

ODNR SERVICES AGREEMENT

This Agreement ("Agreement") is between the **OHIO DEPARTMENT OF NATURAL RESOURCES**, acting through its **DIVISION OF PARKS AND WATERCRAFT** ("ODNR"), with offices located at 2045 Morse Road, Columbus, Ohio 43229, and **BURREY AQUATIC RESTORATION LLC** ("Contractor") with offices located at 23784 Rapp-Dean Rd, Raymond OH 43067.

The parties agree as follows:

I. NATURE OF AGREEMENT

- A. Contractor shall be engaged as an independent contractor to fulfill the terms of this Agreement and to act as a contractor to ODNR. It is specifically understood that the nature of the services to be rendered under this Agreement are of such a nature that ODNR shall be the sole judge of the adequacy of such services.
- B. ODNR enters into this Agreement in reliance upon Contractor’s representations that it has the necessary expertise and experience to perform its obligations hereunder, and Contractor warrants that it does possess the necessary expertise and experience.
- C. Contractor shall perform the services to be rendered under this Agreement and ODNR shall not hire, supervise, or pay any assistants to Contractor in its performance of services under this Agreement. ODNR shall not be required to provide any training to Contractor to enable it to perform services required hereunder.

II. NOTICES

- A. Except to the extent expressly provided otherwise herein, all notices, consents, and communications required hereunder (each, a "Notice") shall be in writing and shall be deemed to have been properly given when: 1) hand delivered with delivery acknowledged in writing; 2) sent by U.S. Certified mail, return receipt requested, postage prepaid; 3) sent by overnight delivery service (Fed Ex, UPS, etc.) with receipt; or 4) sent by email. Notices shall be deemed given upon receipt thereof, and shall be sent to the addresses set forth below. Notwithstanding the foregoing, notices sent by email shall be effectively given only upon acknowledgement of receipt by the receiving party. Any party may change its address for receipt of Notices upon notice to the other party. If delivery cannot be made at any address designated for Notices, a Notice shall be deemed given on the date on which delivery at such address is attempted.

Contractor Contact: Jeremy Burrey Owner Burrey Aquatic Restoration LLC 23784 Rapp-Dean Rd Raymond, OH 43067 (937) 935-1211 burreyaquatic@gmail.com	ODNR Contact: Josh Gardner Central District Manager ODNR Division of Parks and Watercraft 3615 Old State Rd Delaware, OH 43015 (419) 860-4291 Joshua.Garnder@dnr.ohio.gov
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III. SCOPE OF WORK

- A. Contractor shall perform the services (the "Work") set forth in the attached Exhibit 1, Scope of Work, which is incorporated as part of this Agreement.
- B. In order to facilitate the Work, ODNR shall provide the resources set forth in Exhibit 1, Scope of Work.

IV. TIME OF PERFORMANCE

- A. The Work shall be commenced on or after the date of an approved purchase order.
- B. The Work shall be concluded on or before June 30, 2023. As the current General Assembly cannot commit a future General Assembly to expenditures, this Agreement shall terminate no later than June 30, 2023.
- C. Upon mutual, written consent prior to the termination date, and subject to appropriation, the parties may renew this Agreement on the same terms and conditions.
- D. It is expressly agreed by the parties that none of the rights, duties, and obligations herein shall be binding on either party if award of this Agreement would be contrary to the terms of Ohio Revised Code ("R.C.") Sections 3517.13, 127.16, or R.C. Chapter 102.

V. COMPENSATION

- A. ODNR shall pay Contractor no more than **\$ 326,000.00** for the Work.
- B. The total amount due and its manner and schedule of payment shall be computed according to the cost schedule established in Exhibit 1, Scope of Work.
- C. Contractor shall not be reimbursed for travel-related expenses incurred in the performance of the Work.
- D. Contractor must receive a purchase order from ODNR prior to filling an order or performing any of the Work.
- E. After Contractor receives a purchase order, Contractor shall submit an invoice weekly for the Work performed consistent with this Article V, Compensation. Each invoice shall contain an itemization of the Work performed, including dates the Work was performed and total hours worked, if required by Paragraph B, above, the location or address where the Work was performed, and the sum due at that time pursuant to this Agreement. All invoices shall contain Contractor's name and address and purchase order number. Invoices are to be sent to Ohio Shared Services via email to invoices@ohio.gov, by fax to 614-485-1039, or by mail to P. O. Box 182880, Columbus, Ohio 43218-2880. After receipt and approval by ODNR of an invoice, as defined in R.C. § 125.01(B), payment will be made pursuant to R.C. § 126.30. Defective or improper invoices may be returned unprocessed, delaying payment.
- F. In the event that any customer of Contractor negotiates a lower fee structure for the Work or comparable services Contractor shall promptly notify ODNR and shall extend the lower negotiated rate to ODNR retroactively to the first date the lower rate was offered to another customer.

