

**MEMORANDUM**  
**Comfort Lake-Forest Lake Watershed District**

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**To:** Board of Managers  
**From:** Mike Kinney  
**Subject:** Blue Water Science 2020 Agreement

**Date:** January 16, 2020

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**Background/Discussion**

The purpose of this agenda item is to consider the 2020 service agreement between the CLFLWD and Blue Water Science. The main body of the contract is similar to previous years' and follows the District's standard template for service agreements, with input from legal counsel. District staff requested a quote for the items listed in Attachment A. These items were requested based on what is in the 2020 budget and information gathered from 2019 activities.

**Recommended Action**

Manager \_\_\_\_\_ moves to authorize the Administrator, on advice of counsel, to enter into an agreement with Blue Water Science in accordance with the January 16, 2020 services agreement and in an amount not to exceed \$29,600; and authorize the Administrator to request additional services from Blue Water Science, not to exceed \$2,960 (10%), to be compensated in accordance with the 2020 service agreement. Seconded by Manager \_\_\_\_\_.

**Attached:** 2020 Blue Water Science Service Agreement

**2020 SERVICES AGREEMENT BETWEEN  
COMFORT LAKE-FOREST LAKE WATERSHED DISTRICT and  
BLUE WATER SCIENCE**

This Agreement is entered into between the Comfort Lake-Forest Lake Watershed District, a public body with powers set forth at Minnesota Statutes chapters 103B and 103D (CLFLWD), and Blue Water Science, a private Minnesota corporation (“CONSULTANT”). In consideration of the mutual terms and conditions set forth herein, including the obligations of mutual consideration, the sufficiency of which is hereby acknowledged, CLFLWD and CONSULTANT agree as follows:

1. Services

CONSULTANT will perform the tasks described at Attachment A hereto (hereinafter, “the Services”). The CLFLWD, at its discretion, in writing may suspend work immediately or amend the Services to delete any task or portion thereof. Authorized work by CONSULTANT on a task deleted or modified by the CLFLWD will be compensated in accordance with Paragraph 6.

2. Independent Contractor

CONSULTANT is an independent contractor under this Agreement. CONSULTANT will select the means, method and manner of performing the Services. Nothing herein contained is intended or should be construed to constitute CONSULTANT as the agent, representative or employee of the CLFLWD in any manner. Personnel performing the Services on behalf of CONSULTANT or a subcontractor will not be considered employees of the CLFLWD and are not entitled to any compensation, rights or benefits of any kind from the CLFLWD.

3. Subcontract and Assignment

CONSULTANT will not assign, subcontract or transfer any obligation or interest in this Agreement or any of the Services without the written consent of the CLFLWD. Written consent to any subcontracting will not relieve CONSULTANT from its responsibility to perform the Services or any part thereof, nor in any respect its warranty, insurance, indemnification, duty to defend or agreement to hold harmless with respect to the Services. CONSULTANT will incorporate this Agreement in any assignment, subcontract or transfer agreement.

4. Warranty and Indemnification

CONSULTANT will perform the Services in accordance with due care. CONSULTANT will indemnify, defend and hold harmless the CLFLWD, its officers, board members, employees and agents from any and all actions, costs, damages and liabilities of any nature to the degree they are the result of CONSULTANT's or a subcontractor's negligence or other action or inaction by CONSULTANT or a subcontractor that is the basis for CONSULTANT's or the subcontractor's liability in law or equity.

The CLFLWD will indemnify, defend and hold harmless CONSULTANT, its officers, employees and agents, from any and all actions, costs, damages and liabilities of any nature to the degree they are the result of any action or inaction by the CLFLWD that is the basis for the CLFLWD's liability in law or equity.

