

ORDINANCE NO. 2019-21

AN ORDINANCE AUTHORIZING THE MAYOR AND CHIEF OPERATING OFFICER TO ENTER INTO A WEED AND ALGAE CONTROL AGREEMENT WITH MC CLOUD AQUATICS, ELBURN, ILLINOIS FOR MAINTENANCE SERVICES OF VILLAGE PONDS IN HERITAGE OAKS PARK

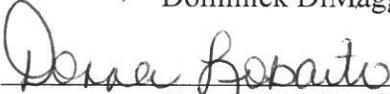
BE IT ORDAINED by the Mayor and Board of Trustees of the Village of Hawthorn Woods, Illinois, that the Mayor and Chief Operating Officer be, and the same are, hereby authorized and directed to execute an agreement with McCloud Aquatics, in substantially the form attached hereto as Exhibit "A," and, by this reference, made a part hereof. The foregoing Ordinance was adopted by the Village Board of Hawthorn Woods, Illinois on February 22, 2021:

AYES: Kaiser, Kosik, Riess, David, McCartney, Ryan

NAYS: 0

ABSENT AND NOT VOTING: 0

APPROVED: 
Dominick DiMaggio, Mayor

ATTEST: 
Donna Lobaito, Village Clerk

ADOPTED: February 22, 2021

APPROVED: March 8, 2021

Exhibit "A"



705 E. North St.
 Elburn, IL 60119
 847-891-6260
 www.mccloudaquatics.com

Estimate
 31847
 12/28/2020

Billing

Village of Hawthorn Woods
 2 Lagoon Drive
 Hawthorn Woods, IL 60047

Service Location

2 Lagoon Drive
 Hawthorn Woods, IL 60047

*****IMPORTANT*****

MUST CIRCLE APPROPRIATE ANSWERS - Is pond(s) water used for IRRIGATION? YES or NO

*****PLEASE CHOOSE ONE PAYMENT METHOD BELOW AND CIRCLE:*****

1. **5% ANNUAL PRE- PAYMENT DISCOUNT** (Valid on "STANDARD POND/LAKE "CONTRACTS" only. EXCLUDES equipment sales/repairs &/or application services. The 5% DISCOUNT will be REFLECTED on the INVOICE. Payment MUST BE RECEIVED by March 31st, 2021. NO EXCEPTIONS WILL BE GRANTED. Offer not valid with other "discounts" given.
2. **SINGLE PAYMENT** & will be invoiced on the 1st of April, upon receipt of signed contract and is due upon receipt.
3. **TWO PART PAYMENT** (Valid on vegetative pond contracts only, EXCLUDES EQUIPMENT & APPLICATION services). Invoiced on the 1st of April & June and is due upon receipt. (A 3% surcharge will be added to the contract amount for a two-part payment).
4. **CONTRACTS RECEIVED AFTER JULY 31ST, MUST BE PAID IN FULL, PRIOR TO START OF SERVICE.**

Qty	Item	Description	Amount	Total
	Standard Pond/Lake...	Treat for Algae/Chara with inspections that focus on harmful algae blooms (HAB's) along with submerged weeds and invasive species. Period of Control: May through September with a minimum of 10 service visits per full season. Refer to Scope Of Service for additional details.	2,680.00	2,680.00
	Free Floating Plants	HERITAGE OAKS PARK POND ONLY Free floating plants i.e. Duckweed, *Limited Control ONE TREATMENT INCLUDED (NOT TO EXCEED 1/4 OF THE POND) If more treatments are needed, we will propose a treatment program at that time. HERITAGE OAKS PARK POND ONLY For 2021 & 2022 Pond Management Seasons Per Season		

Our quotation is based on access of your lake/pond via our trailered boat and equipment, your current irrigation status, and reflects the entire cost of labor, equipment, chemical, insurance, state and local licensing, NPDES permit, and guarantee. (No guarantee for ponds with average depth less than 2 feet or no boat access).

Sales Tax (8.0%) \$0.00

Total \$2,680.00

Estimate is only valid for 30 days from the date of quote. We reserve the right to revoke (or null) the proposal if not accepted within 30 days.