VI. CERTIFICATION OF FUNDS / NON-APPROPRIATION

- A. It is expressly understood and agreed by the parties that none of the rights, duties, and obligations described in this Agreement shall be binding on either party until all relevant statutory provisions of the Ohio Revised Code, including, but not limited to, R.C. § 126.07, have been met, and until such time as all necessary funds are available or encumbered and, when required, such expenditure of funds is approved by the Controlling Board of the State of Ohio, or in the event that grant funds are used, until such time that ODNR gives Contractor written notice that such funds have been made available to ODNR by ODNR's funding source.

VII. TERMINATION OF CONTRACTOR'S SERVICES

- A. ODNR may, at any time prior to completion of the Work, suspend or terminate this Agreement with or without cause by giving written notice to Contractor.
- B. If the Work includes divisible services, ODNR may, at any time prior to completion of the Work, by giving written notice to Contractor, suspend or terminate any one or more such portions of the Work.
- C. Contractor, upon receipt of notice of suspension or termination, shall cease work on the suspended or terminated activities under this Agreement, suspend or terminate all subcontracts relating to the suspended or terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and, if requested by ODNR, furnish a report, as of the date Contractor receives notice of suspension or termination, describing the status of all Work, including, without limitation, results, conclusions resulting therefrom, and any other matters ODNR requires.
- D. If this Agreement is terminated without cause, Contractor shall be paid for services rendered up to the date Contractor receives notice of suspension or termination, less any payments previously made, provided Contractor has supported such payments with detailed factual data containing Work performed and hours worked. In the event of suspension or termination, any payments made by ODNR for which Contractor has not rendered services shall be refunded.
- E. If this Agreement is terminated for cause as the result of the Contractor committing a material breach of the Agreement, the Contractor shall not be entitled to further payment. If the unpaid balance of the amount identified in paragraph V.A. above is exceeded by the costs of finishing the Work and other damages incurred by ODNR and not expressly waived, the Contractor shall immediately pay the amount of the insufficiency to ODNR. This obligation for payment shall survive termination of this Agreement.
- F. If this Agreement is terminated prior to completion of the Work, Contractor shall deliver to ODNR all work products and documents which have been prepared by Contractor in the course of performing the Work. All such materials shall become and remain the property of ODNR, to be used in such manner and for such purpose as ODNR may choose.
- G. Contractor agrees to waive any right to, and shall make no claim for, additional compensation against ODNR by reason of any suspension or termination.
- H. Contractor may terminate this Agreement upon ninety (90) days' prior written notice to ODNR.

VIII. RELATIONSHIP OF PARTIES

- A. Contractor shall be responsible for all of its own business expenses, including, but not limited to, computers, email and internet access, software, phone service, and office space. Contractor will also be responsible for all licenses, permits, employees' wages and salaries, insurance of every type and description, and all business and personal taxes, including income and Social Security taxes and contributions for Workers' Compensation and Unemployment Compensation coverage, if any, unless payment for any such item is specifically provided for herein or in the purchase order.
- B. While Contractor shall be required to render services described hereunder for ODNR during the term of this Agreement, nothing herein shall be construed to imply, by reason of Contractor's engagement hereunder as an independent contractor, that ODNR shall have, or may exercise, any right of control over Contractor with regard to the manner or method of Contractor's performance of services hereunder.
- C. Except as expressly provided herein, neither party shall have the right to bind or obligate the other party in any manner without the other party's prior written consent.
- D. It is fully understood and agreed that Contractor is an independent contractor and neither Contractor nor its personnel shall at any time, or for any purpose, be considered as agents, servants, or employees of ODNR or the State of Ohio.
- E. For any employees or subcontractors working onsite at any ODNR location, Contractor understands that these employees or subcontractors are subject to a background check conducted by ODNR. Such a background check may include criminal records, tax records, driving records, and verification of academic credentials or degrees. ODNR may also conduct drug testing, field investigation, and polygraph examinations of certain employees of the Contractor or its subcontractors, if ODNR believes such action is necessary. ODNR reserves the right to refuse access to the job site at any time if ODNR determines in its discretion that Contractor's employee or subcontractor presents a potential security threat or if there is a change in the results of the background check at any time during the completion of the Work.

IX. RECORD KEEPING

- A. During performance of this Agreement and for a period of three (3) years after its completion, Contractor shall maintain auditable records of all charges pertaining to this Agreement and shall make such records available to ODNR as ODNR may reasonably require.
- B. Contractor shall, for the purpose of compliance with R.C. § 145.036, provide ODNR with a list of all individuals who will provide services under this Agreement, but only if Contractor has no more than four employees.

X. RELATED AGREEMENTS

- A. All Work is to be performed by Contractor, who may subcontract without ODNR's approval for the purchase of articles, supplies, components, or special mechanical services that do not involve the type of

work or services described in Exhibit 1, Scope of Work, but which are required for satisfactory completion of the Work.

