

**AGREEMENT FOR
ST. JOHNS RIVER WATER TAXI SERVICES**

THIS AGREEMENT FOR ST. JOHNS RIVER WATER TAXI SERVICES (“*Agreement*”), made and entered this August 4th, 2014, is between **THE CITY OF JACKSONVILLE**, a Florida municipal corporation (“*CITY*”), **LAKESHORE MASTERCRAFT AND MERCURY, LLC**, a Florida limited liability company, doing business as **LAKESHORE MARINE**, whose address is 3326-7 Lakeshore Blvd., Jacksonville, FL 32210 (“*OPERATOR*”).

WITNESSETH:

WHEREAS, the *CITY* desires water taxi services in downtown Jacksonville, Florida, as more particularly described herein (collectively, the “*Services*”)

WHEREAS, the provision of the *Services* on a continuing basis is critical to *CITY*’s tourism and economic development efforts; and

WHEREAS, *CITY* intends to lease one (1) pontoon water taxi vessel with a capacity of 50 passengers, and one (1) pontoon water taxi vessel with a capacity of 100 passengers (collectively, the “*Water Taxis*”) which are equipped with the coast guard required equipment including personal flotation devices, throw ring, fire extinguishers as well as floats and tie off lines; and

WHEREAS, *CITY* has determined that *OPERATOR* is best suited to operate the Water Taxis and provide the *Services* on an interim basis until *CITY* can award a long term contract for the *Services*; and

WHEREAS, the parties have negotiated mutually satisfactory terms for the *Services*;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein, the parties agree as follows:

**SECTION 0
INCORPORATION OF RECITALS AND CAPITALIZED TERMS**

The above stated recitals are true and correct and, by this reference, are made a part hereof and are incorporated herein. All capitalized terms shall have the meanings given to them in this Agreement.

**SECTION 1
OPERATOR’S RESPONSIBILITIES**

Effective upon commencement of *Services* as provided in Section 2 below, *OPERATOR* shall:

1.1 Furnish all labor, materials, fuel and other items necessary for the proper operation, management and maintenance of the Water Taxis for passenger service between the north and south banks of downtown Jacksonville, Duval County, Florida. No other routes or excursions are permitted.

1.2 Provide, manage, operate and maintain the Water Taxis in compliance with requirements and regulations of the United States Coast Guard (“USCG”).

1.3 NOT permit more passengers to occupy a Water Taxi at one time than the number of passengers the Water Taxi was designed or designated by the manufacturer of the Water Taxi or the USCG to carry. OPERATOR shall post a suitable card in large type, easily readable, in each Water Taxi for hire explaining and describing the maximum capacity of the Water Taxi, which can be readily understood by passengers.

1.4 Maintain the Water Taxis in accordance with industry standards and in optimal working conditions at all times. To this end, OPERATOR shall, at its sole cost and expense, be fully responsible for all normal maintenance and repair, but not for any repairs of more than \$2,500.00 unless the repairs are required as a result of OPERATOR’s negligence. CITY reserves the right, in its sole discretion and at any time, to inspect the Water Taxis and maintenance facilities during normal working hours, and to review OPERATOR’s maintenance records, at all times during the period of this Agreement.

1.5 Clean the Water Taxis, internally and externally at least once each day. OPERATOR shall have a continuing obligation to ensure cleanliness of the Water Taxis, and OPERATOR shall perform additional cleaning and extermination for pests of the Water Taxis as required.

1.6 Provide properly licensed Captains to operate the Water Taxis, with appropriate and current USCG Master’s Licenses. Water Taxi Captains and crews shall not exceed the maximum work hours as required in the USCG regulations. OPERATOR shall NOT operate the Water Taxis unless the Water Taxis are under the command of a person on board holding a valid USCG license as Master of river steam or motor vessels of any gross tons, or an equivalent or higher grade USCG license.

1.7 Promptly report to the Director of the Department of Parks, Recreation & Entertainment any accidents or incidents involving the Water Taxis that result in personal injury, property damage, or the violation of any and all governing and/or applicable ordinances, regulations, or laws, and shall cooperate and/or assist CITY in the investigation of the same.

