

10092

AGREEMENT
(UTILIZING STATE OF FLORIDA, DEPARTMENT OF MANAGEMENT SERVICES
CONTRACT NO. 120-440-08-1)
BETWEEN
THE CITY OF JACKSONVILLE
AND
BRUNSWICK CORPORATION, DBA MERCURY MARINE
FOR PURCHASE OF
BOAT MOTORS

THIS AGREEMENT is made and entered into in duplicate this 16 day of March, 2015 (hereinafter the "Effective Date"), by and between the CITY OF JACKSONVILLE (hereinafter the "CITY"), a municipal corporation existing under the Constitution and the laws of the State of Florida, and BRUNSWICK CORPORATION, doing business as MERCURY MARINE (hereinafter the "Contractor"), a foreign for profit corporation authorized to do business in Florida with principal office at 1 N. Field Court, Lake Forest, Illinois 60045, for the purchase of two boat motors (the "Equipment").

RECITALS:

WHEREAS, effective February 12, 2008, the State of Florida, by and through its Department of Management Services, entered into State of Florida Contract No. 120-440-08-1 (hereinafter the "State Contract") with various vendors of the Equipment, including Contractor; and

WHEREAS, said State Contract is in full force and effect until February 28, 2015 and has been competitively procured and awarded by State of Florida as contracting authority according to Florida law; and

WHEREAS, the Jacksonville Procurement Code, more particularly Section 126.211, *Ordinance Code* authorizes and allows the CITY to use *inter alia* contracts of other local governmental entities which have been competitively procured and awarded; and

WHEREAS, the State Contract is broad enough to include the Equipment and Contractor has agreed to allow the CITY to use its State Contract; and

WHEREAS, CITY's General Government Awards Committee ("GGAC") approved the purchase set forth herein on December 15, 2014; and

WHEREAS, it is in the best interests of the parties to use the State Contract for the Equipment and to add those contractual provisions the CITY is required to use by ordinance or policy; now therefore

IN CONSIDERATION of the premises and of the mutual covenants and agreements hereinafter contained and for other good and valuable consideration the parties agree as follows:

ARTICLE 1: Incorporation of Recitals:

The above stated recitals are accurate, true, and correct and, by this reference, are made a part hereof and are incorporated herein.

ARTICLE 2: Engagement of Contractor:

CITY hereby engages Contractor and Contractor hereby accepts said engagement for the purpose of selling to CITY the Equipment, as described in and according to the provisions of the State Contract and its exhibits, equipment descriptions, and quotations and

the CITY's GGAC Award under bid # PXF-0351-15 dated December 4, 2014, all of which are identified as **Composite Exhibit 1**, attached hereto and, by this reference, made a part hereof and incorporated herein, and in accordance with the other provisions required by law, ordinance, or policy of the CITY contained in this Agreement. With respect to the Equipment, the provisions, terms, and conditions of the State Contract shall apply unless specifically preempted herein; therefore, any conflict between the provisions of this Agreement and those in the State Contract shall be resolved in favor of this Agreement, but only to the extent of any conflict.

ARTICLE 3: Coordination and Services Provided by CITY:

CITY shall designate for the purchase of the Equipment a Project Coordinator who will, on behalf of the CITY, coordinate with Contractor and administer this Agreement according to the terms and conditions contained herein and in the exhibit(s) mentioned herein and made a part hereof. It shall be the responsibility of Contractor to coordinate all Equipment-related activities with the designated Project Coordinator. The CITY's Project Coordinator shall be David Hylaziewski, Equipment Control Administrator (Telephone: 904-255-7470; Fax: 904-381-4607; Cell: 904-509-8088; E-mail: davidhy@coj.net).

ARTICLE 4: Duration of Agreement/Pricing Available to Other Entities:

The term of this Agreement shall commence on the Effective Date and shall continue and remain in full force and effect as to all its terms, conditions, and provisions as set forth herein through a period of time which is the earlier of the Contractor's delivery and CITY's

acceptance of the Equipment within the time period set forth in the purchase order or 12 months from the Effective Date unless sooner terminated as provided in **Composite Exhibit**

1. During said period of time, the Equipment provided hereunder shall be available to all using agencies and other political subdivisions, boards, agencies, or authorities existing in Duval County that may desire to purchase the same at the contract price provided herein.

ARTICLE 5: Payments for Services of Contractor:

5.1. Except as provided in Section 5.2 hereof, the CITY will compensate Contractor for the Equipment purchased hereunder in accordance with a purchase order issued and used by the City of Jacksonville Procurement Division; *provided however*, the payment invoice shall be sent to the authorized CITY representative as specified in said purchase order or other subsequent written instrument signed by CITY's Project Coordinator. These provisions shall be in addition to the State Contract, as provided in **Composite Exhibit 1**.