1. Contractor shall not enter into subcontracts related to the Work without prior written approval by ODNR. All subcontracted work shall be at Contractor's expense.
 2. Contractor shall furnish to ODNR a list of all subcontractors, their addresses, tax identification numbers, and the dollar amount of each subcontract.
- B. Contractor shall bind its subcontractors to the terms of this Agreement, so far as applicable to the work of the subcontractor, and shall not agree to any provision which seeks to bind ODNR to terms inconsistent with, or at variance from, this Agreement.
- C. Contractor warrants that it has not entered into, nor shall it enter into, other agreements, without prior written approval of ODNR, to perform substantially identical work for the State of Ohio such that the Work duplicates the work called for by the other agreements.

XI. RIGHTS IN DATA AND COPYRIGHTS / PUBLIC USE

- A. ODNR shall have unrestricted authority to reproduce, distribute, and use (in whole or in part) any reports, data, or materials prepared by Contractor pursuant to this Agreement. No such documents or other materials produced (in whole or in part) with funds provided to Contractor by ODNR shall be subject to copyright by Contractor in the United States or any other country. If Contractor has reason to believe that use of a specified item is subject to patent or copyright protection, Contractor shall immediately notify ODNR.
- B. Contractor agrees that all original works created under this Agreement shall be made freely available to the general public to the extent permitted or required by law until and unless specified otherwise by ODNR. Any request for distribution received by Contractor shall be promptly referred to ODNR.

XII. CONFIDENTIALITY

- A. Contractor shall not discuss or disclose any Confidential Information, defined in Exhibit 2, obtained pursuant to its obligations under this Agreement without the prior written consent of ODNR.
- B. Contractor acknowledges that this Agreement is subject to the requirements, conditions, and restrictions set forth in IRS Publication 1075 (the "Publication"). The IRS may from time-to-time revise, amend, or replace the Publication, which is available online at: (<http://www.irs.gov/pub/irs-pdf/p1075.pdf>). The terms set forth in the attached Exhibit 3 are fully incorporated as part of this Agreement.
- C. The Contractor agrees not to use advertising, news releases, sales promotions, or other publicity matters relating to any product or service furnished by the Contractor wherein ODNR's name is mentioned, or language used from which a connection with ODNR may be reasonably inferred, without the prior written consent of ODNR.
- D. Any obligations under this Agreement regarding confidentiality are subject to applicable law, including the Ohio Public Records Act set forth in R.C. Chapter 149. The disclosure of records by ODNR pursuant to

the Ohio Public Records Act shall not be a breach of this Agreement and shall not constitute a waiver of Contractor's obligations under this Article XII as to any records disclosed pursuant to a request for public records. Contractor shall clearly identify any information or data that it deems Confidential or Proprietary. If ODNR receives a public records request for records that contain Confidential or Proprietary information, ODNR shall provide notice to Contractor, and Contractor shall provide ODNR with redacted copies of any such records, redacting only those specific portions of any record that are Confidential or Proprietary. Contractor may, at its sole discretion and expense, seek a judicial order preventing disclosure of such information.

XIII. WARRANTY

- A. Contractor warrants and represents that each of its employees, subcontractors, and agents assigned to perform any services under the terms of this Agreement shall have the skills, training, and background reasonably commensurate with their level of performance or responsibility, so as to be able to perform in a competent and professional manner consistent with the degree of quality, skill, and care ordinarily exercised by members of the same profession practicing under similar circumstances and providing services of a similar nature. Contractor further warrants that the services provided hereunder will conform to the requirements of this Agreement. All warranties, including any special warranties specified elsewhere herein, shall inure to the State of Ohio through the Ohio Department of Natural Resources.

XIV. LIABILITY

- A. Contractor agrees to indemnify and hold ODNR and the State of Ohio harmless and immune from any and all claims for injury or damages arising from this Agreement which are attributable to Contractor's own actions or omissions or those of its trustees, directors, officers, employees, subcontractors, suppliers, agents, partners, and joint venturers while acting under this Agreement. Such claims shall include any claims made under the Fair Labor Standards Act or under any other federal or state law involving wages, overtime or employment matters, and any claims involving patents, copyrights, and trademarks.
- B. Contractor shall bear all costs associated with defending ODNR and the State of Ohio against any claims.
- C. In no event shall either party be liable to the other party for special damages, which include lost profits.
- D. Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or its subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried out by the State; (c) be provided by a company with an A.M. Best rating of "A" or better, and a financial size of VII or better; and (d) be endorsed to provide ODNR with a 30-day prior written notice of cancellation or material change to the policy.

