

9983

**AGREEMENT
UTILIZING STATE OF FLORIDA CONTRACT # 760-000-10-1
BETWEEN
THE CITY OF JACKSONVILLE
AND
FLORIDA OUTDOOR EQUIPMENT, INC.
FOR THE PURCHASE OF
CONSTRUCTION, INDUSTRIAL, AGRICULTURAL, AND LAWN EQUIPMENT**

THIS AGREEMENT is made and entered into in duplicate this 5 day of May, 2014 (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 FLORIDA OUTDOOR EQUIPMENT, INC. (hereinafter the "Contractor"), a Florida profit corporation with its office at 2691 Dardanelle Drive, Orlando, Florida 32808 for the purchase of construction, industrial, agricultural, and lawn equipment.

RECITALS:

WHEREAS, effective April 28, 2010, the State of Florida, by and through its Department of Management Services, entered into State of Florida Contract Number 760-000-10-1 (hereinafter the "State Contract"), attached hereto as **Exhibit A** and incorporated herein by this reference, with Contractor for the provision of construction, industrial, agricultural, and lawn equipment; and

WHEREAS, said State Contract is in full force and effect until June 30, 2015, and has been competitively procured and awarded by the State of Florida as contracting authority according to law; and

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

WHEREAS, the State Contract is broad enough to allow CITY to purchase ten (10) CAT STC61V-27CV (hereinafter the "Equipment") and Contractor has agreed to allow CITY to use the State Contract; and

WHEREAS, it is in the best interests of the parties to use the State Contract for purchase of the Equipment and to add those contractual provisions 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 are made a part hereof and are incorporated herein by this reference.

ARTICLE 2: Engagement of Contractor

CITY hereby engages Contractor and Contractor hereby accepts said engagement for the purpose of selling to CITY the Equipment according to the provisions of the State contract and its exhibits, amendments, equipment descriptions, and quotations, and in accordance with the other provisions required by law, ordinance, or policy for the CITY contained in this Agreement. The payment schedule and the unit prices are more specifically set forth in the Invoice Schedule, attached hereto as **Exhibit B** and incorporated herein by this reference. 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 exhibits attached hereto and made a part hereof. It shall be the responsibility of Contractor to coordinate all purchases of the Equipment with the designated Project Coordinator. The CITY's Project Coordinator shall be: Diane Farmer, Fleet Management Division (Telephone: 904-255-7465; Fax: 904-381-4607; Email: DFARMER@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 until the Equipment has been purchased. During said period of time, the Equipment pricing 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 5.3 hereof, the CITY will compensate Contractor for the Equipment purchased hereunder in accordance with purchase orders issued and used by the City of Jacksonville Procurement Division; *provided however*, payment invoices shall be sent to the authorized City representative as specified in said purchase order or other subsequent written instrument signed by the City's Project Coordinator.

5.2. Notwithstanding any contrary provision in **Exhibit A**, the maximum indebtedness of CITY for all fees, reimbursable items, or other costs for the Equipment sold by Contractor to CITY pursuant to this Agreement shall not exceed the sum of SEVENTY-FOUR THOUSAND THREE HUNDRED EIGHTY-

EIGHT and 60/100 USD (\$74,388.60).

ARTICLE 6: Notice

Notice to CITY under this Agreement shall be delivered by certified mail, return receipt requested, or by other delivery with receipt to the following:

Diane Farmer
Fleet Management Division
Equipment Procurement Coordinator
2581 Commonwealth Avenue
Jacksonville, Florida 32254

Gregory Pease
Chief of Procurement Division
Ed Ball Building
214 North Hogan Street, 8th Floor
Jacksonville, Florida 32202

Notice to Contractor under this Agreement shall be delivered by certified mail, return receipt requested, or by other delivery with receipt to the following:

Russ Knowles
2691 Dardanelle Drive
Orlando, Florida 32809
russ@floridaoutdoors.com

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 purchases contemplated in this Agreement. If any of the obligations of this Agreement are to be performed by a subcontractor, the provisions of this Article 7 shall be incorporated into and become a part of the subcontract.