1.8 At its sole cost and expense, comply with all applicable requirements of the Americans with Disabilities Act (“ADA”), the United States Department of Transportation (“USDOT”), the Florida Department of Transportation (“FDOT”), the United States Department of Environmental Protection (“USDEP”), the Florida Department of Environmental Protection (“FDEP”), USCG and any other applicable federal, state, and local laws, codes, ordinances, rules and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement. To the extent any terms in this Agreement are inconsistent with applicable requirements and regulations of ADA, USDOT, FDOT, USDEP, FDEP, USCG, or any other applicable federal, state, and local laws, codes, ordinances, rules, and regulations, this Agreement shall be superseded thereby, but only to the extent of such inconsistency.

1.9 NOT refuse to take aboard a passenger, under tender of legal fare, unless the passenger is obviously under the influence of alcohol, narcotics or drugs or otherwise not in control of his or her faculties to an extent that constitutes, in the reasonable opinion of the Captain, an immediate hazard to the safety or operation of the Water Taxi or the safety of the Water Taxi operator or other occupants of the Water Taxi. In the case of a Water Taxi operating along a fixed or defined route, the Water Taxi Captain shall not be obliged to deviate from that route in order to convey a passenger, unless previously arranged.

1.10 Operate the Water Taxis during the following hours (unless weather conditions make such operations unsafe):

- The 50 or 100 passenger boat shall be operated between the hours of 11am and 9pm Sunday through Thursday; and 11am to 11pm Fridays, Saturdays and holidays.
- The 100 passenger boat shall be operated between the hours of 4pm and 11pm on Fridays, Saturdays and holidays.
- During football games at Everbank Stadium and other special events drawing large crowds to downtown Jacksonville, both Water Taxis shall be operated from 11am or three (3) hours before the start of the event, whichever earlier, to 9pm or three (3) hours after the end of the event, whichever later.
- Any additional hours of operation as mutually agreed, without the need of a formal amendment, as circumstances warrant.
- OPERATOR may adjust hours or suspend service in periods of poor weather or low ridership with verbal agreement of the City Dockmaster.

1.11 Maintain complete and accurate records of information and data in the format prescribed by CITY and shall furnish such records to CITY on a monthly basis. OPERATOR shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Service. OPERATOR shall preserve and make available, at reasonable times for examination and audit by CITY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. In addition to its financial records, OPERATOR shall provide to CITY, upon demand, all Water Taxi maintenance and inspection records, permits, licenses, approvals, certificates and any other documents that may be reasonably requested by CITY or required for proper Service.

1.12 At its own cost and expense, comply with any and all security regulations during the term of this Agreement.

1.13 Secure at its own expense all personnel and any additional equipment or facilities required to perform all Services under this Agreement. OPERATOR shall not have any direct or indirect contractual relationship with any officer or employee of CITY that will conflict with its ability to perform hereunder. All personnel assigned to the work shall be fully qualified and all equipment and facilities employed shall be adequate for the work required. OPERATOR shall perform the Services under the full-time direction of

one or more of its senior officers or a responsible representative, who shall be acceptable to CITY. OPERATOR shall designate in writing to CITY such representative who shall be authorized to act on behalf of OPERATOR on any matter covered by this Agreement.

SECTION 2 CITY'S RESPONSIBILITIES

2.1 CITY shall deliver the Water Taxis in good working condition to OPERATOR no later than **three (3)** days after the effective date of the Rental Agreement (defined in Section 5.10 below). (the "**Delivery Date**"). CITY shall designate one or more of the approved taxi stands as the place of delivery and will give OPERATOR at least twelve (12) hours advance notice. The Services will commence immediately upon delivery, provided that OPERATOR will have at least four (4) hours to test and prepare the Water Taxis for operation. CITY will provide OPERATOR with a reasonable extension of time to commence Services if needed.

2.2 CITY shall provide the Water Taxis to OPERATOR during the term of this Agreement at no charge and for the sole purpose of providing the Services.

2.2 CITY shall ensure that all taxi stands, loading and unloading zones, landings and access and/or destination points located on municipality owned or leased property comply with the requirements of ADA. CITY shall endeavor to maintain taxi stands, loading and unloading zones, landings and access and/or destination points located on municipally owned or leased property only.

2.3 CITY shall permit the OPERATOR to store the Water Taxis at the Jacksonville Landing Water Taxi Dock and OPERATOR agrees to do the same during the term of this Agreement. The OPERATOR shall NOT store the Water Taxis at the Metro Marina and the OPERATOR's storage of the Water Taxis at the Metro Marina anytime during the term of this Agreement shall be a material breach of this Agreement.

2.4 As required by Section 106.431, *Ordinance Code*, the CITY's maximum indebtedness under this Agreement shall be Zero DOLLARS (\$0.00).

