

## MEMORANDUM

TO: RPBCWD Board of Managers  
 FROM: Joshua Maxwell – Water Resources Coordinator  
 DATE: April 6<sup>th</sup>, 2022  
 RE: 2022 Staring Lake Fluridone AS Treatment

The 2022 Staring Lake Fluridone AS Treatment is a whole lake treatment designed to reduce the frequency of occurrence of both curlyleaf pondweed and Eurasian watermilfoil. District staff sent out request for quotes for the treatment to five herbicide applicators and only heard back from three. Lake Management Inc. could not accept any additional treatments for the 2022 season. The lowest quote came from PLM Lake and Land Management Corporation at \$18,120.48. The District applied for and received a MN DNR Traditional Aquatic Invasive Species Control Grant for \$10,000. The District will need to front the total cost of the treatment and will be reimbursed after the treatment is complete.

**Staff recommends to the Board of Managers to move forward with PLM Lake and Land Management Corporation as the fluridone applicator for Staring Lake in 2022.**

### Background

Eurasian watermilfoil (EWM) and Curly-leaf pondweed (CLP) are non-native species that can rapidly expand within lakes if not kept in check. Both plants can form dense mats at the water’s surface inhibiting water recreation. They can also overtake habitat and outcompete native aquatic plants, potentially lowering diversity while providing unsuitable shelter, food, and nesting habitat for native animals. CLP also has midsummer die-offs which can litter the shoreline with dead plants and increase nutrients levels within the lake. Both species are spread primarily through the movement of watercraft and water-related equipment. The District has been consistently treating both of these plants across many of the lakes with varying degrees of success. Depending on the lake, these plants are often treated yearly in attempt to control their negative impacts. Other lakes have had a successful treatment or consecutive treatments which have allowed for control of these plants for multiple years. **Table 1** addresses how lake vegetation management fits into the RPBCWD’s 10 Year Management Plan.

**Table 1 – RPBCWD 10 Year Management Plan – Vegetation Management**

Chapter 9	Section	Page Number
9.1 Watershed Management	9.1.1.2 Vegetation	9-10
9.5 Data Collection & Analysis	9.5.2.2 Lake Veg & Fisheries	9-30
9.5 Data Collection & Analysis	9.5.4 Plant Restoration	9-32
9.10 Lake Vegetation Management Plan		9-39

Whole-lake, low-dose applications of fluridone herbicide have been used to control infestations of EWM. Studies in mesotrophic lakes have documented extended reductions in EWM with limited effects on native macrophytes and water quality with the use of fluridone. This has been documented on a number of lakes in the state of Minnesota as well as in North America. Although the use of fluridone in MN is increasing, it is still considered experimental by the MN Department of Natural Resources (MNDNR). District staff have been in discussion and has had the support of the MNDNR for an application of the herbicide fluridone to Staring Lake since 2020. Additionally, Professor Ray Newman (U of MN) who worked on Staring Lake from 2011-2020 has recommended this treatment type (**Table 2**). The treatment would include a first initial treatment, followed by monitoring of herbicide levels. Once concentrations are reduced, additional second and third bump applications would occur. Because Staring Lake has Purgatory Creek flowing in and out of the lake, the herbicide applicators and manufacturers having the flexibility of an additional bump treatment is important in case concentrations are rapidly reduced due to large rain events. For all subsequent bump treatments, the District would only be charged for the amount of chemical needed in order to increase concentrations back to the desired concentration. For the fourth treatment, this would likely not cost the full amount but the maximum charge for the additional bump would not exceed \$3,930. A Lake Vegetation Management Plan was sent to the MNDNR in February 2022 and is currently in the process of being finalized. A fluridone treatment in Staring Lake would potentially:

- Reduce the abundance EWM (primary), CLP (secondary), and likely Coontail (which is a native plant species)
- Allow for the potential expansion of the abundance and distribution of native plants
- Potentially reduce the frequency of treatment needed to control EWM
- Be the first of its kind within the District and provide support to use in other District lakes if successful
- Expand upon the knowledge base of this type of treatment and its impacts on native and nonnative aquatic plants
- Support research currently being conducted by the U of MN/Ray Newman

### Staring Lake Aquatic Vegetation Summary

The plant community in Staring Lake was assessed from 2011 to 2021 using point intercept (PI) plant surveys starting by the Professor Ray Newman/U of MN, in anticipation of common carp (*Cyprinus carpio*) removal to improve water clarity. A summary of the PI surveys and secchi disk depths from 2011-2021 can be seen in **Table 2**. In Staring Lake, carp removal began in the winter of 2012. Removal led to the desired carp biomass goal of <100 kg/ha. Prior to carp removal, water clarity was poor, and the aquatic plant community was limited. Coontail was the dominant macrophyte and plants were rarely found beyond a depth of 4.6 ft. After the carp population was reduced in winter 2014, the plant community started to increase in abundance and distribution but was still dominated by coontail. In 2021 plant distribution and abundance has increased significantly and plants were seen at depths of 11.6 ft. Plants were observed at depths >15 ft in 2019 and 2020. Coontail abundance has also increased, reaching 53% in 2016 and 94% in 2021. Coontail abundance was less than 5% in 2011.

Unfortunately, nonnative plants have also seen an increase in abundance and distribution, including CLP and EWM (**Table 2**). Immediate action by the District in 2015 (consecutive herbicide treatments and manual removal events) likely delayed the expansion of EWM for multiple years following its arrival. CLP increased rapidly after water clarity improved, and it was effectively treated in 2017. Now both CLP and EWM (primarily) have been increasing in recent years. EWM is now at a frequency of occurrence that is affecting the expansion of native plants. If left untreated it could expand further, reducing native plant abundance and distribution.

<b>Table 2 - Staring Lake Aquatic Vegetation and Secchi Disk Summary</b>					
<b>Date</b>	<b>Secchi (m)</b>	<b>Submersed Native Taxa</b>	<b>FOO Natives</b>	<b>FOO EWM</b>	<b>FOO CLP</b>
<b>2011</b>	0.63	4	4		7
<b>2012</b>	0.58	3	2		5
<b>2013</b>	0.78	7	7		7
<b>2014</b>	1.00	13	16		17
<b>2015</b>	1.14	11	44		37
<b>2016</b>	0.84	6	44		44
<b>2017</b>	1.04	3	43		21
<b>2018</b>	1.11	5	55		14
<b>2019</b>	1.48	9	67	8	26
<b>2020</b>	1.04	11	66	15	12
<b>2021</b>	1.49	3	94	34	n/a
*Sub Native Taxa, Freq of Occurrence and EWM, based on August Point Intercept Surveys					
*Frequency Occurrence of curly leaf pondweed based on June Point Intercept Surveys					
*Secchi = average depth in meters from June-September					
*FOO=Frequency of Occurrence					

Overall, the plant community in Staring has responded positively to carp removal and natives still are more frequent than invasives. EWM has been increasing and the invasives will need continued monitoring. A herbicide treatment (such as fluridone) should be planned for during the 2022 season to control invasives, particularly EWM, and sustain an effective native plant community. It is likely that the high abundance of native plants, albeit primary coontail, is helping to sustain water clarity and suitable habitat for native plant expansion. Coontail is very dominant and may be also contributing to a reduction in other native plant growth. Fluridone is known to effect coontail which may reduce the abundance and allow for the expansion of native plants.