INSURANCE REQUIREMENTS	
Commercial General Liability Insurance	
Required Limits	Additional Requirements
<u>Minimum Limits:</u> \$1,000,000 Each Occurrence \$2,000,000 Aggregate	Policy must cover bodily injury, personal injury, wrongful death, and property damage. Defense cost shall be outside of the policy limits. Policy shall designate "the State of Ohio, its departments, divisions, agencies, offices, commissions, officers,

\$2,000,000 Products/Completed Operations \$100,000 Fire Legal Liability \$10,000 Medical Payments \$1,200,000 General Aggregate	employees, and agents” as additional insureds. Policy shall be endorsed to include a blanket waiver of subrogation.
Commercial Automobile Liability Insurance	
<u>Minimum Limits:</u> Combined single limit of \$1,000,000	
Workers’ Compensation Insurance	
<u>Minimum Limits:</u> Coverage according to applicable laws governing work activities	
Employer’s Liability Insurance	
<u>Minimum Limits:</u> \$1,000,000 Accident Limit Each Occurrence \$1,000,000 Disease Limit Each Employee \$1,000,000 Disease Policy Limit	
Cyber Liability Insurance	
<u>Minimum Limits:</u> \$2,000,000 Per Claim \$2,000,000 Aggregate	

1. Where applicable, professional liability insurance covering all staff with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 aggregate. If the Contractor’s policy is written on a “claims made” basis, the Contractor shall provide ODNR with proof of continuous coverage at the time the policy is renewed. If for any reason the policy expires, or coverage is terminated, the Contractor must purchase and maintain “tail” coverage through the applicable statute of limitations.
 2. Where applicable, builder’s risk insurance covering the Work with a minimum limit equal to the compensation for the Work as set forth in Article IV.
 3. Certificates for Workers’ Compensation and proof of insurance must be provided to ODNR. The certificate(s) must be in a form that is reasonably satisfactory to ODNR as to the contents of the policies and the quality of the insurance carriers. If Contractor is a sole proprietor, partnership, or has no statutory requirement for workers’ compensation, Contractor must provide a letter stating that it is exempt and agreeing to hold ODNR and the State of Ohio harmless from loss or liability for such.
- E. Contractor shall pay all deductibles, or self-insured retentions, or both, contained in the Contractor’s policies of insurance required or provided in connection with the Agreement. ODNR reserves the right to

approve or reject all levels of self-insured retention, captive insurance programs, or other alternative risk financing the Contractor may use to comply with any insurance requirement.

- F. Contractor may use Umbrella or excess commercial liability policies in combination with primary policies to satisfy the limit requirements above. Such umbrella or excess commercial liability policies must apply without any gaps in the limits of coverage and be at least as broad as and follow the form of the underlying primary coverage required above.
- G. Contractor must provide ODNR with written notice of cancellation or material change to any insurance policy required above as soon as possible and must use best efforts to notify ODNR at least 30 days in advance of such cancellation or material change, except for non-payment cancellation. Material change shall be defined as any change to the insurance limits, terms, or conditions that would limit or alter ODNR's available recovery under any of the policies required above. A lapse in any required insurance coverage during this Agreement shall be a breach of this Agreement.
- H. The insurance obligations under this Agreement shall be the minimum insurance coverage requirements and/or limits shown in this Agreement. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to ODNR. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the Contractor under this Agreement.
- I. Pursuant to R.C. § 2743.02(D), all applicable insurance or other means of recovery shall apply to any claim arising from the Contractor's activities relating to this Contract on a primary basis. The insurance or self-insurance maintained by ODNR shall not contribute to claims made due to the Contractor's negligence, errors, or omissions. No subrogation demands shall be made against ODNR, except where there is negligence on the part of ODNR, and any such demands shall be reduced by all collateral recovery sources available to or received by the claimant.
- J. To the fullest extent permitted by applicable law, Contractor waives all rights against ODNR and its agents and employees for damages to the extent covered by any insurance, except rights to the proceeds of that insurance. All policies shall accomplish the waiver of subrogation by endorsement or otherwise.
- K. Contractor hereby grants to ODNR a waiver of any right to subrogation which any insurer of said Contractor may acquire against ODNR by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not ODNR has received a waiver of subrogation endorsement from the insurer.

XV. ANTITRUST ASSIGNMENT

- A. Contractor assigns to ODNR all state and federal antitrust claims and causes of action that relate to all goods and services provided for in this Agreement.

XVI. CONTRACTOR'S STATUTORY OBLIGATIONS

- A. **PREVAILING WAGES.** Contractor shall comply with the prevailing wage requirements described under R.C. Chapter 4115 that include, without limitation, the requirements described under this section. If the Work is subject to payment of prevailing wage rates, the Contractor shall:
1. Pay to laborers and mechanics performing the Work the prevailing wage rates of the Project locality, as determined by the Ohio Department of Commerce, Wage and Hour Bureau;
 2. Post in a prominent place readily accessible by all workers on the site, a legible listing of the current classifications of laborers, workers, and mechanics employed under this Agreement;
 3. Ensure that the rates posted are current and remain posted in legible condition during the period of this Agreement; and not be entitled to an increase in compensation on account of an increase in prevailing wage rates, except as otherwise provided by applicable law.