ARTICLE 8: 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 CITY, to the extent the parties are aware of the same.

ARTICLE 9: Confidentiality

Subject to applicable Florida law, all confidential or proprietary information and documentation relating to either party (including, without limitation, any information or data stored within Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents, and employees to the extent that such disclosure is necessary for the performance of their duties under this Agreement, provided the data may

be collected, used, disclosed, stored, and disseminated only as provided by and consistent with Florida law. The provisions of this article shall not apply to any information that (a) is lawfully in the public domain, (b) has been independently developed by the other party without violation of this Agreement, (c) was already in the possession of such party, (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to disclose the information, or (e) such party is required by law to disclose.

ARTICLE 10: Prompt Payment

As required by Chapter 126, Part 6, *Ordinance Code*; provided however, if Contractor does not use JSEB or MBE subcontractors, as identified below, this Article 10 shall not apply:

10.1 *Generally*. When Contractor receives payment from CITY for labor, services, or materials furnished by subconsultants or subcontractors and suppliers hired by the Contractor, the Contractor shall remit payment due (less proper retainage) to those subconsultants, subcontractors, and suppliers within fifteen (15) calendar days after the Contractor's receipt of payment from CITY. Nothing herein shall prohibit the Contractor from disputing, pursuant to the terms hereof, all or any portion of a payment alleged to be due to its subconsultants, subcontractors, and suppliers. In the event of such dispute, Contractor may dispute the disputed portion of any such payment only after Contractor has provided notice to CITY and to the subconsultant, subcontractor, and supplier whose payment is in dispute, which notice shall: (i) be in writing; (ii) state the amount in dispute; (iii) specifically describe the actions required to cure the dispute; and, (iv) be delivered to CITY and said subconsultant, subcontractor, or supplier within ten (10) calendar days after Contractor's receipt of payment from CITY. Contractor shall pay all undisputed amounts due within the time limits imposed by this article.

10.2. *Jacksonville Small Emerging Business Enterprise ("JSEB") and Minority Business Enterprise ("MBE") Participation*. Notwithstanding Chapter 126, Part 6, *Ordinance Code*, Contractor shall pay all contracts awarded with certified JSEB's and MBE's, as defined therein, their pro rata share of their earned portion of the progress payments made by CITY under this Agreement within seven (7) business days after Contractor's receipt of payment from CITY (less proper retainage). The pro rata share shall be based on all work completed, materials and equipment furnished, or services performed by the certified JSEB or MBE at the time of payment. As a condition precedent to progress and final payments to Contractor, the Contractor shall provide to CITY with its requisition for payment, documentation that sufficiently demonstrates that Contractor has made proper payments to its certified JSEB's or MBE's from all prior payments Contractor has received from CITY. Contractor shall not unreasonably withhold payments to certified JSEB's and MBE's if such payments have been made to Contractor. If Contractor withholds payment to its certified JSEB's or MBE's, which payment has been made by CITY to Contractor, Contractor shall return said payment to CITY.

Contractor shall provide notice to CITY and to the certified JSEB's or MBE's whose payment is in dispute, which notice shall: (i) be in writing; (ii) state the amount in dispute; (iii) specifically describe the actions required to cure the dispute; and, (iv) be delivered to CITY and said JSEB's or MBE's within five (5) calendar days after Contractor's receipt of payment from CITY. Contractor shall pay all undisputed amounts due within the time limits imposed in this Article 10. The failure to pay undisputed amounts to the JSEB's or MBE's within seven (7) business days shall be a breach of this Agreement, compensable by one per-cent (1%) of the outstanding invoice being withheld by CITY, not as a penalty but as liquidated damages to compensate for the additional contract administration by CITY.