SECTION 3 TERM OF AGREEMENT

The effective date of this Agreement shall be on the day and year first written above; provided, however, the period of service (the "**Service Period**") shall begin on the Delivery Date (in Section 2.1 above) and shall continue for three (3) months thereafter, unless terminated earlier as provided herein. CITY may extend the Service Period for an additional three (3) month period upon at least thirty days written notice to OPERATOR.

City may terminate this Agreement for convenience upon thirty (30) days written notice to the OPERATOR. CITY may also terminate this Agreement immediately upon notice if CITY determines that termination is necessary to protect the public health, safety or welfare, or to enter into a long-term operator agreement.

This Agreement may be terminated for cause by action of CITY or by OPERATOR if the party in breach has not corrected the breach within ten (10) days after written notice from the aggrieved party identifying the breach.

**SECTION 4
FARE SCHEDULE**

OPERATOR shall provide the Services in accordance with the following fares, which OPERATOR acknowledges as sufficient to cover all of its costs and expenses:

One Way Fares:

Adults	\$5.00
Children 3 – 12 years of age	\$4.00
Senior Citizens, if requested.....	\$4.00
Children under 3 years of age.....	Free

Round-Trip Fares:

Adults	\$7.00
Children 3 – 12 years of age	\$5.00
Senior Citizens, if requested.....	\$5.00
Children under 3 years of age.....	Free

Football Games and Special Events:

Adults	\$5.00
Children 3 – 12 years of age	\$4.00
Senior Citizens, if requested.....	\$4.00
Children under 3 years of age.....	Free

Discounts for conventions and other groups (e.g., military) may be given by the OPERATOR. The Fare Schedule may be revised by mutual prior written agreement between the parties. OPERATOR shall post a suitable card in large type, easily readable, in each Water Taxi for hire explaining and describing the fare, rate or charge for the use of the Water Taxi as indicated by the Fare Schedule. Fares, rates and charges shall be displayed in a manner and form that can be readily understood by passengers. Upon the request of a passenger, OPERATOR shall supply the passenger with a written receipt showing the fare paid by the passenger and the date of the transaction. OPERATOR shall conspicuously post notice of this requirement in each of the Water Taxis.

OPERATOR shall not be entitled to any other compensation from CITY or from passengers in exchange for providing the Service.

**SECTION 5
ADVERTISING**

OPERATOR may display advertising provided such advertising shall be of a reputable character, shall conform to recognized commercial standards, shall not conflict with any applicable law, and shall generally conform to the aesthetics and display environment in which the advertising is promoted. CITY reserves the right to approve all proposed advertising to ensure that advertisements are in good taste, are displayed in a safe, satisfactory, and professional manner, and do not detract from or impair the public image and reputation of CITY. OPERATOR shall at the request of CITY, immediately remove advertisements that CITY, in its sole discretion, deems objectionable at OPERATOR's own expense.

SECTION 6 GENERAL CONDITIONS

5.1 INDEMNIFICATION. OPERATOR, its employees, agents and subconsultants shall hold harmless and indemnify CITY, its directors, officers, employees, representatives and agents against any damages, liabilities, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of OPERATOR, and other persons employed or utilized by OPERATOR in the performance of this Agreement or the work or services performed hereunder. This indemnification agreement is separate and apart from, and in no way limited by, any insurance provided pursuant to this Agreement or otherwise. The indemnification by OPERATOR shall extend for any claims arising in whole or part from a breach of this Agreement to the extent OPERATOR is directly or indirectly responsible.

5.2 INSURANCE. Without limiting its liability under this Agreement, OPERATOR shall procure and maintain during the life of this Agreement insurance of the types and in the amounts not less than stated on Exhibit A attached hereto and incorporated herein by this reference.

5.3 SUCCESSORS, ASSIGNS AND SUBCONTRACTORS. CITY and OPERATOR each bind the other and their respective successors and assigns in all respects to all of the terms, conditions, covenants and provisions of this Agreement, and any assignment or transfer by OPERATOR of its interests in this Agreement without the written consent of CITY shall be void. Because OPERATOR agrees that it will not subcontract any of the Services to third parties, CITY's contract provisions relating to JSEBs and MBEs do not apply to this Agreement.

5.4 NON-DISCRIMINATION. OPERATOR 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 employee relations, throughout the term of this Agreement. OPERATOR 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 for the purpose of investigation to ascertain compliance with the nondiscrimination provisions of this Agreement; provided that OPERATOR shall not be required to produce for inspection records covering periods of time more than one year prior to the day and year first above written.