The Contractor may access the Ohio Department of Commerce, Wage & Hour Bureau at its website, <https://wagehour.com.ohio.gov/w3/webwh.nsf/wrlogin/?openform>, to obtain the current wage rates.

- B. **COMPLIANCE WITH LAWS.** Contractor, in the execution of its duties and obligations under this Agreement, agrees to comply with all applicable federal, state, and local laws, rules, regulations, and ordinances.
- C. **DRUG-FREE WORKPLACE.** Contractor agrees to comply with all applicable federal, state, and local laws regarding smoke-free and drug-free workplaces and shall make a good faith effort to ensure that none of its employees or permitted subcontractors purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs in any way while engaged in the Work provided for in this Agreement.
- D. **NONDISCRIMINATION OF EMPLOYMENT.** Pursuant to R.C. § 125.111, Contractor agrees that Contractor, any subcontractor, and any person acting on behalf of Contractor or a subcontractor, shall not discriminate, by reason of race, color, religion, sex, sexual orientation, age, disability, military status as defined in R.C. § 4112.01, national origin, or ancestry against any citizen of this state in the employment of any person qualified and available to perform the Work. Contractor further agrees that Contractor, any subcontractor, and any person acting on behalf of Contractor or a subcontractor shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of the Work on account of race, color, religion, sex, sexual orientation, age, disability, military status, national origin, or ancestry. If required by R.C. § 125.111(B) and Ohio Administrative Code § 123:2-3-02, Contractor shall have a valid Certificate of Compliance (COC) from the Ohio Department of Development demonstrating compliance with affirmative action program requirements.
- E. **USE OF MBE AND EDGE VENDORS.** R.C. § 125.081 requires state agencies to set aside purchases for Minority Business Enterprises ("MBE") and R.C. § 122.92 requires the Department of Development, through the adoption of rules, to establish agency goals for contracting with Encouraging Diversity, Growth and Equity ("EDGE") businesses which will be applied at the contract level. ODNR encourages Contractor to purchase goods and services from Ohio-certified MBE and EDGE vendors.

- F. **CONFLICTS OF INTEREST.** No personnel of Contractor who exercise any functions or responsibilities in connection with the review or approval of this Agreement or carrying out of any of the Work shall, prior to the completion of the Work, voluntarily acquire any personal interest, direct or indirect, that is incompatible or in conflict with the discharge and fulfillment of their functions and responsibilities with respect to the carrying out of the Work. Any such person who acquires, whether voluntarily or involuntarily, an incompatible or conflicting personal interest on or after the effective date of this Agreement shall immediately disclose their interest to ODNR in writing. Thereafter, they shall not participate in any action affecting the Work, unless ODNR shall determine in its sole discretion that, considering the personal interest disclosed, their participation in any such action would not be contrary to the public interest.
- G. **OHIO PUBLIC EMPLOYEES RETIREMENT SYSTEM RETIRANT.** If Contractor is a PERS Retirant, as defined by R.C. § 145.38, Contractor shall notify ODNR of such status in writing prior to the commencement of the Work. Notices pursuant to this paragraph shall be sent to ODNR's Director of Human Resources by mail at 2045 Morse Rd., Building D-1, Columbus, Ohio 43229 or by email at toni.brokaw-farmer@dnr.ohio.gov. ODNR shall not be responsible for any changes to Contractor's retirement benefits that may result from entering into this Agreement. Contractor acknowledges and agrees that any of its individual employees providing services under this Agreement are not public employees for the purposes of R.C. Chapter 145. ODNR will not make contributions to the public employees' retirement system on behalf of any individuals employed by Contractor, or its subcontractors or other agents. Contractor certifies that it is an employer with five or more employees as defined as a "business entity" in R.C. § 145.037(A) for the purposes of the application of R.C. Chapter 145, or that it has completed the necessary forms and returned them to ODNR if Contractor is an employer with no more than four (4) employees.

XVII. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

- A. **ETHICS COMPLIANCE.** Contractor represents and warrants that it: (i) has reviewed and understands the Ohio ethics and conflict of interest laws as found in R.C. Chapter 102 and in R.C. §§ 2921.42 and 2921.43, and (ii) will take no action inconsistent with those laws. The Contractor understands that failure to comply with Ohio's ethics and conflict of interest laws in grounds for termination of this Agreement and may result in the loss of other contracts or grants with the State of Ohio.
- B. **QUALIFICATIONS TO DO BUSINESS.** Contractor represents and warrants that it has all of the registrations, approvals, licenses, or other qualifications needed to conduct business in Ohio and that all are current. If Contractor becomes disqualified from conducting business in the state of Ohio for any reason at any time during the term of this Agreement, Contractor will immediately notify ODNR in writing and will immediately cease performance of the Work.
- C. **CAMPAIGN CONTRIBUTIONS.** Unless this Agreement was solicited by competitive bid pursuant to R.C. § 125.07, Contractor hereby represents and warrants that all applicable parties are in full compliance with R.C. § 3517.13.
- D. **FINDINGS FOR RECOVERY.** Contractor represents and warrants that it is not subject to an "unresolved" finding for recovery under R.C. § 9.24.

