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|-----------------------------|----------------|
| <b>Report Number:</b>       | _____          |
| <b>Agenda Section:</b>      | _____          |
| <b>Report Date</b>          | <u>2/27/17</u> |
| <b>Council Meeting Date</b> | <u>2/28/17</u> |

## REQUEST FOR COUNCIL CONSIDERATION

**ITEM DESCRIPTION:** Approve First Year of Long Lake Invasive Species Treatment and Authorize the Mayor and City Manager to enter into an agreement with the Long Lake Improvement Association (LLIA).

**DEPARTMENT HEAD’S APPROVAL:**

**CITY MANAGER’S APPROVAL:**

No comments to supplement this report \_\_\_\_\_ Comments attached \_\_\_\_\_

**Recommendation:** Approve First Year of Long Lake Invasive Species Treatment and Authorize the Mayor and City Manager to enter into an agreement with the Long Lake Improvement Association (LLIA).

**Legislative History:**

None

**Financial Impact:** The proposed council action would appropriate a one-time funding amount of \$15,000 for the 2017 year. This amount would come from the General Fund balance.

**Explanation:** Long Lake is different invasive vegetation that is impacting the quality of the water and the health of the Lake itself. Members of the Long Lake Improvement Association (LLIA) have approached the City with this concern asking for assistance in finding a funding source to address this concern. The LLIA has been working with state and county agencies as well as the City of New Brighton attempting to find a source of long term funding to address this issue. The LLIA’s intent is to secure funding from a variety of sources starting in 2018 and beyond, so it is understood that the funding from New Brighton is meant to address the immediate need of this year and not to be expected by any party to be a continuing source of funding.

Attached is a proposed agreement that is based on an agreement used by the Lake Minnetonka Conservation District (LMCD) and third party organizations. When the LMCD appropriates money to a project, legal assurances are sought to ensure that any funding they provide to a third party is actually used for the intended purpose. This agreement is used for that purpose. A copy of this agreement has been sent to the LLIA for their consideration and aside of any minor adjustments, city staff and the LLIA believe there should be no problem entering into such an agreement. Any final version of the agreement will only be executed if it meets with the City Attorney’s approval.

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Dean R. Lotter  
City Manager

## GRANT AGREEMENT

Amount: \$15,000.00  
Long Lake, City of New Brighton

Grantee: Long Lake Improvement Association of New Brighton, Inc.

Address: 500 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402

THIS AGREEMENT is between the City of New Brighton, a Minnesota municipal corporation, hereinafter referred to as the “City”, the Long Lake Improvement Association, a Minnesota nonprofit corporation, hereinafter referred to as the “Grantee.”

### 1. BACKGROUND

- 1.1 Grantee has proposed to undertake certain activities to control invasive species on Long Lake in the City of New Brighton. Specifically, Grantee has solicited proposals for the application of and proposes to award and enter into a contract with Lake Restoration Incorporated (hereinafter referred to as “Lake Restoration”) for the application of herbicides in accordance with an agreement, dated \_\_\_\_\_, 2017 (hereafter the “Lake Restoration Proposal”), attached hereto as Exhibit A.
- 1.2 The City is willing to provide a grant for such activities on the terms and conditions set forth herein.

### 2. DUTIES AND CONDITIONS.

#### 2.1 General

- 2.1.1 The City will grant to Grantee the amount stated above, which funds may only be used for expenses incurred in performing activities specified in Exhibit A to this Agreement. The work described in Exhibit A is hereafter referred to as the “Project.” Grantee will perform the work of the Project in accordance with Exhibit A, including securing any necessary permits therefor. Grantee will conclude the Project within the time specified in Exhibit A and no later than the date specified herein as the date for termination of this Agreement.
- 2.1.2 The City will reimburse Grantee for expenses incurred in the Project to the maximum amount specified above. All other costs and expenses incurred by Grantee in completing the work of the Project will be the responsibility of Grantee. Only costs and expenses

identified in Exhibit A will be reimbursed by the City. Expenses will be reimbursed up to the amount of \$15,000.00 upon completion of work in accordance with Exhibit A.

2.1.3 Grantee will act in all respects as an independent contractor under this Agreement and will be solely responsible for performance of services required hereunder as well as the means and manner of performance thereof. The City will not be an employer, partner or co-venturer with Grantee for any purpose, and will have no responsibility or liability for the acts or omissions of Grantee. Nothing herein authorizes Grantor to act as an agent or representative of the City for any purpose.

2.1.4 All data created, collected, received, stored, used or maintained by Grantee shall comply with the Minnesota Data Practices Act, Minnesota Statutes, Chapter 13 (the "Act") to the extent such data is subject to the Act. The City agrees to use any information provided by the Grantee, its contactors, or subcontractors in a lawful manner including not using the information in any manner that results in the invasion of privacy of any person; provided, however, that nothing herein shall require the City to violate any provisions of the Act.

## 2.2 Reporting

The Grantee will submit progress reports, using the work plan, timeline, and budget in Exhibit A, to the City every month on the status of the Project. A final report is due to the City prior to the end of the Agreement Period stated in Section 5 of this Agreement.

## 3. TERMS OF PAYMENT.

The City will disburse funds to Grantee pursuant to this Agreement, based on a payment request form approved by the City, submitted by the Grantee. Payment requests must be accompanied by supporting invoices that relate to activities in the approved Project budget. Subject to paragraph 2.1.2 and to verification of adequacy of a written disbursement request and approval of consistency with this Agreement, the City will disburse the requested amount to the Grantee within three weeks after receipt of a written disbursement request.