<b>Riley Purgatory Bluff Creek Watershed District</b>		
<b>Goals and Strategies Addressed by this Project</b>		
	PROJECT NAME:	Staring Lake AS Fluridone Treatment
<b>3.2.2</b>	<b>DATA COLLECTION</b>	
3.2.2.1	<i>Goals</i>	
	DC 1	Collect data and use the best available science to recommend and support management decisions.
3.2.2.2	<i>Strategies</i>	
	DC S2	The District will develop and implement a Monitoring Plan. Collected data may include, but is not limited to: water chemistry, fisheries, macroinvertebrates, water levels, vegetation, planktons, shoreline and streambank inventories, flow data, and climatic data
	DC S3	The District maintains the flexibility to modify its monitoring and data collection programs as necessary to capture the most relevant information. The District will periodically review and update its Monitoring Plan to address emerging contaminants of concern, improved analytical methods, or other developing issues.
	DC S5	The District will monitor District-managed resources for the presence of aquatic invasive species.
	DC S7	The District will analyze data to help inform management decisions.
	DC S8	The District will coordinate its monitoring efforts with other entities to promote efficiency, increase data availability, and to identify and fill data gaps.
<b>3.2.4</b>	<b>PLANNING</b>	
3.2.4.1	<i>Goals</i>	
	Plan 1	Plan and conduct the District’s implementation program to most effectively accomplish its vision with consideration for all stakeholders and resources.
3.2.4.2	<i>Strategies</i>	
	Plan S1	The District will use an adaptive management approach to protect, manage, and restore District- managed resources (see Section 9.1).
	Plan S6	The District will implement projects that address a District-managed resource. The District will prioritize planned projects based on methodology included in Section 4.0 of this Plan, which is based on the following factors: <ul style="list-style-type: none"> <li>-Targeting</li> <li>-Volume management</li> <li>-Sustainability</li> <li>-Shoreline/streambank restoration and stabilization</li> <li>-District goals</li> <li>-Habitat restoration</li> <li>-Watershed benefits</li> <li>-Partnership opportunities</li> <li>-Public education and access</li> </ul>
	Plan S7	The District will seek to incorporate ecological, economic, and social benefits into its projects as opportunities allow.
	Plan S9	The District will seek to partner with cities, state agencies, and other entities to implement projects and programs to meet District goals.
	Plan S10	The District will pursue grants, cost-sharing, and other opportunities to leverage District financial resources.
<b>3.2.6</b>	<b>WATER RESOURCES</b>	
	<b>WATER QUALITY</b>	
3.2.6.1	<i>Goals</i>	
	WQual 1	Protect, manage, and restore water quality of District lakes and creeks to maintain designated uses.
	WQual 3	Preserve and enhance habitat important to fish, waterfowl, and other wildlife.
3.2.6.2	<i>Strategies</i>	
	<b>HABITAT</b>	
	WQual S9	The District will partner with other entities to minimize the spread and reduce the adverse ecological impacts of aquatic invasive species.
	WQual S10	The District will manage non-native aquatic invasive macrophytes to improve water quality and/or habitat in accordance with an approved lake vegetation management plan or as part of a rapid response control project.

**RESOLUTION NO. 22-027**  
**Riley-Purgatory-Bluff Creek Watershed District**  
**Board of Managers**

**Authorizing execution of contract with PLM for fluridone treatment of Staring Lake**

Manager \_\_\_\_\_ offered the following resolution and moved its adoption, seconded by  
Manager \_\_\_\_\_:

**WHEREAS** Riley-Purgatory-Bluff Creek Watershed District's 2018 10-Year Watershed Management Plan identifies and allocates funding for implementation of lake-vegetation management as watershed-wide project (Table 9-1);

**WHEREAS** Staring Lake in Eden Prairie is listed by the Minnesota Pollution Control Agency as impaired for aquatic recreation because of excessive nutrients, and RPBCWD has monitored water quality in Staring Lake and implemented both carp-reduction and vegetation-management strategies in an effort to improve water quality since 2011;

**WHEREAS** RPBCWD's assessment and analysis of lake water quality and aquatic vegetation community indicates that additional aquatic plant management efforts are warranted to control aquatic invasive macrophyte species growth to reduce the degradation of water quality and promote a diverse native macrophyte community;