5.2. Notwithstanding any contrary provision in **Composite Exhibit 1**, the maximum indebtedness of the CITY for all fees, reimbursable items, or other costs for the Equipment sold by Contractor pursuant to this Agreement shall not exceed the sum of SEVENTY-THREE THOUSAND NINETY-TWO AND 68/100 USD (\$73,092.68).

ARTICLE 6: Notice:

In addition to the notice requirement in **Composite Exhibit 1**, notice to the parties under this Agreement shall be delivered by certified mail, return receipt requested, or by other delivery with receipt to the following:

As to the CITY:

David Hylazewski
Equipment Control Administrator
Fleet Management Division
2581 Commonwealth Avenue
Jacksonville FL 32254

Gregory Pease
Chief of Procurement Division
Suite 800, Ed Ball Building
214 North Hogan Street
Jacksonville, FL 32202

As to the Contractor:

Jason Benedict
Mercury Marine-Division of Brunswick Corp.
W6250 Pioneer Road
Fon du Lac, WI 54935

ARTICLE 7: Laws, Ordinances, Rules and Regulations:

As required by Section 126.108(b), *Ordinance Code*, in the sale of the Equipment, the Contractor must comply with any and all applicable federal, state, and local laws, rules, regulations, and ordinances, as the same exist and may be amended from time to time. Such laws, rules, regulations, and ordinances shall include, but are not limited to, Chapter 119, Florida Statutes (the Florida Public Records Law), and Section 286.011, Florida Statutes (the Florida Sunshine Law), as they apply to the purchase contemplated in this Agreement. If any of the obligations of this Agreement are to be performed by a subcontractor, the provisions of this section shall be incorporated into and become a part of the subcontract.

ARTICLE 8: Indemnity:

8.01 The Contractor shall act as an independent contractor and not as an employee, agent, partner, joint venture, representative, or associate of the CITY in performing under this Agreement. Contractor shall be solely responsible for the means, methods, techniques,

sequences, and procedures utilized in the full performance of this Agreement.

8.01.01 Contractor Indemnity: Contractor, including its employees, representatives, agents, consultants, subsidiaries, and subcontractors of any tier (the "Indemnifying Parties"), shall hold harmless, indemnify, and defend the CITY, including, without limitation, its officers, directors, members, representatives, affiliates, agents, employees, successors and assigns (collectively the "Indemnified Parties"), against any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities, and expenses of whatsoever kind or nature (including all costs for investigation and defense thereof, including, but not limited to, court costs, reasonable expert witness fees, and attorney's fees) which may be incurred by, charged to, or recovered from any of the foregoing Indemnified Parties, arising (a) directly or indirectly out of any of Contractor's operations, work or services performed in connection with this Agreement, including, but not limited to, any and all claims for damages as a result of the injury to or death of any person or persons, or damage to or destruction of any property which arises as a result of any negligent act, error, omission, recklessness, or intentionally wrongful conduct on the part of Contractor, its agents, affiliates, or assigns, regardless of where the damage, injury, or death occurred, or (b) out of the failure of Contractor to keep, observe, or perform any of its obligations under this Agreement or in any other document or instrument delivered by Contractor pursuant to this Agreement. This indemnification agreement is separate and apart from, and is in no way limited by, any insurance provided pursuant to this Agreement or otherwise. This section relating to

indemnification shall survive the term of this Agreement and any holdover and/or contract extensions thereto, whether such Term expires naturally by the passage of time or is terminated earlier pursuant to the provisions of this Agreement.

8.01.02. Intellectual Property Indemnity: Contractor shall hold harmless, indemnify, and defend the Indemnified Parties against any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities, and expenses (including all costs for investigation and defense thereof, including, but not limited to, court costs, reasonable expert witness fees, and attorney's fees), arising directly or indirectly out of any allegation that the Equipment or any part of the Equipment constitutes an infringement of any copyright, patent, trade secret, or any other intellectual property right and, whether such injury or damage is caused by negligence, errors, omissions, recklessness, or intentionally wrongful conduct, will pay all costs (including, but not limited to attorney's fees and court costs), damages, charges, and expenses charged to, incurred by, or recovered from the Indemnified Parties by reason thereof. This indemnification agreement is separate and apart from, and is in no way limited by, any insurance provided pursuant to this Agreement or otherwise. This section relating to indemnification shall survive the term of this Agreement, and any holdover and/or contract extensions thereto whether such Term expires naturally by the passage of time or is terminated earlier pursuant to the provisions of this Agreement. If in any suit or proceeding, the Equipment or any part of the Equipment is held to constitute an infringement and its use is permanently enjoined, Contractor shall immediately make every

reasonable effort to secure for the CITY a license authorizing the continued use of the Equipment. If Contractor fails to secure such a license for the CITY, then Contractor shall replace the Equipment with a non-infringing Equipment or modify such Equipment in a way satisfactory to the CITY at no additional cost to CITY so that the Equipment is non-infringing.