See attached for Scope of Service & Terms and Conditions.

Signature/Date [Signature] 3/8/21

Sales Rep
LK

SCOPE OF SERVICE

Period of Control: May through September with a minimum of 10 service visits per full season. Should the need arise prior to May 1st, McCloud Aquatics will respond to your request as soon as possible (additional charges may apply). Contracts received after May 1st, will be added to the already established schedule for your area.

Frequency: You will receive a site visit approximately every two weeks after initial service is started. Service is dictated by weather, boat access, dissolved oxygen levels and other growth-related conditions.

Herbicides/Algaecides: Our herbicide selection and the rates applied are dictated by the product label, species and extent of vegetation present, current and proposed water usage (i.e. used for irrigation, swimming, fishing, etc.) dissolved oxygen levels (no applications will be made when levels are below 5.0 ppm), other environmental conditions and our discretion. All herbicides utilized are EPA registered, labeled for use in aquatic resources and applied by licensed applicators.

Communication: McCloud Aquatics requires an on-site/off-site point of contact for communication purposes. McCloud Aquatics is always open to your questions or concerns and will provide factual answers to the point of contact(s) only. McCloud Aquatics will email a service report to the point of contact after each site visit. A service report includes; dissolved oxygen level, pH, water temperature, infestation(s), action taken and water use restrictions, if applicable.

Vegetation categories below are NOT included in the Standard Pond/Lake Maintenance Program:

Free floating plants i.e., Duckweed, Watermeal* (limited control)
Floating pondweed i.e., American & IL pondweeds
Emerald plants i.e., Cattails, Arrowheads, Am. Lotus, Waterlily, Creeping Water Primrose
Submerged vegetation i.e., Eelgrass
Terrestrial vegetation in rocky shoreline
No physical removal is offered

*Limited control – Is due to the genetic makeup of Duckweed and Watermeal which can form a resistance to products used during treatment. It is also difficult to gain control due to the reintroduction through stormwater systems and water flow.

Our quotation is based on access of your lake/pond via our trailered boat and equipment, your current irrigation status, and reflects the entire cost of labor, equipment, chemical, insurance, state and local licensing, NPDES permit, and guarantee. (No guarantee for ponds with average depth less than 2 feet or no boat access).

TERMS AND CONDITIONS

MATERIALS

- A. The Herbicide/materials used in aquatic services shall conform to federal, state, and local ordinances and are EPA registered for aquatic use.

CLIENT RESPONSIBILITIES

- A. The customer shall extend all necessary cooperation to ensure effective results from aquatic management services, such as availability of boat access. With boat access comes the possibility of minor shoreline disturbances, such as tire depressions, shoreline tears and mud trails, if not a man-made structure. McCloud Aquatics shall be held harmless should events of this type occur.
- B. Customer is responsible for passing information along to the appropriate parties on restrictions due to herbicide applications that is related to: Fish consumption, live-stock drinking, swimming, irrigation.
- C. Label will dictate which restrictions will apply. High winds, heavy rains, water temperature, dissolved oxygen levels will determine any and all applications.
- D. Customer's signature attests to 1) financial responsibility, ability, and willingness to pay McCloud Aquatics within stated terms of Upon Receipt; 2) agreement to pay a finance charge 1/2 % per month or 18% per year on all past due amounts older than 30 days; 3) agreement to pay all costs of collecting to include attorney's fees; 4) agreement, that for purposes of determining the location for bringing any legal action on the account, client agrees that any such action may be brought in a court in the county in which McCloud Aquatics principal place of business is located, or in such other county chosen by McCloud Aquatics.
- E. Allegations of property damage resulting from a service visit by McCloud Aquatics, must be submitted in writing within five business days. McCloud Aquatics will review and submit McCloud Aquatics findings to determine a fair and equitable resolution, if McCloud Aquatics is found to be fault.
- F. Fish kills must be reported with 24-48 hours to determine the "root" cause of the kill by calling 847-226-4718 for inspection and gathering of water parameters by McCloud Aquatics. If determined that the resultant fish kill was caused by our actions, McCloud Aquatics will remove and dispose of the fish collected and will replace only those game species at the time of stocking (spring and fall only), if requested. Fish replacement will be based only on the number of game species collected and not by the size. Exotic species and non-native game fish are excluded from replacement and or monetary reimbursement. Fish kills caused by acts of nature, weather, disease, bacteria, runoff, foul hooking, vandalism, pollution, turnover or other events beyond our control, are not covered under the contract with McCloud Aquatics. There are no provisions, written or implied, concerning removal, disposal or

water testing to determine cause, diagnosis, prevention or odor reduction offered by McCloud Aquatics. McCloud Aquatics shall be held harmless should these events occur.