10.3. *Third Party Liability.* The Prompt Payment requirements hereunder shall in no way create any contractual relationship or obligation between CITY and any subconsultant, subcontractor, supplier, JSEB, MBE, or any third party or create any CITY liability for Contractor's failure to make timely payments hereunder. However, Contractor's failure to comply with the Prompt Payment requirements shall constitute a material breach of Contractor's contractual obligations to CITY. As a result of said breach, CITY, without waiving any other available remedy it may have against Contractor, may (i) issue joint checks and (ii) charge Contractor a 0.2% daily late payment interest charge or the charges specified in said Chapter 126, *Ordinance Code*, for JSEB's or MBE's and in Chapter 218, Florida Statutes, for non-JSEB's or non-MBE's, whichever is greater.

ARTICLE 11: Limitations of Liability

Neither CITY nor Contractor shall be liable for any speculative or unforeseeable damages under any theory of relief, including without limitation breach of warranty, breach of contract, tort (including negligence), and strict liability, or otherwise arising out of or related to CITY's or Contractor's acts or omissions. For all other damages arising out of or related to this Agreement, Contractor will not be liable for more than 200% of the amount equivalent to the fees paid and payable by CITY to Contractor under this Agreement. The foregoing limitations of liability do not apply to (i) injury to third parties and third party property, (ii) claims arising under any of the indemnity or warranty provisions of this Agreement, or (iii) claims covered by any insurance policies or bonds required under this Agreement up to the amount of the required coverage. These limitations of liability are in no way to be construed as a waiver or limitation by CITY of its sovereign immunity accorded by the Florida Constitution as codified in § 768.28, Florida Statutes.

ARTICLE 12: Nondiscrimination

As required by Section 126.404, *Ordinance Code*, Contractor represents that it has adopted and will maintain a policy of nondiscrimination 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. 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 nondiscrimination 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. 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 12 shall be incorporated into and become a part of the subcontract.

ARTICLE 13: Governing Law/Venue

This Agreement is governed by the laws of the State of Florida and the ordinances of the City of Jacksonville. Venue for any action arising under this Agreement shall lie exclusively in the appropriate state court in Duval County, Florida.

ARTICLE 14: 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 left blank intentionally. Signature page follows immediately.]

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 *Karen Bowling*
Alvin Brown, Mayor



WITNESS:

FLORIDA OUTDOOR EQUIPMENT, INC.

By *Matthew R. Martin*
Signature
Matthew R. Martin
Type/Print Name
Technical Service Assistant
Title

By *Russell E. Knowles*
Signature
Russell E. Knowles
Type/Print Name
CONTRACT ADMIN.
Title

Karen Bowling
Chief Administrative Officer
For: Mayor Alvin Brown
Under Authority of:
Executive Order No. 2013-04


Encumbrance and funding information for internal City use:

Account OPFM513-06401

Total Amount. . . \$74,388.60

This above-stated total amount is the maximum fixed monetary amount of the foregoing contract. It shall not be encumbered by the foregoing contract. It shall be encumbered by one (1) or more subsequently issued Purchase Order(s) that must reference the foregoing Contract. All financial examinations and fund control checking will be made at the time such Purchase Order(s) are issued.

In accordance with Section 24.103(e), of 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; *provided however*, this certification is not nor shall it be interpreted as an encumbrance of funding under this Contract. Actual encumbrance(s) shall be made by subsequent purchase order(s) as specified in said Contract.