5.5 COMPLIANCE WITH LAWS. OPERATOR shall comply with any and all applicable Federal, State and local laws, rules, and regulations, as the same exist and may be amended

from time to time. Such laws, rules and regulations include, but are not limited to, Chapter 119, Florida Statutes, (the Public Records Act) and Section 286.011, Florida Statutes, (the Florida Sunshine Law).

5.6 PROHIBITION AGAINST CONTINGENT FEES. OPERATOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for OPERATOR, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person or entity, other than a bona fide employee working solely for OPERATOR, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For the breach or violation of these provisions, CITY shall have the right to terminate this Agreement without liability and, at its discretion, to recover the full amount of such fee, commission, percentage, gift or consideration.

5.7 INDEPENDENT CONTRACTOR. In the performance of this Agreement, OPERATOR shall be acting in the capacity of an independent contractor, and not as an agent, employee, partner, joint-venturer or associate of CITY. OPERATOR shall be solely responsible for the means, methods, techniques, sequences and procedures utilized in the full performance of this Agreement.

5.8 APPLICABLE LAW. This Agreement is to be read and construed in accordance with the Laws of the State of Florida, City of Jacksonville and Duval County. The parties hereto agree that any court of appropriate jurisdiction presiding in Duval County, Florida, shall be the forum for any action or lawsuit brought hereunder.

5.9 NOTICES. Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand-delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party as follows:.

FOR CITY:

Office of the Director
Parks, Recreation and Community Services
214 North Hogan Street, Suite 3102
Jacksonville, Florida 32202

FOR OPERATOR:

Attn: Ron Hilliard, Jr.
Lakeshore Mastercraft and Mercury,
LLC
3326-7 Lakeshore Blvd.
Jacksonville, 32210

The above addresses may be changed in writing without a formal amendment to this Agreement.

5.10 AGREEMENT SUBJECT TO TERMS OF RENTAL AGREEMENT. The parties acknowledge that, at the time this Agreement is entered, CITY intends to lease the Water Taxis from FRISCH SERVICES, LLC pursuant to a rental agreement (the "Rental Agreement"), a copy of which is attached as **Exhibit B**, and incorporated herein by this reference. Accordingly, the parties agree that (i) all of CITY's rights and obligations under this Agreement are subject to and contingent upon the terms of the Rental Agreement, and (ii) neither party will take any action that would cause a breach or default of the Rental Agreement. CITY will advise OPERATOR in advance of any modifications or replacements of the Rental Agreement.

5.11 ENTIRE AGREEMENT; AMENDMENTS. This Agreement represents the entire agreement of the parties with respect to the Service. No statement, representation or understanding made by either party or by representatives of either party, which are not expressed in this Agreement shall be binding. This Agreement may be amended only by written instrument signed by both parties. Nothing in this Agreement precludes CITY from providing additional or supplemental water taxi service if ridership levels warrant expanded service.

[The remainder of this page was intentionally left blank; signature pages to follow.]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement the day and year first above written.

ATTEST:

CITY OF JACKSONVILLE, a Florida municipal corporation

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



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

In compliance with the Charter of CITY of Jacksonville, I do certify that there is an unexpended, unencumbered and unimpounded balance in the appropriation sufficient to cover the foregoing Agreement and that provision has been made for the payment of the monies provided therein to be paid.

C. Ronald Belton
Director of Administration and Finance
9894-36

Form Approved:

[Signature]
Assistant General Counsel

ATTEST:

LAKESHORE MASTERCRAFT AND MERCURY, LLC, a Florida limited liability company d/b/a LAKESHORE MARINE

By *Allison C. Adams*
Signature
Allison C. Adams
Type/Print Name

By *Ronald L. Hilliard Jr.*
Signature
Ronald L. Hilliard Jr.
Type/Print Name
Director of operation
Title

EXHIBIT A -- INSURANCE

Without limiting its liability under this Agreement, OPERATOR shall at all times during the term of this Agreement procure prior to commencement of work and maintain at its sole expense during the life of this Agreement (and OPERATOR shall require its contractors, subcontractors, laborers, materialmen and suppliers to provide, as applicable), insurance of the types and in the amounts not less than stated below, and prior to work commencement provide a certificate with applicable endorsements on a form that is acceptable to the City's Division of Insurance and Risk Management evidencing the following required coverages to the City:

<u>Schedule</u>	<u>Limits</u>
Worker's Compensation/Employers Liability	
Worker's Compensation	Florida Statutory Coverage
Employer's Liability	\$100,000 Each Accident \$500,000 Disease Policy Limit \$100,000 Each Employee/Disease

In addition to coverage for the Florida Workers' Compensation Act, coverage is to be included for the Federal Employers' Liability Act, USL&H and Jones Act.