SPECIAL PROCEDURES

- A. Any service required outside the scope of the agreement will have to be agreed upon both to any application can be performed.

ONGOING MAINTENANCE PROGRAM

- A. The terms of agreement for all ongoing programs or other annual plans are from the date of the proposal. All annual programs will not renew automatically after the term of the agreement. Unless the contract is terminated by either party within a written thirty-day notice.
- B. All equipment purchased by the customer is your sole responsibility unless McCloud Aquatics is retained to perform any maintenance/service. Any aeration Equipment that is missing or becomes damaged while under McCloud Aquatics winter storage program; will be replaced by McCloud Aquatics personnel.
- C. Customer approval of this contract includes the specifications that McCloud Aquatics will provide all services as scheduled in this document. Customer agrees to pay for all such services even if no client representative is available nor approving signature obtained by McCloud Aquatics at the time service is performed.
- D. Customer approval of this contract indicates your willingness to pay any associated fees for non-contracted vegetation treatments, special services, product/equipment purchases, and/or for add-on service to additional locations verbally requested and approved by you or your representatives.

INSURANCE

McCloud Aquatics provides the following insurance coverage at this time.

Worker's Compensation and Employer's Liability..... \$1,000,000
General Liability \$2,000,000 / \$4,000,000
Automobile \$2,000,000

The above is included in the Standard Policies from McCloud Aquatics; higher limits may be available upon request. A certificate of insurance will be issued upon request and submitted upon acceptance of this agreement.

LIMITED WARRANTY

McCloud Aquatics will guarantee up to 80% of covered submerged vegetation and 90% of algae excluding resistant algae, which are: Microcystic spp., Lyngbya spp., Oscillation spp., Hydrodictyon spp., there is no guarantee for non-covered vegetation. Use of any other products (aquatic or otherwise) and/or service provider by any individual(s), agents, board members or owners of the property shall be cause for termination of the contract and McCloud Aquatics shall be held harmless as a result of such actions.

McCloud Aquatics warrants that its application of treatments here under shall be in accordance with applicable herbicide/algaeicide regulations of the Environmental Protection Agency (EPA) and other application government agencies. This warranty is exclusive and is lieu of any warranty of merchantability, fitness for a particular purpose or other warranty or representation, expressed or implied, with respect to any goods or services furnished by McCloud Aquatics, pursuant to this contract. McCloud Aquatics representatives will make additional calls and treatments for covered vegetation in areas covered by this agreement, when deemed necessary and these extra service calls will be provided at no additional charge during work hours. Unless specified otherwise in the service agreement, special services and after-hours service calls will be provided on a cost per treatment basis. The parties agree that the client's sole and exclusive remedy against McCloud Aquatics in the event continued infestation shall be the reapplication of treatment as described above. The customer agrees that no other remedy shall be available to them. ORAL STATEMENTS DO NOT CONSTITUTE WARRANTIES. The entire contract is embodied in this writing and NO OTHER WARRANTIES are given beyond those set forth in this contract. This writing constitutes the final expression of the parties agreement and it is a complete and exclusive statement of the terms of that agreement. Any different additional terms proposed in customer's order are rejected unless expressly agreed to in writing by McCloud Aquatics authorized agent. The terms and conditions contained herein shall constitute an offer by McCloud Aquatics and may only be accepted on the terms herein set forth.

CANCELLATION

If for any reason you are not satisfied with McCloud Aquatics services, you may cancel this contract with a written 30-day cancellation notice mailed to the McCloud Aquatics office. McCloud Aquatics also reserves the right to cancel this agreement before one year for any reason.