Budget Direct

Director of Finance
City Contract # *9983*
wbr

Approved as to form:

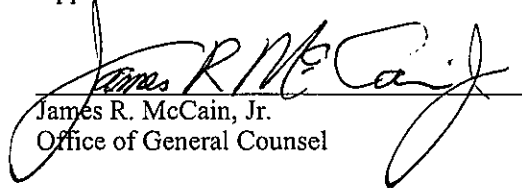

James R. McCain, Jr.
Office of General Counsel

Exhibit A
State Contract

EXHIBIT "A"

AMENDMENT NO. 3
Renewal No. 2
To State Term Contract 760-000-10-1
Construction, Industrial, Agricultural and Lawn Equip

Previously
Provided

This Amendment No. 3 (Amendment) is effective December 31, 2013, c. parties, to the Construction, Industrial, Agricultural and Lawn Equipment Contract, No. 760-000-10-1, effective between the State of Florida, Department of Management Services (Department) and (Contractor). The Department and Contractor are collectively referred to herein as the "Parties." All capitalized terms used herein shall have the meaning assigned to them in the Agreement, unless otherwise defined herein.

WHEREAS the Contract was originally entered on April 27, 2010 with the Contractor for the provision of Construction, Industrial, Agricultural and /or Lawn Equipment, and is scheduled to expire on December 31, 2013; and

WHEREAS upon mutual agreement, the Customer and the Contractor agree to amend the Contract, in accordance with section 4.26, Renewal; and

THEREFORE, in consideration of the mutual promises contained below, and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following:

1.0 Contract Amendment. Pursuant to section 4.26, Renewal, the current State Term Contract No. 760-000-10-1, is renewed for 18 months and will expire June 30, 2015.

2.0 Effect. Unless otherwise modified by this Amendment, all terms and conditions contained in the Contract shall continue in full force and effect.

3.0 Conflict. To the extent any of the terms of this Amendment conflict with the terms of the Contract, the terms of this Amendment shall supersede.

4.0 Warrant of Authority. Each person signing this Amendment warrants that he or she is duly authorized to do so and to bind the respective party.

5.0 Successors and Assigns. This Amendment shall be binding upon and inure to the benefit of the successors and permitted assignors of the parties hereto.

6.0 Entire Agreement. Except as expressly modified by this Amendment, the contract shall be and remain in full force and effect in accordance with its terms and shall constitute the legal, valid, binding and enforceable obligations to the parties. This Amendment and the contract (including any written amendments thereto), collectively, are the complete agreement of the parties and supersede any prior agreements or representations, whether oral or written, with respect thereto.

State of Florida, Department of Management Services: (Contractor)

By: _____

By: _____

Name: Kelley J. Scott

Name: _____

Title: Director of State Purchasing and Chief Procurement Officer

Title: _____

Date: _____

Date: _____

Exhibit B
Invoice Schedule

Selling Equipment

Quote Id: 9241515

Customer Name: CITY OF JACKSONVILLEPUBLIC WORKS

SCAG STC61V-27CV								
Hours: 0								Suggested List *
						\$ 10,428.00		
						Selling Price *		
						\$ 8,329.86		
* Price per item - includes Fees and Non-contract items								
Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price	
STC61V-27CV	61" VELOCITY DECK, 27hp KOH, SUSPENSION SEAT	10	\$ 9,537.00	0.00	\$ 0.00	\$ 9,537.00	\$ 95,370.00	
Dealer Attachments/Non-Contract/Open Market								
S9288	DISCHARGE COVER	10	\$ 92.00	0.00	\$ 0.00	\$ 92.00	\$ 920.00	
NDT	NO-DOWNTIME	10	\$ 699.00	0.00	\$ 0.00	\$ 699.00	\$ 6,990.00	
PPP	PERMANENT PUNCTURE PROTECTION	10	\$ 100.00	0.00	\$ 0.00	\$ 100.00	\$ 1,000.00	
Dealer Attachments Total			\$ 891.00		\$ 0.00	\$ 891.00	\$ 8,910.00	
Suggested Price						\$ 104,280.00		
Additional Discounts								
Misc. Additional Discount		10			\$ 2,098.14	\$ -2,098.14	\$ -20,981.40	
Additional Discount Total					\$ 2,098.14	\$ -2,098.14	\$ -20,981.40	
Total Selling Price			\$ 10,428.00		\$ 2,098.14	\$ 8,329.86	\$ 83,298.60	