Hull Coverage: Coverage for direct damage to vessels written on American Institute Hull clauses form, specifically including "Running Down clauses," "Agreed Valuation clauses," and Amount of insurance based on value of vessels. The policy shall cover collision liability on a primary basis.

Protection and Indemnity Coverage: Form "SP 23" Coverage for water taxi operations of the watercraft, as included in "SP23" for damage to any harbor, graving, piers, bumpers, etc.; including but not limited to Crew to the extent coverage is not provided by the Worker's Compensation policy, Passenger and Coverage for property and liability from land while loading and unloading the Ferry or Water Taxi and on-board during navigation along with Cargo Legal Liability, Dock Liability, Excess Collision over insured hull limit.

(Coverage shall include Premises, Pollution Exclusion Buyback Endorsement A, Personal Effects, Medical Payments, Voluntary Wreck Removal, and Pollution Buyback.)

\$1,000,000 coverage required.

Vessel Pollution Liability (Occ. Form)

Including clean-up cost

\$1,000,000 Anyone Scheduled Vessel, any one incident for IOA 90, CERCLA, Spill Management, Firefighting and Salvage and Defense Cost including damage to Property Ashore.

Including Water Quality Insurance Syndicate or similar form Per Statutory coverage and limits).

Comprehensive Marine General Liability Coverage

Coverage for third party liability for land based operations to the public and connection with the taxi operation, specifically including Occurrence form, Bodily Injury, Property Damage, Products & Completed Operations, Medical Payments, Personal Injury, Contractual Liability, Ship Repair Liability.

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those approved by the City’s Office of Insurance and Risk Management.

\$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

- A. Waiver of Subrogation. All insurance shall be endorsed to provide for a waiver of underwriter’s rights of subrogation in favor of the City of Jacksonville, Frisch Services, LLC, and for all their members, officials, officers, employees and agents.
- B. Additional Insured: All insurance except Worker’s Compensation shall be endorsed to name as Additional Insureds the City of Jacksonville, Frisch Services, LLC and all their members, officials, officers, and employees. Additional Insured for General Liability shall be in a form no more restrictive than CG2010. As respects to the Hull coverage, Beaver Street Fisheries and City of Jacksonville will be named as a loss payee as the interest may appear.
- C. OPERATOR’s Insurance Primary. The insurance provided by the OPERATOR shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by the City of Jacksonville or Frisch Services, LLC
- D. Deductible or Self-Insured Retention Provisions. Except as authorized in writing by the City of Jacksonville, the insurance maintained by the Operator shall apply on a first dollar basis without application of a self-insurance, deductible or self-insured retention. Except as authorized specifically in writing by the City of Jacksonville, no self-insurance, deductible, or self-insured retention for any required insurance provided by Operator will be allowed.
- E. Contractor’s Insurance Additional Remedy. Compliance with the insurance requirements of this Agreement shall not limit the liability of the Contractor or its Subcontractors or Sub-subcontractors, employees or agent to the City or others. Any remedy provided to City or Frisch Services, LLC shall be in addition to and not in lieu of any other remedy available under this Agreement or otherwise.

- F. No Waiver by City Approval/Disapproval. Neither approval by City nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide insurance as required under this Agreement.
- G. Each policy shall be written by an insurer holding a current certificate of authority pursuant to chapter 624, Florida Statutes or a company that is declared as an approved Surplus Lines carrier under Chapter 626 Florida Statutes. Such insurance shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the City and Frisch Services, LLC. Such Insurance shall be written by an insurer with an A.M. Best Rating of A-VII or better. Prior to commencing any Services, Certificates of Insurance approved by City's Division of Insurance & Risk Management demonstrating the maintenance of said insurance shall be furnished to City. The Contractor shall provide an endorsement issued by the insurer to provide the City thirty (30) days prior written notice of any change in the above insurance coverage limits or cancellation, including expiration or non-renewal. In the event the Contractor is unable to obtain such endorsement, the Contractor agrees to provide the City the notice directly. Until such time as the insurance is no longer required to be maintained by Contractor, Contractor shall provide the City with renewal or replacement evidence of insurance with the above minimum requirements no less than 30 days before the expiration or termination of the insurance for which previous evidence of insurance has been provided.
- H. Notwithstanding the prior submission of a Certificate of Insurance, copies of endorsements, or other evidence initially acceptable to City's Division of Insurance and Risk Management, if requested to do so by the City, the Contractor shall, within thirty (30) days after receipt of a written request from the City, provide the City with a certified, complete copy of the policies of insurance providing the coverage required herein.
- I. 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 the Contractor shall relieve the Contractor or its sub-contractors or sub-subcontractors from responsibility to provide insurance as required by the Agreement.
- J. 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.