- E. STATE OF OHIO DEBARMENT. Contractor represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either R.C. §§ 153.02 or 125.25.
- F. FEDERAL GOVERNMENT DEBARMENT AND SUSPENSION. Should a federal government or entity provide a source or the entire source of funding and payment for this Agreement, this section applies. Contractor represents and warrants that it is not debarred from consideration for contract awards under 2 CFR 180. If, for any reason, the Contractor and/or any of its principals becomes disqualified from conducting business in the United States during the term of this Agreement, or if Contractor and/or any of its principals becomes subject to any reportable event outlined in Section 872 of Public Law 110-417 (41 U.S.C. 2313), Contractor shall both immediately notify ODNR in writing and cease performance of work. Failure to provide such notice in a timely fashion as required by the federal funding authority shall void this Agreement and may be sufficient cause for the State or the federal funding agency to debar the Contractor from future state contracting opportunities as may be permitted by state or federal law, guidance for which is provided at 2 CFR Sections 180 and 200.212.
- G. EXPENDITURES OF PUBLIC FUNDS ON OFFSHORE SERVICES. Contractor affirms that it has read, and understands, Executive Order 2019-12D issued by Ohio Governor Mike DeWine. Contractor shall perform no services required under this Agreement or locate State data in any way outside of the United States.
- Contractor also affirms that it has read, and understands, Executive Order 2022-02D issued by Ohio Governor Mike DeWine. Contractor has signed and completed the Standard Affirmation and Disclosure Form and shall perform no services in Russia, locate State data in Russia in any way, or purchase from or invest in Russian institutions or companies.
- H. BOYCOTTING. Pursuant to R.C. § 9.76, Contractor hereby represents and warrants that it is not boycotting any jurisdiction with whom the State of Ohio can participate in open trade, including the nation of Israel, and will not do so during the term of this Agreement.
- I. REPAYMENT. If the representations and warranties in this Article XVII are found to be false, this Agreement is void *ab initio* and Contractor shall immediately repay to ODNR any funds paid under this Agreement.

XVIII. MISCELLANEOUS

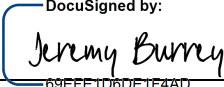
- A. CONTROLLING LAW. This Agreement and the rights of the parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the state of Ohio. Contractor consents to jurisdiction in a court of proper jurisdiction in Franklin County, Ohio.
- B. WAIVER. A waiver by any party of any breach or default by the other party under this Agreement shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.
- C. SUCCESSORS AND ASSIGNS. Neither this Agreement nor any rights, duties, or obligations hereunder may be assigned or transferred in whole or in part by Contractor, without the prior written consent of ODNR.

- D. **CONFLICT.** In the event of any conflict between the terms and provisions of the body of this Agreement and any exhibit hereto, the terms and provisions of the body of this Agreement shall control.
- E. **HEADINGS.** The headings in this Agreement have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of this Agreement.
- F. **SEVERABILITY.** The provisions of this Agreement are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless be binding and enforceable.
- G. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement between the parties hereto and shall not be modified, amended, or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties hereto. This Agreement supersedes any and all previous agreements, whether written or oral, between the parties.
- H. **EXECUTION.** This Agreement is not binding upon ODNR unless executed in full and is effective as of the last date of signature by ODNR.
- I. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.
- J. **ELECTRONIC SIGNATURES.** Any party hereto may deliver a copy of its counterpart signature page to this Agreement electronically pursuant to R.C. Chapter 1306. Each party hereto shall be entitled to rely upon an electronic signature of any other party delivered in such a manner as if such signature were an original.

Each party is signing this Agreement on the date stated below that party's signature.

CONTRACTOR

BURREY AQUATIC RESTORATION LLC

By:  _____
Printed Name: Jeremy Burrey
Title: owner
Date: April 26, 2023

OHIO DEPARTMENT OF NATURAL RESOURCES

DIVISION OF PARKS AND WATERCRAFT

By: _____
Printed Name: _____
Title: _____
Date: _____

EXHIBIT 1

Scope of Work

I. WORK DESCRIPTION

A. OBJECTIVE AND SCOPE

1. This project involves the performance of routine aquatic vegetative maintenance and debris removal on Indian Lake with a focus on public beach and other near shore areas.
2. The Contractor shall be responsible for harvesting and maintaining the aquatic vegetation condition of Indian Lake, primarily in near shore areas including but not limited to public beaches as directed by Indian Lake State Park leadership in consultation with the ODNR Lake Management Plan. This primarily consists of surface and submerged vegetation removal, and the control of any aquatic vegetative species that could contribute to the recreational degradation of Indian Lake. The table below summarizes the required aquatic vegetation harvesting and required frequency. Additional harvesting activities should be anticipated as necessary after heavy winds, heavy rainfall and other weather conditions that spark excessive aquatic growth.
3. Acreage and specific target areas for harvesting will be identified by Indian Lake State Park Leadership in consultation with the Lake Management Plan. A separate supplier is contracted and responsible for the collection of lake data (i.e. water quality, vegetation, etc.), the analysis of current water and vegetative conditions, and evaluation of environmental changes within the lake