**WHEREAS** Staring Lake is in the Purgatory Creek subwatershed and the City of Eden Prairie owns most of the Staring Lake lakeshore;

**WHEREAS** to contribute to implementation of the aquatic vegetation management and water-quality goals for Staring Lake in the plan, staff solicited quotes for a spring 2022 herbicide treatment of the entire lake surface using fluridone (the Project), two quotes were received, and PLM Lake and Land Management Corporation submitted the lower quote at \$18,120.48;

**WHEREAS** staff subsequently requested revised quotes to include an optional supplemental treatment, to be authorized by staff if needed to achieved intended results, and PLM submitted a revised quote at \$22,050.60;

**WHEREAS** RPBCWD staff has obtained or will obtain state Department of Natural Resources approval of the lake vegetation management plan prepared by RPBCWD and permit;

**WHEREAS** RPBCWD has received state \$10,000 in state grant funding, which will substantially offset the cost of the Project to watershed taxpayers; and

**WHEREAS** RPBCWD staff and Interim Administrator Terry Jeffery have determined that PLM is a responsible and well-qualified aquatic-vegetation treatment provider, and recommend award of the contract for the Project to PLM, with such non-material revisions as may be recommended by RPBCWD counsel.

**NOW THEREFORE BE IT RESOLVED** that the RPBCWD Board of Managers authorizes the interim administrator, with advice of counsel, to enter a contract with PLM Lake and Land Management for fluridone treatment of Staring Lake at a cost not to exceed \$22,051, as finalized with such nonsubstantive changes as are necessary to implement the intent of the managers and the Project.

The question was on the adoption of the resolution and there were \_\_\_\_ yeas and \_\_\_\_ nays as follows:

Yea                      Nay                      Abstain                      Absent

**CRAFTON**  
**KOCH**  
**PEDERSEN**  
**ZIEGLER**

Upon vote, the president declared the resolution \_\_\_\_\_ on this 6<sup>th</sup> day of April, 2022.

\* \* \* \* \*

I, Dorothy Pedersen, secretary of the Riley-Purgatory-Bluff Creek Watershed District, hereby certifies that I have compared the above resolution with the original thereof as the same appears of record and on file with RPBCWD and find the same to be a true and correct transcription thereof, and further that the resolution is in full force and effect on this date, and Resolution 22-027 has not been modified, amended or rescinded since its adoption.

IN TESTIMONY WHEREOF, I set my hand this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Dorothy Pedersen, Secretary

**Exhibit A**  
**Agreement**

**Agreement between  
Riley-Purgatory-Bluff Creek Watershed District  
PLM Lake and Land Management**

**2022 Herbicide Treatment of Staring Lake  
Eden Prairie, Minnesota**

This agreement is entered into by the Riley-Purgatory-Bluff Creek Watershed District, a public body with powers set forth at Minnesota Statutes chapters 103B and 103D (RPBCWD), and PLM Lake and Land Management Corp., a private Michigan corporation (Contractor). In consideration of the terms and conditions set forth herein, including mutual consideration, the sufficiency of which is hereby acknowledged, RPBCWD and Contractor agree as follows:

**1. Scope of Work**

The scope of work includes the following:

1. Mobilize and demobilize labor, equipment, and materials.
2. Furnish, deliver, store and apply Fluridone AS to the lake to reduce prevalence of curly-leaf pondweed and Eurasian watermilfoil in the lake. A whole-lake, low-dose application of Fluridone AS will be required, given 2021 aquatic vegetation surveys, which indicate Eurasian watermilfoil is more than 30 percent of the littoral area of the lake and a May 2020 aquatic vegetation survey showing that curly-leaf pondweed was present in 25 percent of the littoral area. The initial dose will be applied between April 15 and May 15, 2022, to achieve a 4 parts per billion concentration within the lake. The second will occur between May 15 and June 15, 2022, and the third dose will occur between June 15 and July 15, 2022. These doses must be applied to achieve a concentration of 2 ppb. A fourth dose will be applied between July 15 - August 15, 2022, only if needed to maintain concentrations at 2 ppb after the third dose. Lake-wide concentrations of Fluridone will be monitored by the applicator to indicate timing of and need for subsequent doses. The herbicide must be applied at weather, temperature and flow conditions as specified by the manufacturer.
3. Furnish, install and remove all appropriate signage and buoys (if used) in a timely manner.
4. Restore all land areas directly or indirectly disturbed by the Work.