EXHIBIT B – RENTAL AGREEMENT

RENTAL AGREEMENT FOR VESSELS

THIS RENTAL AGREEMENT FOR VESSELS ("*Agreement*") is made and entered into this 15th day of July, 2014 ("*Effective Date*"), between the FRISCH SERVICES, LLC, a Florida limited liability company ("*Lessor*") and the CITY OF JACKSONVILLE, a Florida municipal corporation ("*Lessee*").

BACKGROUND FACTS:

A. Lessor owns or plans to own two pontoon vessels more particularly identified and depicted on Exhibit "A" attached hereto (collectively, the "*Vessels*").

B. Lessee desires to lease the Vessels from Lessor for a short-term period in connection with the operation of a water taxi service.

C. Lessor has agreed to lease the Vessels to Lessee for \$1.00 per day per vessel subject to the terms and conditions contained herein.

D. Lessee's authority to enter into this Agreement is pursuant to Chapter 126 (Procurement Code), *Ordinance Code*, and Administrative Award No. AD-0559-14 dated July 10, 2014, a copy of which is attached hereto as Exhibit "B."

NOW, THEREFORE, for and in the good and valuable consideration given each respective party to the other including, but not limited to, the covenants, conditions and terms hereof, the sufficiency and receipt of said good and valuable considerations being herewith acknowledged by the respective parties, Lessor and Lessee agree as follows:

1. **Background Facts.** The background facts above are accurate, correct and true and incorporated herein by this reference, except that with respect to item D above, Lessee is relying on Lessor's representations and warranties that said item D is accurate, correct and true.

2. **Definitions.** As used in this Agreement, the words defined immediately below shall have the meaning stated next to same. Words imparting the singular number include the plural number and vice versa, unless the context clearly requires otherwise.

(a) "*Agreement*" means this Rental Agreement for Vessels (including all exhibits hereto), and any amendments or addenda that may supplement, modify or amend the same.

(b) "*Governmental Requirement*" means any permit, law, statute, code, rule, regulation, ordinance, order, judgment, decree, writ, injunction, franchise, condition, certificate, permit, license, authorization, or other direction or requirement of any governmental and/or regulatory national, state or local entity with jurisdiction over the Vessels. Governmental Requirements shall include all applicable, relevant, or appropriate Florida Statutes and City of Jacksonville ordinances including, without limitation, any regulation found in Florida Administrative Codes or regulations.

(c) “*Lessee*” means the City of Jacksonville, a Florida municipal corporation.

(d) “*Lessor*” means the Frisch Services, LLC, a Florida limited liability company.

(e) “*Operator*” means Multi-Marine Services, Inc., a Florida corporation, or any other entity procured by Lessee and approved by Lessor, to manage, maintain and operate the Vessels in connection with a water taxi service.

(f) “*Ownership and Inspection Documents*” means the documents evidencing the Lessor’s ownership of the Vessels and necessary certifications from all applicable governmental entities in connection with the operation of the Vessels, including but not limited to the following:

- i. Certificate of Title from the State of Florida;
- ii. United States Coast Guard Certificate Documentation;
- iii. Certificate of Inspection from the United States Coast Guard; and
- iv. State of Florida Registration.

(g) “*Section*” means the numerical sections of this Agreement and the respective subsections thereof. Each respective Section begins with a numerical number and a capitalized heading of the Section which is underlined to indicate the subject matter thereof.

(h) “*Term*” means the term of this Agreement, which shall be for a period of six (6) months or less commencing on the Delivery Date as defined in Section 6 below and ending on such date that the Lessee provides written notice of termination pursuant to Section 20 herein.

(i) “*Vessels*” means the two pontoon Vessels more particularly identified on Exhibit “A.”