## 4. CONDITIONS OF PAYMENT.

All work performed by the Grantee under this Agreement will be performed to the satisfaction of the City, and in accordance with all applicable federal, state, and local laws, and any amendments thereto. The Grantee will use the funds herein only for the purposes described in Exhibit A.

## 5. TERM OF AGREEMENT.

This Agreement will be effective when all necessary approvals and signatures have been obtained, and will terminate on \_\_\_\_\_, 2016, or the date all obligations have been satisfactorily fulfilled by both parties, whichever occurs first.

6. CANCELLATION AND REVOCATION.

The City may cancel this Agreement for just cause. "Just cause" means that the Grantee has breached a term of this Agreement. Grantee must be given written notice 14 calendar days prior to cancellation. Grantee may cancel this Agreement with or without cause prior to reimbursement of any funds by the City. In the event of cancellation by the City, Grantee is entitled to payment, determined on a pro rata basis, for work satisfactorily performed.

7. ASSIGNMENT.

Grantee will neither assign nor transfer any rights or obligations under this Agreement without the prior written consent of the City. Grantee may contract with others, including Lake Restoration under terms and conditions specified by Grantee to complete the work specified in Exhibit A. However, Grantee will continue to be responsible for performance of its obligations under this Agreement notwithstanding contracts with contractors or subcontractors or approved assignment to a subgrantee.

8. USE OF FUNDS.

Grantee will use the proceeds of this Agreement only for the eligible costs of the Project as described in Exhibit A.

9. AMENDMENTS.

Any amendments to this Agreement must be in writing, and executed by the City and Grantee.

10. COST OVERRUNS.

Grantee agrees that cost overruns are the sole responsibility of Grantee, and the City shall have no further obligation to pay compensation or consideration to Grantee, in quantum meruit or otherwise.

11. INDEMNIFICATION.

Grantee agrees that, by itself or through its contractors, it will defend, indemnify and hold harmless, the City, its officials, agents, and employees from any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, resulting directly or indirectly from any act or omission of the Grantee, its contractors, or subcontractors.

12. INSURANCE.

In order to protect the City and those listed above under the indemnification provision, Grantee agrees at all times during the term of this Agreement and beyond such term when so required, to have and keep in force, or, if contractors are doing all work of the Project, to cause all contractors and subcontractors to have and keep in force, the following insurance coverages:

1. Commercial General Liability on an occurrence basis with Contractual Liability Coverage:
 

|  | <u>Limits</u> |
|--|---------------|
| General Aggregate                          | \$1,500,000   |
| Products-Completed Operations Aggregate    | 1,500,000     |
| Personal and Advertising Injury            | 1,500,000     |
| Each Occurrence –                          |               |
| Combined Bodily Injury and Property Damage | 1,500,000     |
  
2. Automobile Liability – Combined single limit each occurrence for bodily injury and property damage covering owned, non-owned, and hired automobiles. 1,500,000
  
3. Workers’ Compensation and Employer’s Liability if Grantee has employees:
  - a. Workers’ Compensation Statutory  
 If the contractor is based outside the State of Minnesota, coverage must apply to Minnesota laws.
  
  - b. Employer’s Liability. Bodily Injury by:
 

|                          |         |
|--------------------------|---------|
| Accident – Each accident | 100,000 |
| Disease – Policy Limit   | 500,000 |
| Disease – Each Employee  | 100,000 |

The insurance must be maintained continuously for a period of one year after the termination of this Agreement.

Grantee will require that its contractor and any subcontractors furnish certificates of insurance to Grantee of the insurance coverages listed above, and provide updated certificates as coverages expire.

An umbrella or excess policy over primary liability coverages is an acceptable method to provide the required insurance limits. The above establishes minimum insurance requirements. It is the sole responsibility of Grantee to determine the need for and to

procure additional insurance that may be needed in connection with this Agreement. Copies of policies must be submitted to the City upon written request.

13. ACCOUNTING AND RECORD KEEPING.

For all expenditures of funds made pursuant to this Agreement, Grantee will keep financial records including properly executed contracts, invoices, and other documents sufficient to evidence in proper detail the nature and propriety of the expenditures. Accounting methods will be in accordance with generally accepted accounting principles.

Grantee agrees that the City, the State 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, records, etc., that are pertinent to the accounting practices and procedures of Grantee and involve transactions relating to this Agreement. Such materials shall be maintained and such access and rights will be in force and effect during the period of the Agreement and for two years after its termination or cancellation.

14. NONDISCRIMINATION.

Grantee agrees and will require contractors and subcontractors, material suppliers, and vendors to agree not to discriminate in hiring by reason of race, creed, or color or otherwise violate the provisions of Minnesota Statutes Section 181.59, which section is incorporated herein by reference.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed intending to be bound thereby.

LONG LAKE IMPROVEMENT ASSOCIATION OF NEW BRIGHTON, INC.

By: \_\_\_\_\_

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

Its: \_\_\_\_\_

CITY OF NEW BRIGHTON

By: \_\_\_\_\_

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

Valerie Johnson

Its: Mayor

and

By: \_\_\_\_\_

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

Dean Lotter

Its: City Manager

Attachment(s): Exhibit A

**EXHIBIT A**

Lake Restoration Incorporated Contract

[to be attached]