

**AGREEMENT BETWEEN CHARLES AQUATICS, INC., AND
DURBIN CROSSING COMMUNITY DEVELOPMENT DISTRICT
REGARDING THE PROVISION OF AQUATIC MANAGEMENT SERVICES**

This agreement is made and entered into this 17th day of November, 2015, by and between:

Durbin Crossing Community Development District, a local unit of special purpose government established pursuant to Chapter 190, Florida Statutes, located in St. Johns County, Florida, with offices at 475 West Town Place, Suite 114, St. Augustine, Florida 32092 ("District"), and

Charles Aquatics, Inc., a Florida corporation with offices located at 6869 Phillips Parkway Drive S, Jacksonville, Florida 32256 ("Contractor" and together with the District, the "Parties").

RECITALS

1. The District is a special purpose unit of local government established pursuant to and governed by Chapter 190, Florida Statutes.
2. As a District improvement, the District currently owns, operates and maintains several stormwater management facilities located throughout the boundaries of the District.
3. The District desires to enter into an agreement with an independent contractor to provide maintenance services, including inspection and treatment for control of noxious aquatic weeds and algae, at each of the District's fifty-eight (58) storm water management facilities.
4. Contractor provides such services and desires to contract with the District to do so in accordance with the terms and specifications of this Agreement.
5. The Parties warrant and agree that they have all right, power and authority to enter into and be bound by this Agreement.

Now, therefore, in consideration of the recitals, agreements, and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

Section 1. Recitals. The recitals so stated are true and correct and by this reference are incorporated into and form a material part of this Agreement.

Section 2. Contractor's Obligation.

- A. General Obligations Applicable to all Ponds.** From December 1, 2015 through September 30, 2018, unless canceled or extended in writing in accordance with the provisions of this Agreement, Contractor shall inspect and treat, as necessary, each of

the fifty-eight (58) storm water management facilities (ponds) identified in the attached **Exhibit A** at least forty-eight (48) times per year and Contractor shall provide the following additional services: 1) additional treatments, as required; 2) call-back service within 24 hours; 3) comprehensive written monthly service reports, including but not limited to dates of inspection; 4) fish barrier installation; and 5) mechanical harvesting (together, the "Work"). Contractor shall provide all labor and equipment necessary to complete the Work. When authorized by a separate written work authorization from the District, Contractor shall stock grass carp in identified District ponds ("Stocking Services"). Contractor shall conduct the Work and Stocking Services with environmentally safe water management practices and in accordance with all local, state and federal laws, regulations, rules and requirements.

- B. Compensation.** Contractor shall perform the Work for Two Thousand Eight Hundred Fifty Dollars (\$2,850.00) per month. Contractor shall perform the Stocking Services at a cost of Four Dollars and Fifty Cents (\$4.50) per grass carp installed.

Section 3. Billing and Payment. The Contractor shall invoice the District by the 5th day of each month for services provided pursuant to the terms of this Agreement. Additional services may be provided by the Contractor upon explicit, written authorization from the District. Fees for such additional services are as outlined above and where not provided for, shall be as negotiated between the Parties. The District shall provide payment within thirty (30) days of receipt of invoices.

Section 4. Care of the Property. Contractor shall use all due care to protect the property of the District, its residents and landowners from damage. Contractor agrees to repair any damage resulting from Contractor's activities and work within twenty-four (24) hours.

Section 5. Insurance.

A. The Contractor and any subcontractor hired by Contractor to perform aquatic management services shall maintain throughout the term of this Agreement the following insurance:

- (1) Worker's Compensation Insurance in accordance with the laws of the State of Florida.
- (2) Commercial General Liability Insurance covering the Contractor's legal liability for bodily injuries, with limits of not less than \$1,000,000 combined single limit bodily injury and property damage liability, and including, at least, Independent Contractors Coverage for bodily injury and property damage in connection with subcontractors' operation.
- (3) Employer's Liability Coverage with limits of at least \$1,000,000 per accident or disease.

(4) Automobile Liability Insurance for bodily injuries in limits of not less than \$1,000,000 combined single limit bodily injury and for property damage, providing coverage for any accident arising out of or resulting from the operation, maintenance, or use by the Contractor of any owned, non-owned, or hired automobiles, trailers, or other equipment required to be licensed.

(5) Pollution Liability Insurance in limits of not less than \$1,000,000 for a single event and \$2,000,000 aggregate providing coverage for any accident(s) arising out of or resulting from Contractor's provision of services contemplated by this Agreement.