3. **Lease.** In consideration of the representations, warranties, agreements and covenants contained herein, Lessor shall lease to Lessor the Vessels for the Term, all in accordance with all of the provisions, covenants, conditions and terms herein. The parties intend that this Lease is made on a “bare boat” basis, whereby Lessor is not to provide any crew.

4. **Rental Fee.** Lessor and Lessee have agreed that the license fee during the License Term shall be one dollar (\$1.00) per day per vessel. The daily rental amounts shall be payable on the last day of each month. Lessor and Lessee acknowledge that Lessee is a tax exempt entity, and as such, no sales tax shall be collected for the rent paid hereunder. Lessee agrees to provide such information as reasonably required by Lessor regarding Lessee’s tax exempt status. The rental amounts shall be paid by Lessee to Lessor via check or wired funds. Payments should be mailed to the following address: Frisch Services, LLC, c/o Beaver Street Fisheries, Inc., 1741 W. Beaver Street, Jacksonville, FL, 32209, Attention: Hans Frisch.

5. **Maximum Indebtedness.** As required by Section 106.431, Ordinance Code, the Lessee’s maximum indebtedness to Lessor under this Agreement shall not exceed FIVE THOUSAND and 00/100 DOLLARS (\$5,000.00).

6. **Delivery and Acceptance.** Lessor shall cause the Vessels to be delivered to Lessee in good and fully operable condition at the following location: Sadler Point Marina, Inc., located at 4669 Roosevelt Boulevard, Jacksonville, FL 32210, within one business day of Lessor obtaining all necessary Ownership and Inspection Documents ("***Delivery Date***"), copies of which will be provided at that time to Lessee. Lessee will accept the Vessels as soon as the Vessels have been delivered at the location above and determined by Lessee to be operational. Lessee will evidence its acceptance of the Vessels by delivering to Lessor (via hand-delivery, email or fax) the Acknowledgement of Delivery and Acceptance Form attached hereto as **Exhibit "C"**, executed by the Lessee's Director of Parks, Recreation and Community Services Department upon delivery of the Vessels to Lessee, and said acceptance of the Vessels by Lessee shall be on an "as is" and "where is" basis, without any warranties of any kind, express or implied. If Lessor fails to deliver either or both of the Vessels as provided herein, or if Lessee determines that either or both of the Vessels are not fully operable upon delivery of the same, Lessee shall have the right to terminate this Agreement as to one or both of the Vessels, **as its sole remedy against Lessor hereunder.** In such event, Lessee shall not be responsible for any rental fees pursuant to Section 4 above with respect to any such termination, and Lessee shall not interfere or object to the return of all funds of Lessor's, held in escrow, pertaining to the proposed purchase of any such Vessel or Vessels not delivered by Lessor or determined by Lessee to not be fully operable.

7. **Use of Vessels.** Lessee shall have the right to operate the Vessels in Duval County, Florida, and in, along, and across the St. Johns River and any surrounding tributaries. Lessee agrees to use the Vessels only for the lawful operation of a water taxi service and shall comply with all applicable statutes, rules and regulations applicable to such operation. Lessor acknowledges that Lessee intends to retain the Operator to manage and operate the Vessels and the water taxi service.

8. **Quiet Enjoyment.** Lessee shall have full use and quiet enjoyment of the Vessels during the Term, subject to the terms and conditions of this Agreement.

9. **Operating & Other Costs & Expenses.** Lessee shall, at its own expense, or through the Operator, operate the Vessels. Lessee shall be responsible for timely arranging and paying for all property taxes, assessments, costs and expenses incident to the safety, use and operation of the Vessels during the Term. Lessee shall reimburse Lessor for any and all costs and expenses related to the acquisition of the Vessels, including without limitation, those related to the delivery of the Vessels to Jacksonville, and the titling, inspection and registration of the Vessels (including any escrow costs); provided that the City shall not be responsible for any such costs and expenses that cause it to exceed its total maximum indebtedness under Section 5 above. Neither Lessee nor the Operator shall do anything that will encumber or create any liens against any of the Vessels.

10. **Repair and Maintenance.** Lessee shall be responsible for arranging and paying all costs and expenses to keep the Vessels fully operable, safe and in good repair and condition and in substantially the same condition as on the date of the Delivery and Acceptance Form,

normal wear and tear excepted. Neither Lessee nor the Operator shall do anything that will encumber or create any liens against any of the Vessels.