All work described above must be in accordance with Figure 1 attached to this agreement and incorporated herein as a term hereof, showing the lake-access and lake surface area. The Contract Documents consist of the following:

Change orders;

Notice to proceed;



This agreement;

Contractor's completed quote attached hereto and incorporated herein as Exhibit A;

Figure 1.

In the event of conflict between terms in contract documents, priority will be given to the documents in the order above. A term used in a specific contract document will have the meaning given by a specific definition of the term in that document. If there is not a specific definition, the term will be governed by a specific definition in the agreement first specifically defining such term, in the order of precedence stated above.

Contractor will furnish all materials, machinery, equipment, tools, labor and expertise as needed to complete the Work. RPBCWD, at its discretion, in writing may at any time suspend work or amend the contract documents to delete any task or portion thereof. Authorized work by Contractor on a task deleted or modified by RPBCWD will be compensated in accordance with the terms of this agreement generally and section 6 specifically.

**2. Independent Contractor**

Contractor is an independent contractor. Contractor will select the means, method and manner of performing the Work. Nothing herein constitutes Contractor as the agent, representative or employee of RPBCWD in any respect. Personnel performing the Work on behalf of Contractor or a subcontractor will not be considered employees of RPBCWD and will not be entitled to any compensation, rights or benefits of any kind from RPBCWD.

**3. Subcontract and Assignment**

Contractor will not assign, subcontract or transfer any obligation or interest in this agreement or any of the Work without the written consent of RPBCWD and pursuant to any conditions included in that consent. RPBCWD consent to the subcontracting does not relieve Contractor of its responsibility to perform the Work or any part thereof, nor in any respect its warranty, insurance, indemnification, duty to defend or agreement to hold harmless with respect to the Work. Contractor is responsible to RPBCWD for any subcontractor's conformance to sections 9, 10, 11, 12 and 13 of this agreement in the same manner as those sections bind Contractor.

**4. Duty of Care; Delay**

Contractor will perform the Work in a proper, workmanlike and good quality manner, with due professional care. Contractor warrants the work for one year from the date of completion.

Contractor will not be entitled to an adjustment in contract price or contract time for delays within the control of Contractor. Delays beyond the control of Contractor will include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work, fires, floods, epidemics, abnormal weather conditions or acts of God.

**5. Indemnification**

Contractor will defend, indemnify and hold harmless RPBCWD, its officers, council and board members, employees and agents from any and all actions, costs, damages and liabilities of any nature arising from: (a) Contractor's negligent or otherwise wrongful act or omission, or breach of a specific contractual duty; or (b) a subcontractor's negligent or otherwise wrongful act or omission, or breach of a specific contractual duty owed by Contractor to RPBCWD. For any claim subject to indemnification under this paragraph by an employee of Contractor or a subcontractor, the indemnification obligation is not limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or a subcontractor under workers' compensation acts, disability acts or other employee benefit acts.

RPBCWD will indemnify, defend and hold harmless Contractor, 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 RPBCWD that is the basis for RPBCWD's liability in law or equity.

**6. Compensation**

RPBCWD will compensate the Contractor on a progress payments basis for completed work and reimburse direct costs in accordance with the agreement, Figure 1 and Exhibit A. RPBCWD will pay Contractor for completion of the Work an amount in current funds equal to the sum of the amounts determined pursuant to this agreement and Exhibit A. Estimated quantities are not guaranteed, and determinations of actual quantities and selection of alternates will be made by the RPBCWD administrator, and such determinations will be used to compute the final contract price.