B. WORK MANAGEMENT

TABLE 1: Summary of the aquatic vegetation harvesting and required frequency

Required Activity	Required Frequency
Meet with an ODNR Parks and Watercraft Representative to scope out the upcoming work plan / area for aquatic vegetation harvest.	Weekly
The Contractor is expected to harvest aquatic vegetation based on 8 – 10 hour work day (dependent upon equipment and weather conditions)	Daily
The Contractor is expected to offload debris to an ODNR designated staging or disposal area.	Daily
The Contractor shall email a weekly report to the designated ODNR Representative(s), as determined by the Agency. The weekly report shall include: areas managed, hours worked, amount of vegetation removed, and photo documentation of the work completed.	Weekly

C. DELIVERABLES

- a. Burrey Aquatic Restoration will provide the following equipment and the labor necessary to run it for each hour of work performed:
- Truxor T 50 Amphibious Harvester- with cutting head, Grapple and rake attachments. 7-13 ft. cutting and harvesting capability.
 - ILH 250 Harvester- with a cutting head width of 7 ft. and 6 ft. of depth. Capable of harvesting 1-1.5 ft. of water. 250 cu ft. of storage.
 - Pickup truck and dump trailer- for hauling vegetation to designated dump site.
 - Vermeer 720- Mini Loader with Grapple bucket for hauling and loading vegetation.
 - John Deere 35G – Mini Excavator with thumb attachment for removing vegetation.

II. COMPENSATION

- A. \$326,000.00
- B. Invoices may be submitted weekly, bi-weekly or monthly as the contractor chooses until the work is completed.

III. CHANGES TO SCOPE OF WORK

ODNR may order changes in the Work without invalidating the Agreement. A change in the Work shall be governed by a change order in the form of a contract amendment. Contractor shall not proceed with any change in the Work without ODNR's prior written authorization. Upon execution of an amendment, Contractor shall perform all changes in the Work under the applicable provisions of the Agreement and any amendments, and the Contractor shall proceed promptly with the change unless otherwise provided in the amendment. The amendment will govern any changes to the Work, changes to the fees owed to Contractor, and any changes to the time for completion of the project. By signing an amendment, Contractor irrevocably certifies that the elements of the amendment are completely satisfied, and waives all rights, if any, to seek further adjustment of the fees owed or the time for completion of the Work, or both, at a later date with respect to the associated change in the Work including without limitation on account of the "cumulative impact" of the associated change in the Work in combination with one or more other changes in the Work.

EXHIBIT 2

Agreement for Protection of Confidential Information

“Confidential Information” means any and all tangible or intangible information, documents, prototypes, samples, products, services, methodologies, research, technical knowledge, marketing plans, trade secrets, and proprietary materials disclosed previously or in the future by ODNR to you, either directly or indirectly, in writing, orally or by inspection of tangible objects, including, without limitation, any information: (i) that has been marked as proprietary or confidential; (ii) whose confidential nature has been made known by ODNR; (iii) that due to its character and nature, a reasonable person under like circumstances would treat as confidential. Confidential Information may also include information disclosed to a Contractor by third parties; or (iv) Personal Information, as defined in R.C. § 1347.01(E), in any form which is any information that describes anything about a person, or that indicates actions done by or to a person, or that indicates that a person possesses certain personal characteristics, and that contains, and can be retrieved from a system by, a name, identifying number, symbol, or other identifier assigned to a person. Confidential Information shall not, however, include any information which (i) was publicly known and made generally available in the public domain prior to the time of disclosure by ODNR; (ii) becomes publicly known and made generally available after disclosure by ODNR to you through no action or inaction of you; (iii) is already in your possession at the time of disclosure by ODNR as shown by your files and records immediately prior to the time of disclosure; (iv) is obtained by you from a third party without a breach of such third party’s obligations of confidentiality; or (v) is required by law to be disclosed by you, provided that ODNR is given prompt written notice of such requirement prior to such disclosure and assistance in obtaining an order protecting the information from public disclosure, in which case such information shall remain Confidential Information.

Although some sensitive personal information, such as medical records, addresses, telephone numbers, and social security numbers may be publicly available through other sources, Contractor shall not disclose or use such information in any manner except as expressly authorized in this Agreement. Therefore, notwithstanding whether such information becomes publicly known without breach of this Agreement, Contractor does have an obligation to maintain the confidentiality of such sensitive personal information.