5. Compensation

The CLFLWD will compensate CONSULTANT for the Services on a task lump sum basis in accordance with the fee schedule attached to and incorporated into this Agreement as Attachment A. Invoices are to be submitted monthly for tasks completed during the preceding month. Payment for undisputed work is due within 30 days of receipt of invoice. Direct costs are incorporated into indicated task lump sums. Subcontractor fees and subcontractor direct costs incurred by CONSULTANT will be reimbursed by the CLFLWD at the rate specified in the CLFLWD's written approval of the subcontract arrangement.

The total payment for the Services as specifically described in Attachment A will not exceed \$29,600. Additional activities as duly authorized by the CLFLWD Administrator will be compensated at the hourly rate indicated in Attachment A or the optional activity at the indicated lump sum. The CLFLWD will not make final payment until CONSULTANT has provided proof of compliance with state income tax withholding requirements pursuant to Minnesota Statutes § 270C.66.

CONSULTANT will maintain all records pertaining to the Services for six years from the date of completion of the Services. CONSULTANT agrees that any authorized representative of the CLFLWD or the State Auditor may examine, audit, and copy any such records during normal business hours.

#### 6. Term and Termination

This Agreement is effective when fully executed by the parties and remains in force until February 1, 2021, unless earlier terminated as set forth herein.

The CLFLWD may terminate this Agreement at its convenience, by a written termination notice stating specifically what prior authorized or additional services CONSULTANT is to complete. CONSULTANT will receive full compensation for all authorized work performed, except that CONSULTANT will not be compensated for any part performance of a specified task if termination is due to CONSULTANT's breach of this Agreement. Upon termination, the CONSULTANT will turn over all working and archived files to the DISTRICT, and agrees to cooperate with the DISTRICT in any transition.

#### 7. Waiver

The failure of either party to insist on the strict performance by the other party of any provision or obligation under this Agreement, or to exercise any option, remedy or right herein, does not waive or relinquish the party's rights in the future to insist on strict performance of any provision, condition or obligation, all of which will remain in full force and affect. The waiver of either party on one or more occasion of any provision or obligation of this Agreement will not be construed as a waiver of any subsequent breach of the same provision or obligation, and the consent or approval by either party to or of any act by the other requiring consent or approval will not render unnecessary the party's consent or approval to any subsequent similar act by the other.

Notwithstanding any other term of this Agreement, the CLFLWD waives no immunities in tort. This Agreement creates no rights in and waives no immunities, defenses or limitations on liability with respect to any third party.

8. Insurance

At all times during the term of this Agreement, CONSULTANT will have and keep in force the following insurance coverages:

- A. General liability: \$1.5 million each occurrence and aggregate, on an occurrence basis.
- B. Automobile liability: combined single limit each occurrence coverage for bodily injury and property damage covering all vehicles, \$1.5 million, on an occurrence basis.
- C. Workers' compensation: in accordance with legal requirements applicable to CONSULTANT.

CONSULTANT will not commence work until it has filed with the CLFLWD a certificate of insurance clearly evidencing the required coverages and naming the CLFLWD as an additional insured with primary coverage for general liability on a non-contributory basis, as well as a copy of the additional insured endorsement. The certificate will name the CLFLWD as a holder and will state that the CLFLWD will receive written notice before cancellation, nonrenewal or a material change in any described policy under the same terms as CONSULTANT.

9. Compliance with Laws

CONSULTANT will comply with the laws and requirements of all federal, state, local and other governmental units in connection with performing the Services, and will procure all licenses, permits and other rights necessary to perform the Services.

In performing the Services, CONSULTANT will ensure that no person is excluded from full employment rights or participation in or the benefits of any program, service or activity on the ground of race, color, creed, religion, age, sex, disability, marital status, sexual orientation, public assistance status or national origin; and no person who is protected by applicable federal or state laws, rules or regulations against discrimination otherwise will be subjected to discrimination.