Invoices will be submitted no more frequently than monthly. RPBCWD will pay for undisputed work within 45 days of receipt of invoice.

Contractor warrants that it has examined the Work to the extent necessary to agree to the price of the Work and accepts any increased cost due to site conditions that were foreseeable.

In accordance with Minnesota Statutes section 471.425, subdivision 4a, Contractor will pay any subcontractor within 10 days of Contractor's receipt of payment from RPBCWD for undisputed services provided by the subcontractor. Contractor will pay interest of 1½

percent per month or any part of a month to a subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, Contractor will pay the actual penalty due to the subcontractor.

Contractor will maintain all records pertaining to fees or costs incurred in connection with the Work for six years from the date of completion of the Work. Any authorized RPBCWD representative or representative of the Minnesota State Auditor will have access to and the right to examine, audit or copy any such records during normal business hours.

RPBCWD will not make final payment until Contractor has provided proof of compliance with state income tax withholding requirements pursuant to Minnesota Statutes section 270C.66.

**7. Termination; Continuation of Obligations**

This agreement is effective upon execution of both parties and will remain so until August 30, 2022, unless earlier terminated as set forth herein. RPBCWD may suspend or terminate this agreement with or without cause, by a written termination notice stating specifically what prior authorized or additional Work it requires Contractor to complete. If the agreement is suspended or terminated for convenience, Contractor will be compensated for all authorized work performed, including reasonable costs for actions directed by RPBCWD to stabilize the site of the Work. If suspension or termination is for cause, Contractor will stabilize the site before vacating, without extra compensation. Contractor will be given a reasonable opportunity to cure before termination for cause.

It is understood and agreed that insurance obligations; warranties and obligations to defend, indemnify and hold harmless; and document-retention requirements survive the completion of the Work and the term of this agreement.

**8. Waiver**

RPBCWD's failure to insist on Contractor's strict performance of any obligation, condition or provision of this agreement, or to exercise any option, remedy or right herein, will not waive its rights in the future to do so. 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 such party's consent or approval to any subsequent similar act by the other.

Notwithstanding any other term herein, the agreement creates no rights in any third party, and RPBCWD waives no tort defense, immunity or liability limit with respect to contractor or any third party.

**9. Insurance**

At all times during the term of this agreement, Contractor will have and keep in force the following insurance coverage:

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

Contractor will not commence work until it has filed with RPBCWD a certificate of insurance clearly evidencing the required coverage and naming RPBCWD, as an additional insured with primary coverage for general liability on a noncontributory basis, along with a copy of the additional-insured endorsement. The certificate will name RPBCWD as a holder and will state that RPBCWD will receive written notice before cancellation, nonrenewal or a change in the limit of any described policy under the same terms as Contractor. The policy must afford coverage for bodily injury and damage to property of others arising out of the perils of boating accidents and chemical spills.

**10. Compliance with Laws; Site Control**

Contractor will comply with the laws and requirements of all federal, state, local and other governmental units in connection with performing the Work. Contractor will identify and procure all licenses, permits and other rights and approvals required for the Work, except that RPBCWD has obtained a permit for the Work from the Minnesota Department of Natural Resources, and RPBCWD has obtained or will obtain authorization from the Department of Natural Resources, which owns the access area delineated in Figure 1, to use the access area for purposes of the Work. Contractor will comply with all local requirements and the terms of this agreement as to traffic, staging, site ingress and egress, work hours and site maintenance.

Contractor is responsible for site conditions relating to worker and public safety, cleanliness and environmental protection and in all other respects.

In its performance of the Work, Contractor 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.

**11. Records**

All documents and information obtained or generated by Contractor or a subcontractor in performing the Work, including hard and electronic copy, software, and in any other forms in which the materials are contained, documented or memorialized, are the property of RPBCWD.

