amount of damages due is determined. Such withholding shall not constitute default or failure to perform on the part of LMCD.
28. **No Waiver.** If the LMCD fails to enforce any provisions of this Agreement, such failure does not waive the provision or the LMCD's right to enforce it.
29. **Data Practices.** The Consultant agrees to comply with the Minnesota Government Data Practices Act and all other applicable laws relating to data privacy or confidentiality. The Consultant will immediately report to the LMCD any data requests from third parties relating to this Agreement. The LMCD agrees to work with the Consultant to respond to the data

request. The Consultant agrees to hold the LMCD, its officers, and employees harmless from any claims resulting from the Consultant's unlawful disclosure, use or failure to produce.

30. **Nondiscrimination**. Consultant agrees to abide by the requirements and regulations of The Americans with Disabilities Act of 1990 (ADA), the Minnesota Human Rights Act (Minn. Stat. Chap. 363), and Title VII of the Civil Rights Act of 1964. These laws deal with discrimination based on race, gender, disability, and religion, and with sexual harassment. Violation of any of the above laws can lead to the immediate termination of this Agreement without needing to provide a cure period.
31. **Audit**. The Consultant agrees that the LMCD, the Minnesota State Auditor, and Minnesota Legislative Auditor, or any of their duly authorized representatives, at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt and transcribe any books, documents, papers, and records that are relevant and involve transactions relating to this Agreement.
32. **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 Consultant.
33. **Severability**. If any provision of this Agreement is held invalid, illegal, or unenforceable, the remaining provisions will not be affected.

Exhibit B
Description of Services

This Description of Services applies to the Agreement to which it is attached and all capitalized terms of the Agreement shall apply to this Description of Services. This Description of Services is made part of the Agreement as if fully set out therein and the Request for Services for Scientific Studies of Lake Minnetonka and Development of a Vegetation & AIS Master Plan

- A. **Background.** The following provides the background information regarding the Services to be provided: The primary focus of this initiative is to develop a holistic and data-driven set of scientific studies culminating in a Lake Minnetonka Vegetation and AIS Master Plan (Master Plan). It is anticipated that this document will be able to be adjusted over time to meet new or modified information.
- B. **Scope of Services.** The scope of the Services to be provided by the Consultant shall include the following:
- (1) Proactive Starry Stonewort Protection Plan
 - (2) A review of the efficiency of the current harvesting program.
 - (3) A review of the current harvesting program management, methods and procedures
 - (4) AIS Inventory Mapping
 - (5) AIS Master Plan and Threat Assessment
 - (6) AIS Emergency Action Plan Module
 - (7) Ongoing assistance to the LMCD Board
- C. **Schedule of Work and Budget.** The following identifies the schedule for the provisions of the specific items of work to be completed as part of the Services and the budget applicable to each:

	Target Date for completed task	Cost of scope or task
Scope 1 Planning		
Task 1		
Task 2		
Task 3		
Scope 2 Materials		
Material 1		
Material 2		
Material 3		
Scope 3 Facilitate Meetings		
Task 1		
Task 2		

Task 3		
Scope 4 Reporting		
Task 1		
Task 2		
Task 3		

D. **Deliverables.** The Consultant shall provide the following deliverables to the LMCD as part of the Services:

- (1) Starry Stonewort Response Plan 06/15/2019
- (2) Harvesting Program Reviews 06/31/2019
- (3) Vegetation/AIS Inventory & Mapping 09/30/2019
- (4) Master Plan 12/15/2019

E. **Compensation.** The LMCD shall pay the Consultant the following amount, or the following rate, for the Services provided under this Agreement:

- (1) Hourly Rate. An hourly rate, which shall be billed in no greater than 15 minute increments, of \$_____.
- (2) Total Amount. A total not to exceed amount of \$_____.

F. **Additional Invoicing Requirements.** The Consultant shall comply with each of the following in submitting invoices to the LMCD with respect to the Services provided under the Agreement:

- (1) Company and Contact Information
- (2) Deliverable, total hours, breakdown of tasks, and retainage

G. **Special Provisions.** The following special provisions shall apply to the Agreement and shall be controlling notwithstanding any provisions to the contrary in the General Provisions:

- (1)
- (2)