B. The District, its staff, consultants, employees and supervisors shall be named as additional insured parties. The Contractor shall furnish the District with the Certificate of Insurance evidencing compliance with this requirement. No certificate shall be acceptable to the District unless it provides that any change or termination within the policy periods of the insurance coverages, as certified, shall not be effective within thirty (30) days of prior written notice to the District. Insurance coverage shall be from a reputable insurance carrier, licensed to conduct business in the State of Florida.

C. If the Contractor fails to have secured and maintained the required insurance, the District has the right (without any obligation to do so, however), to secure such required insurance in which event, the Contractor shall pay the cost for that required insurance and shall furnish, upon demand, all information that may be required in connection with the District's obtaining the required insurance.

Section 6. Independent Contractor. In all matters relating to this Agreement, the Contractor shall be acting as an independent contractor. Neither the Contractor nor employees of the Contractor, if there are any, are employees of the District under the meaning or application of any Federal or State Unemployment or Insurance Laws or Old Age Laws or otherwise. The Contractor agrees to assume all liabilities or obligations imposed by any one or more of such laws with respect to employees of the Contractor, if there are any, in the performance of this Agreement. The Contractor shall not have any authority to assume or create any obligation, express or implied, on behalf of the District and the Contractor shall have no authority to represent the District as an agent, employee, or in any other capacity, unless otherwise set forth in this Agreement.

Section 7. Indemnification. Contractor agrees to indemnify, defend and hold harmless the District and its supervisors, officers, agents, staff and employees from any and all liability, claims, actions, suits or demands by any person, corporation or other entity for injuries, death, property damage or of any nature, arising out of, or in connection with, the Work to be performed by Contractor.

Section 8. Recovery of Costs and Fees. In the event that either party is required to enforce this Agreement by court proceedings or otherwise, then the Parties agree that the substantially prevailing party shall be entitled to recover from the other all fees and costs

incurred, including reasonable attorneys' fees, paralegal fees and costs for trial, alternative dispute resolution, or appellate proceedings.

Section 9. Limitations on Governmental Liability. Nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of the District beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature in Section 768.28, Florida Statutes, or other statute, and nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

Section 10. Negotiation at Arms' Length. This Agreement has been negotiated fully between the Parties as an arms' length transaction. The Parties participated fully in the preparation of this Agreement and received the advice of counsel. In the case of a dispute concerning the interpretation of any provision of this Agreement, all Parties are deemed to have drafted, chosen and selected the language, and the doubtful language will not be interpreted or construed against any party.

Section 11. Enforcement. A default by either party under this Agreement shall entitle the other party to all remedies available at law or in equity, which shall include, but not be limited to, the right of damages, injunctive relief and specific performance.

Section 12. Cancellation. The District shall have the right to cancel this Agreement at any time for cause or with thirty (30) days written notice without cause. Contractor shall have the right to cancel this Agreement upon sixty (60) days written notice mailed to the District at the address written herein stating a failure of the District to perform in accordance with the terms of this Agreement. As the sole means of recovery for termination, Contractor shall be entitled to payment for any Work provided through the effective date of termination, subject to any offsets. Contractor shall not be entitled to lost profits or consequential damages of any kind, and, instead, Contractor's sole recourse for termination of this Agreement shall be as set forth in the preceding sentence.

Section 13. Entire Agreement. This instrument shall constitute the final and complete expression of the agreement between the Parties relating to the subject matter of this Agreement.

Section 14. Amendment. Amendments to and waivers of the provisions contained in this Agreement may be made only by an instrument in writing which is executed by both of the Parties hereto.

Section 15. Authority to Contract. The execution of this Agreement has been duly authorized by the appropriate body or official of all Parties hereto, each party has complied with all the requirements of law, and each party has full power and authority to comply with the terms and provisions of this instrument.

Section 16. Notices. All notices, requests, consents and other communications hereunder ("Notices") shall be in writing and shall be delivered, mailed by Federal Express or First Class Mail, postage prepaid, to the Parties, as follows:

- a. If to Contractor: Charles Aquatics, Inc.
6869 Phillips Parkway Drive S.
Jacksonville, Florida, 32256
Attn: _____
- b. If to District: Durbin Crossing Community Development District
475 West Town Place, Suite 114
St. Augustine, Florida 32092
Attn: District Manager

With a copy to: Hopping Green & Sams, P.A.
119 South Monroe Street, Suite 300 (32301)
Post Office Box 6526
Tallahassee, Florida 32314
Attn: Michael C. Eckert

Section 17. Third Party Beneficiaries. This Agreement is solely for the benefit of the formal Parties herein and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a formal party hereto. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the Parties hereto any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof; and all of the provisions, representations, covenants and conditions herein contained shall inure to the sole benefit of and shall be binding upon the Parties hereto and their respective representatives, successors and assigns.