RPBCWD may immediately inspect, copy or take possession of any such materials on written request to Contractor. Contractor may maintain a copy of any such materials at its expense.

Any document or information supplied to Contractor by RPBCWD or deriving from RPBCWD is given and accepted without representation or warranty including but not limited to a warranty of fitness, merchantability, accuracy or completeness. Absent RPBCWD written approval, Contractor will not use any such document or information other than for performance of the Work. Contractor will not disclose to any third party proprietary material so denominated by RPBCWD.

**12. Data Practices; Confidentiality**

If Contractor 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) Contractor possesses or has created as a result of this contract, it will inform RPBCWD immediately and transmit a copy of the request. If the request is addressed to RPBCWD, Contractor will not provide any information or documents, but will direct the inquiry to RPBCWD. If the request is addressed to Contractor, Contractor 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 RPBCWD and its legal counsel before replying. Nothing in the preceding sentence supersedes Contractor's obligations under this agreement with respect to protection of RPBCWD data, property rights in data or confidentiality. Nothing in this section constitutes a determination that Contractor 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.

Contractor agrees that it will not disclose and will hold in confidence any and all proprietary materials owned or possessed by RPBCWD and so denominated by RPBCWD. Contractor will not use any such materials for any purpose other than performance of the Work without RPBCWD written consent. This restriction does not apply to materials already possessed by Contractor or that Contractor received on a non-confidential basis from RPBCWD or another party.

**13. RPBCWD Property**

All property furnished to or for the use of Contractor or a subcontractor by RPBCWD and not fully used in the performance of the Work, including but not limited to equipment, supplies, materials and data, both hard copy and electronic, will remain the property of RPBCWD and returned to RPBCWD at the conclusion of the performance of the Work, or sooner if requested by RPBCWD. Contractor further agrees that any proprietary materials are the exclusive property of RPBCWD and will assert no right, title or interest in the materials. Contractor will not disseminate, transfer or dispose of any proprietary materials to any other person or entity unless specifically authorized in writing by RPBCWD. Any property including but not limited to materials supplied to Contractor by RPBCWD or deriving from RPBCWD is supplied to and accepted by Contractor as without representation or warranty including but not limited to a warranty of fitness, merchantability, accuracy or completeness. However, Contractor's warranty under section 4, above, does not extend to materials provided to Contractor by RPBCWD or any portion of the Work that is inaccurate or incomplete as the result of Contractor's reliance on those materials.

**14. Notices**

Any written communication to RPBCWD required under this agreement will be directed to Josh Maxwell, Riley-Purgatory-Bluff Creek Watershed District, 18681 Lake Drive East, Chanhassen, MN 55317; jmaxwell@rpbcwd.org.

Written communication to Contractor will be addressed to:

PLM Lake and Land Management Corp.  
1511 Maras Street  
Shakopee, MN 55379  
(651)383-1150 Ext: 3000

**15. Choice of Law, Venue and Jurisdiction**

This agreement will be construed under and governed by the laws of the State of Minnesota. Venue and jurisdiction for any legal proceedings arising from this agreement, or its breach, or the Work, must be in the appropriate state or federal court with competent jurisdiction in Hennepin County, Minnesota.

**16. Whole Contract**

The entire agreement between the two parties is contained herein and this agreement supersedes all oral contracts and negotiations relating to the subject matter hereof. RPBCWD may amend this agreement by means of a proper work change order clearly denominated as such. Any other amendment must be signed by both parties.

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

**PLM Lake and Land Management Inc.**

\_\_\_\_\_ Date: \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

APPROVED AS TO FORM & EXECUTION

By \_\_\_\_\_

RPBCWD Counsel

**Riley-Purgatory-Bluff Creek Watershed District**

\_\_\_\_\_ Date: \_\_\_\_\_

Terry Jeffery  
Its Interim Administrator

**Figure 1**



**Exhibit A**  
**Contractor's Completed Quote Form**  
not-public data