10. Materials

All materials obtained or generated by CONSULTANT in performing the Services, including documents in hard and electronic copy, software, and all other forms in which the materials are contained, documented or memorialized, are the property of the CLFLWD. CONSULTANT hereby assigns and transfers to the CLFLWD all right, title and interest in: (a) its copyright, if any, in the materials; any registrations and copyright applications relating to the materials; and any copyright renewals and extensions; (b) all works based on, derived from or incorporating the materials; and (c) all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and all causes of action in law or equity for past, present or future infringement based on the copyrights. CONSULTANT agrees to execute all papers and to perform such other proper acts as the CLFLWD may deem necessary to secure for the CLFLWD or its assignee the rights herein assigned.

The CLFLWD may immediately inspect, copy or take possession of any materials on written request to CONSULTANT. On termination of the agreement, CONSULTANT may maintain a

copy of some or all of the materials except for any materials designated by the CLFLWD as confidential or non-public under applicable law, a copy of which may be maintained by CONSULTANT only pursuant to written agreement with the CLFLWD specifying terms.

The CLFLWD acknowledges that the CONSULTANT's plans and specifications and other work products are instruments of professional services. Nevertheless, in the event of termination of this Agreement, plans and specifications and other documents such as permit files, engineering reports and other materials connected with CONSULTANT'S services to the CLFLWD shall become the property of the CLFLWD. The CLFLWD agrees to hold harmless, indemnify and defend the CONSULTANT against all damages, claims, expenses and losses arising out of its reuse of work products without CONSULTANT'S written authorization.

#### 11. Data Practices; Confidentiality

If CONSULTANT receives a request for data pursuant to the Data Practices Act, Minnesota Statutes chapter 13 (DPA), that may encompass data (as that term is defined in the DPA) CONSULTANT possesses or has created as a result of this agreement, it will inform the CLFLWD immediately and transmit a copy of the request. If the request is addressed to the CLFLWD, CONSULTANT will not provide any information or documents, but will direct the inquiry to the CLFLWD. If the request is addressed to CONSULTANT, CONSULTANT will be responsible to determine whether it is legally required to respond to the request and otherwise what its legal obligations are, but will notify and consult with the CLFLWD and its legal counsel before replying. Nothing in the preceding sentence supersedes CONSULTANT's obligations under this agreement with respect to protection of CLFLWD data, property rights in data or confidentiality. Nothing in this section constitutes a determination that CONSULTANT is performing a governmental function within the meaning of Minnesota Statutes section 13.05, subdivision 11, or otherwise expands the applicability of the DPA beyond its scope under governing law.

CONSULTANT agrees that it will not disclose and will hold in confidence any and all proprietary materials owned or possessed by the CLFLWD and so denominated by the CLFLWD. CONSULTANT will not use any such materials for any purpose other than performance of the Services without CLFLWD written consent. This restriction does not apply to materials already possessed by CONSULTANT or that CONSULTANT received on a non-confidential basis from the CLFLWD or another party. Consistent with the terms of this section 11 regarding use and protection of confidential and proprietary information, CONSULTANT retains a nonexclusive license to use the materials and may publish or use the materials in its professional activities. Any CONSULTANT warranty under this agreement does not extend to any party other than the CLFLWD or to any use of the materials by the CLFLWD other than for the purpose(s) for which CONSULTANT is compensated under this agreement.

#### 12. Property of CLFLWD

All property furnished to or for the use of CONSULTANT or a subcontractor by the CLFLWD and not fully used in the performance of the Services, including but not limited to equipment, supplies and materials, both hard copy and electronic, remains the property of the CLFLWD and will be returned to the CLFLWD at the conclusion of the performance of the Services, or sooner if requested by the CLFLWD. CONSULTANT further agrees that any proprietary materials of the CLFLWD are the exclusive property of the CLFLWD and will assert no right, title or interest in the materials. CONSULTANT will not disseminate, transfer or dispose of any proprietary data to any

other person or entity unless specifically authorized in writing by the CLFLWD. Any property supplied to CONSULTANT by the CLFLWD or deriving from the CLFLWD is supplied to and accepted by CONSULTANT as without CLFLWD representation or warranty including but not limited to a warranty of fitness, merchantability, accuracy or completeness. However, CONSULTANT's duty of care under paragraph 4, above, does not extend to materials provided to CONSULTANT by the CLFLWD or any portion of the Services that is inaccurate or incomplete as the result of CONSULTANT's reliance on those materials.