Section 18. Assignment. Contractor may not assign this Agreement or any monies to become due hereunder without the prior written approval of the District. Any purported assignment without such written consent is void.

Section 19. Applicable Law. This Agreement and the provisions contained herein shall be construed, interpreted and controlled according to the laws of the State of Florida.

Section 20. Public Records. The Contractor understands and agrees that all documents of any kind provided to the District in connection with this Agreement may be public records and shall be treated as such in accordance with the District's Records Retention Policy and Florida law. Pursuant to Section 119.07(1)(a), *Florida Statutes*, Contractor shall permit such records to be inspected and copied by any person desiring to do so. Failure of Contractor to comply with public records laws to the extent required by statute will result in immediate termination of the Agreement. The provisions of Section 119.0701 of the Florida Statutes are expressly incorporated herein by this reference, and Contractor shall be responsible for compliance with the same.

Section 21. Term. The term of this Agreement shall be from December 1, 2015 through September 30, 2018.

In witness whereof, the Parties hereto have signed this Aquatic Management Agreement on the day and year first written above.

ATTEST:

**Durbin Crossing Community
Development District**

David de Nagy
[PRINT NAME OF WITNESS]

R.T. Brownlee
Chairman/Vice Chairman, Board of
Supervisors

ATTEST:

Charles Aquatics, Inc.

Lisa M. Jackson
[PRINT NAME OF WITNESS]

J. H. K. [Signature]
President
Title

Start
Date

Completed
Date

District Lakes

Comments:

Durbin Crossing Ponds - Residential

Pond # 1					
Pond # 2					
Pond # 3					
Pond # 4					
Pond # 5					
Pond # 6					
Pond # 7					
Pond # 8					
Pond # 9					
Pond # 10					
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Pond # 26					
Pond #27a					
Pond #27b					
Pond # 28					
Pond # 29					
Pond # 30					
Pond # 31					
Pond # 32					
Pond # 33					
Pond # 34					
Pond # 35					
Pond # 36					
Pond # 37					
Pond # 38					
Pond # 39					
Pond # 40					
Pond # 41					
Pond # 45					
Villages					
Pond A					
Pond B					
Multi-Family					
Pond Y1					
Pond Y2					
Pond Y3					
Sports Park					
Pond S1					
Pond S2					
Pond # 44					
RV Storage					
Pond # 46					
Roadways					
Pond A					
Pond B					
Pond D					
Pond J					
Pond O					
Pond P					

WORK AUTHORIZATION #1
November 23, 2015

Durbin Crossing Community Development District

Subject: **Work Authorization Number 1**
 Durbin Crossing Community Development District

Dear Chairman, Board of Supervisors:

Charles Aquatics, Inc. ("Contractor") is pleased to submit this work authorization to provide inspection, repair, replacement and installation of necessary fish barriers and grass carp stocking services for the Durbin Crossing Community Development District ("District"). We will provide these services pursuant to our agreement with the District dated November 17th, 2015 ("Agreement") as follows:

I. Scope of Work

District hereby engages the services of Contractor to:

1. Inspect existing fish barriers for all ponds in which grass carp will be stocked, and repair or replace them as necessary so that they function for their intended purpose prior to stocking any grass carp.
2. Install fish barriers so that they function for their intended purpose in any pond where grass carp will be stocked prior to stocking any grass carp.
3. Stock a total of at least 1,114 grass carp in the District's storm water ponds, to be divided as follows: 20 grass carp per acre in 21.8 acres of storm water ponds which are currently infested for a total of 426 grass carps, and 10 grass carp per acre in 67.8 acres of storm water ponds which are not infested for a total of 678 grass carps.
4. For each storm water pond, Contractor shall identify in writing the actual number of fish barriers repaired or replaced, the number of new fish barriers installed, and the number of grass carp stocked and provide this document to the District after the above services are completed.

II. Fees

Inspection, repair, replacement and installation of necessary fish barriers is included in the monthly fee set forth in the Agreement. For grass carp stocking services, the District will compensate Contractor in accordance with the terms of the Agreement for a total cost of Five Thousand Thirteen Dollars (\$5,013.00).

This proposal, together with the Agreement, represents the entire understanding between the District and Contractor with regard to the referenced work authorization. If you wish to accept this work authorization, please sign both copies where indicated, and return one complete copy to our office. Upon receipt, we will promptly schedule our services.


Thank you for considering Charles Aquatics, Inc. We look forward to helping you maintain your community.

Sincerely,



Authorized Representative of
Charles Aquatics, Inc.

APPROVED AND ACCEPTED

By: 
Authorized Representative of
Durbin Crossing Community Development District

Date: November 23, 2015

R.T. Brownlee