Contractor must return all originals of any Confidential Information provided by ODNR and destroy any copies Contractor has made on termination or expiration of this Agreement.

Contractor will be liable for the disclosure of any Confidential Information. The parties agree that the disclosure of confidential information of ODNR may cause ODNR irreparable damage for which remedies other than injunctive relief may be inadequate, and Contractor agrees that in the event of a breach of the obligations hereunder, ODNR shall be entitled to temporary and permanent injunctive relief to enforce this provision without the necessity of proving actual damages. This provision shall not, however, diminish or alter any right to claim and recover damages.

NON-USE AND NON-DISCLOSURE. You agree not to use any Confidential Information of ODNR for any purpose except to assist Contractor and its permitted subcontractors or agents in providing services to ODNR. You agree not to disclose any Confidential Information to third parties.

MAINTENANCE OF CONFIDENTIALITY. You agree to take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information.

CONTRACTOR

BURREY AQUATIC RESTORATION LLC

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT 3**IRS Publication 1075****I. PERFORMANCE**

In performance of this Agreement, Contractor agrees to comply with and assume responsibility for compliance by its employees with the following requirements:

- (1) All Work will be performed under the supervision of Contractor or Contractor's responsible employees.
- (2) Any Federal tax returns or return information (hereafter referred to as "returns" or "return information" or "FTI") made available shall be used only for the purpose of carrying out the provisions of this Agreement. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Agreement. Inspection by or disclosure to anyone other than an officer or employee of Contractor is prohibited.
- (3) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.
- (4) No Work involving returns and return information furnished under this Agreement will be subcontracted without prior written approval of ODNR and IRS.
- (5) Contractor will maintain a list of employees authorized access. Such list will be provided to ODNR and, upon request, to the IRS reviewing office.
- (6) Incident response policies and procedures must be developed, documented, disseminated, and updated as necessary to facilitate the implementation of incident response security controls.
- (7) Audit and accountability policies and procedures must be developed, documented, disseminated, and updated as necessary to facilitate the implementation of audit and accountability security controls.
 - a. To support the audit of activities, Contractor must ensure that audit information is archived for six years.
 - b. The information system must protect audit information and audit tools from unauthorized access, modification, and deletion.
- (8) IRS Publication 1075 compliance is mandatory. The aforementioned compliance items are a small selection of key elements contained within the requirements defined in IRS Publication 1075.

ODNR reserves the right to impose additional and more stringent requirements as deemed necessary to protect FTI.

II. CRIMINAL/CIVIL SANCTIONS

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Agreement. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Agreement. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRC Sections 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (3) Additionally, it is incumbent upon Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- (4) Before receiving access to FTI, Contractor must certify that each individual understands ODNR's security policy and procedures for safeguarding IRS information. Contractor must maintain its

authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in ODNR's files for review. Contractor is hereby advised of the provisions of IRC Sections 7431, 7213, and 7213A. (See Exhibit 5 to the Publication, IRC Sec. 7431 Civil Damages for Unauthorized Inspection or Disclosure of Returns and Return Information; see also Exhibit 4 to the Publication, IRC Sec. 7213 Unauthorized Disclosure of Information). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10 of the Publication). For both the initial certification and the annual certification, Contractor must sign, either with ink or electronic signature, a confidentiality statement certifying its understanding of the security requirements.

III. INSPECTION

Contractor shall comply with the FTI safeguard requirements of IRS Publication 1075, including all requirements that refer or relate to record retention and audits.

The IRS and ODNR shall have the right to send their officers and employees into Contractor's offices, plants, and all other sites operated or controlled by Contractor so that the officers and employees may inspect the facilities and operations utilized for the performance of any Work under this Agreement. This includes alternate worksites where FTI is or has been received, processed, stored, destroyed, or handled by any means. This provision specifically includes private property held by Contractor if it allows its employees to establish an alternate work site within their property.

On the basis of such inspection, specific measures may be required to remedy matters of non-compliance where Contractor is found to be noncompliant with safeguards required by the Agreement, the IRS Office of Safeguards, or ODNR. The Agreement may be terminated subject to the discretion of the IRS and/or ODNR for any reason. In either case, Contractor shall have no recourse and shall not be entitled to any damages as a result of the required remedy or termination of the Agreement.

A background check must be performed, as required by IRS Publication 1075, on each of Contractor's employees or subcontractors that may be exposed to FTI provided by ODNR. Results of the background checks shall be made available to ODNR, the IRS, or their designees upon request.

Contractor must provide staff, logs, records, systems access, and access to the facilities at its own expense to assist during each of the inspections/audits. Inspections/Audits may be performed by ODNR, IRS or their designee at any time Contractor is in possession of Federal Tax Information (FTI) or during the subsequent years until all FTI has been return or destroyed, the return or destruction have been reported to ODNR, and the retention periods for these records as defined in IRS publication 1075 have expired.