13. Continuation of Obligation

It is understood and agreed that insurance and surety obligations; warranties and obligations to defend, indemnify and hold harmless; and document retention requirements will survive completion of the Services and the term of this Agreement.

14. Notices

Any written communication required under this Agreement to be provided in writing will be directed to the other party as follows:

To CLFLWD:

Administrator  
Comfort Lake-Forest Lake Watershed District  
44 Lake Street South, Suite A  
Forest Lake, MN 55025

To CONSULTANT:

Steve McComas  
Blue Water Science  
550 Snelling Avenue S, #101  
St. Paul, MN 55116

Either of the parties may in writing designate another individual to receive communications under this Agreement.

15. Choice of Law, Venue

This Agreement will be construed under and governed by the laws of the State of Minnesota. The parties will not dispute venue for any action under this Agreement in Washington and Chisago Counties and will not assert venue elsewhere.

16. Whole Agreement

The entire agreement between the two parties is contained herein and this Agreement supersedes all oral agreements and negotiations relating to the subject matter hereof. Any modification of this Agreement is valid only when reduced to writing as an amendment to the Agreement and signed by the parties hereto. The CLFLWD may amend this Agreement only by action of the Board of Managers acting as a body.

**IN WITNESS WHEREOF**, intending to be legally bound, the parties hereto execute and deliver this Agreement.

**CONSULTANT**

By \_\_\_\_\_ Date:  
Its \_\_\_ Owner \_\_\_\_\_

*Approved as to Form & Execution*

\_\_\_\_\_  
CLFLWD Attorney

**COMFORT LAKE-FOREST LAKE WATERSHED DISTRICT**

By \_\_\_\_\_ Date:  
Its \_\_\_\_\_

# QUOTE

## 2020 CLFLWD Projects

From: Steve McComas, Blue Water Science

### ATTACHMENT A

Lake	Description	Report Summary Date	Full Report Date	2020 BWS Quote
Moody	Pre and post curly-leaf pondweed treatment point-intercept macrophyte survey (full PIS required by DNR because CLFLWD has a variance for treatment)	12/4/2020	1/8/2021	\$3,400
Bone	Curly-leaf pondweed delineation and assessment	12/4/2020	1/8/2021	\$1,900
Bone	Eurasian watermilfoil delineation and assessment	12/4/2020	1/8/2021	\$2,000
Bone	Diving zebra mussel search at high priority areas	12/4/2020	1/8/2021	\$900
Shields	Pre and post curly-leaf pondweed treatment point-intercept macrophyte survey (full PIS required by DNR because CLFLWD has a variance for treatment, it has also been five years since last PIS on Shields)	12/4/2020	1/8/2021	\$3,300
Keewahtin	Point-intercept macrophyte survey (last PI survey in 2015)	12/4/2020	1/8/2021	\$2,400
Forest	Curly-leaf pondweed delineation and assessment	11/6/2020	1/8/2021	\$2,900
Forest	Eurasian watermilfoil delineation and assessment	12/4/2020	1/8/2021	\$3,200
Forest	Flowering rush delineation and assessment	11/6/2020	1/8/2021	\$6,100
Comfort	Curly-leaf pondweed delineation and assessment	12/4/2020	1/8/2021	\$1,400
Comfort	Eurasian watermilfoil delineation and assessment	12/4/2020	1/8/2021	\$1,800
Other Activities				
	CLFLWD January meeting attendance (2021)			\$300
	Lake-related activities, on a requested basis by CLFLWD billed at \$110/hr			
<b>Total Quote</b>				<b>\$29,600</b>

Footnote: Due to new grant requirements, the Forest Lake CLP and Flowering Rush summaries are needed by November 6, 2020 for reporting purposes.