8.01.03. Violation of Laws: Contractor shall hold harmless, indemnify, and defend the Indemnified Parties against any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities, and expenses (including all costs for investigation and defense thereof, including, but not limited to, court costs, reasonable expert witness fees, and attorney's fees) charged to, recovered from, or incurred by any of the Indemnified Parties arising from or based upon the violation of any federal, state, or municipal laws, statutes, resolutions, or regulations by Contractor or those under its control. This indemnification agreement is separate and apart from, and is in no way limited by, any insurance provided pursuant to this Agreement or otherwise. This section relating to indemnification shall survive the term of this Agreement and any holdover and/or contract extensions thereto, whether such term expires naturally by the passage of time or is terminated earlier pursuant to the provisions of this Agreement.

8.01.04. Breach of Representations, Warranties and Obligations: Contractor shall hold harmless, indemnify, and defend the Indemnified Parties against any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities, and

expenses (including all costs for investigation and defense thereof, including, but not limited to, court costs, reasonable expert witness fees, and attorney's fees) which may be incurred by, charged to, recovered from, or incurred by any of the Indemnified Parties arising directly or indirectly out of (a) any breach of any representation or warranty made by Contractor in connection with this Agreement or in any certificate, document, writing, or other instrument delivered by Contractor pursuant to this Agreement or (b) any breach of any covenant or obligation of Contractor set forth in this Agreement or any other any certificate, document, writing, or other instrument delivered by Contractor pursuant to this Agreement. This indemnification agreement is separate and apart from, and is in no way limited by, any insurance provided pursuant to this Agreement or otherwise. This section relating to indemnification shall survive the term and any holdover and/or contract extensions thereto, whether such term expires naturally by the passage of time or is terminated earlier pursuant to the provisions of this Agreement.

8.01.05. Contractor shall be and remain liable in accordance with applicable law, and shall indemnify, hold harmless, and defend CITY for all damages to CITY caused by Contractor's breach of contract or its negligent performance of any services under this Agreement. The Contractor shall not be responsible, however, for any time delays in the Project caused by circumstances beyond Contractor's control.

ARTICLE 9: Insurance:

9.01. Contractor and its subcontractors of any tier shall at all times during the term of

this Agreement procure and maintain at their sole expense insurance of the types and in the minimum amounts stated below:

<u>Schedule</u>	<u>Limits</u>
Worker's Compensation	Florida Statutory Coverage
Employer's Liability	\$1,000,000 Each Accident
(including appropriate federal acts)	\$1,000,000 Disease Policy Limit
	\$1,000,000 Each Employee/Disease

Contractor's workers' compensation insurance shall cover the Contractor and its employees (and to the extent its subcontractors and sub-subcontractors are not otherwise insured, its subcontractors and sub-subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers' Compensation policy, as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than the Florida Employers Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements). In addition to coverage for the Florida Workers' Compensation Act, coverage is to be included for the Federal Employers' Liability Act and any other applicable federal or state law where appropriate. If Contractor is not required to carry workers' compensation coverage as defined under Chapter 440, Florida Statutes, the above requirement may be waived. Contractor shall provide to CITY written confirmation verifying the exemption on Contractor's letterhead, certified and signed by an officer or authorized representative of Contractor).

Commercial General Liability - (Form CG0001)

ISO Form CG0001 as filed for use in the State of Florida without any restrictions endorsements other than those which are required by the State of Florida, or equivalent manuscript form, must be attached to the policy equivalent endorsement as filed with ISO (i.e., mandatory endorsement.

Commercial General Liability	\$2,000,000	General Aggregate
	\$2,000,000	Products & Completed Ops Aggregate
	\$1,000,000	Personal/Advertising Injury
	\$1,000,000	Each Occurrence
	\$50,000	Fire Damage
	\$5,000	Medical Expenses

Automobile Liability (Coverage for all automobiles- owned, hired or non-owned)	\$1,000,000	Total Any One Accident
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The CITY of Jacksonville, its members, officials, employees and agents shall be endorsed as an additional insured under all of the above Commercial General Liability and Automobile Liability coverages. Such insurance shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the CITY.

Umbrella Liability	\$25,000.00 each occurrence/Agg.
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The Umbrella Liability policy shall be in excess of the above limit without any gap. The Umbrella coverage will follow from the underlying coverages and provide on an Occurrence basis all coverages listed above and shall be included in the Umbrella policy.

Professional Liability	\$5,000,000 per claim \$5,000,000 Aggregate
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Professional Liability coverage will be provided on an Occurrence Form or a Claims Made Form with a retroactive date to at least the first date of this Agreement and with a three year reporting option beyond the annual expiration date of the policy.

9.02. The deductible amounts for any peril shall be deemed usual and customary in the insurance industry. Contractor shall be responsible for payments of its deductible(s). Depending upon the nature of any aspect of any project and its accompanying exposures and liabilities, the CITY may, at its sole option, require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the CITY also be named as an additional insured.

9.03. Said insurance shall be written by an insurer holding a current certificate of authority pursuant to chapter 624, Florida Statutes. Such insurance shall be written by an insurer with an A.M. Best Rating of A- VII or better. Prior to commencing any work on the Project, Certificates of Insurance approved by the CITY's Division of Risk Management demonstrating the maintenance of said insurance shall be furnished to the CITY. Contractor shall provide to the City of Jacksonville thirty (30) days' prior written notice of any change in the above insurance coverage limits or cancellation, including expiration or non-renewal.

9.04. Anything to the contrary notwithstanding, the liabilities of the Contractor under this Agreement shall survive and not be terminated, reduced, or otherwise limited by any expiration or termination of insurance coverage. Neither approval of, nor failure to

disapprove, insurance furnished by Contractor shall relieve Contractor or its sub-contractors or sub-subcontractors from the responsibility to provide insurance as required by this Agreement. In case any class of employees engaged in hazardous work under this Agreement is not protected under the Workers' Compensation statute, Contractor shall provide, and cause each subcontractor to provide, adequate insurance satisfactory to the CITY for the protection of employees not otherwise protected. For any insurance coverage required hereby, CONTRACTOR may use a self-insurance program, provided such program has received prior written approval from the CITY's Risk Manager.

ARTICLE 10: Conflict of Interest:

The parties will follow the provisions of Section 126.112, *Ordinance Code*, with respect to required disclosures by public officials who have or acquire a financial interest in a bid or contract with the CITY, to the extent the parties are aware of the same.

ARTICLE 11: Non Discrimination:

As required by Section 126.404, *Ordinance Code*, the Contractor represents that it has adopted and will maintain a policy of non discrimination against employees or applicants for employment on account of race, religion, sex, color, national origin, age, or handicap, in all areas of employment relations throughout the term of this Agreement. The Contractor agrees that on written request, it will permit reasonable access to its records of employment, employment advertisement, application forms, and other pertinent data and records by the Executive Director of the Community Relations Commission or successor agency or

commission for the purpose of investigation to ascertain compliance with the non-discrimination provisions of this Agreement; *provided however*, that the Contractor shall not be required to produce for inspection records covering periods of time more than one (1) year prior to the day and year first above written. The Contractor agrees that if any of the services to be provided pursuant to this Agreement are to be performed by a subcontractor, the provisions of this Article 11 shall be incorporated into and become a part of the subcontract.

ARTICLE 12: Counterparts:

The parties agree that for the execution of this Agreement, time is of the essence. Therefore, this Agreement and all amendments thereto may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument. The parties further agree that facsimile (“fax”) transmission of all signatures with originals to follow shall constitute and be evidence of an executed Agreement.

[Remainder of page is left blank intentionally. Signature page follows immediately.]

Cleveland Ferguson III
Deputy Chief Administrative Officer
For Mayor Alvin Brown
Under Authority of:
Executive Order No. 2015-01

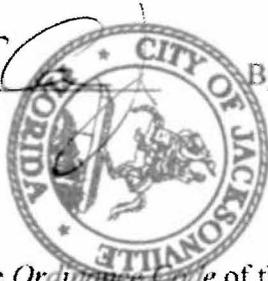
IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day

and year first above written.

ATTEST:

CITY OF JACKSONVILLE:

By James R. McCain, Jr.
James R. McCain, Jr.
Corporation Secretary



By Alvin Brown
Alvin Brown, Mayor

In compliance with the *Ordinance Code* of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered, and unimpounded balance in the appropriation sufficient to cover the foregoing Agreement, and provision has been made for the payment of the monies provided therein to be paid from the following account:

C. Ronald Belto
Director of Finance
10092 PRO

Form Approved:

Juli B. Davis
Office of General Counsel

WITNESS:

BRUNSWICK CORPORATION

By K. Stommel
Signature
Kristy Stommel
Type/Print Name
Gov Sales Acct Rep
Title

By Ross Stewart
Signature
Ross Stewart
Type/Print Name
Viceitor of SALES
Title