11. **Improvements to Vessels; Personal Property**. Lessee and/or the Operator may make incidental non-permanent and removable additions, alterations, changes or improvements in or to the Vessels or any part thereof, without the prior written consent of Lessor. All such additions, alterations, changes or improvements made shall be constructed at Lessee's and/or the Operator's sole expense. All additions, alterations, changes or improvements shall be made in conformance with applicable Governmental Requirements. At the end of the Term, Lessee and/or the Operator shall restore the Vessels to their original condition, normal wear and tear excepted. Lessee and the Operator may place its personal property and storage materials on or within the Vessels during the Term from time to time at their discretion; however, all such personal property that may be on the Vessels during the Term shall be at Lessee's and the Operator's sole risk. Neither Lessee nor the Operator shall do anything that will encumber or create any liens against any of the Vessels.

12. **Insurance**. During the Term, Lessee and its subcontractors of any tier shall maintain the insurance coverages and other requirements identified on **Exhibit "D"** attached hereto ("*Required Insurance*"). It is the intent of the parties hereto that sovereign immunity shall not limit the third party insurance coverages identified in Sections 1, 3 and 4 of Exhibit D, in any way. Lessee shall require the Operator to maintain the Operator's Required Insurance as identified on **Exhibit "D"** during the Term, and shall be responsible for ensuring that the Operator is in full compliance, at all times during the Term, with all Required Insurance provisions and that the Operator pays all of the Operator's self-insurance, deductibles and self-insured retention obligations. If Lessee and/or the Operator fail to provide any of the Required Insurance or fail to provide Lessor with timely evidence of any of the Required Insurance, at any time, during the Term, Lessor may, at its sole option, with reasonable notice, purchase said Required Insurance not provided or evidenced by Lessee and/or the Operator and Lessee shall reimburse Lessor for all insurance premiums and other costs incurred by Lessor to acquire such Required Insurance.

13. **Indemnification**. Lessor shall hold harmless, indemnify, and defend the Lessee, its officers, employees, agents, contractors and representatives against any claim, action, loss, damage, injury, liability, cost and expense of whatsoever kind or nature to persons, including death or damage to property, to the extent caused by the performance of or any failure by Lessor to perform any of the covenants, agreements, conditions and/or terms of this Agreement on Lessor's part to be performed or any false representation or warranty under this Agreement. No other indemnities are provided by Lessor. Subject to the limitations of Section 768.28, Florida Statutes, which provisions are not expanded, altered or waived beyond the statutory limitations contained therein and the provisions of **Exhibit "D"** attached hereto, the Lessee shall hold harmless, indemnify, and defend Lessor, its affiliates, members officers, employees, agents, contractors and representatives against any claim, action, lawsuit, loss, damage, injury, liability, cost and expense of whatsoever kind or nature to persons, including death or damage to property, caused by (i) the negligent or wrongful act or omission of Lessee and/or the Operator, their employees, agents and subcontractors, (ii) the failure by the Lessee and/or the Operator to

perform any of the covenants, agreements, conditions, and/or terms of this Agreement on the Lessee's and/or Operator's part to be performed, and/or (iii) any false representations or warranties made by Lessee under this Agreement.

14. **Compliance with Governmental Requirements.** During the Term, Lessee shall comply with all Governmental Requirements governing or affecting the Vessels and the use thereof for any reason.

15. **Ownership of the Vessels.** Title to the Vessels shall remain vested with Lessor, subject to the covenants, conditions and terms of this Agreement, and Lessee shall have no interest in the title to the Vessels. Neither Lessee nor the Operator shall represent to any person or entity, at any time, that it is the owner of the Vessels. No furnishings, furniture, fixtures, equipment or other personal property or improvements installed or constructed by Lessee and/or the Operator on or within the Vessels shall be Lessor's property, but shall be the property of Lessee, subject to the provisions of Section 11 and Section 22 of this Agreement .

16. **Destruction or Damage.** In the event the Vessels, or any part thereof, is destroyed or damaged by fire, lightning, storm or other casualty, either party may terminate this Agreement by providing written notice to the other party within twenty (20) days of the casualty. If neither party terminates the Agreement, Lessor may forthwith repair the damage to the Vessels (excluding Lessee's personal property) at its own cost and expense.

17. **Representations and Warranties by Lessor.** Without limiting the representations, warranties and covenants of Lessor set forth elsewhere in this Agreement, as a material inducement for Lessee to enter into this Agreement, Lessor represents and warrants to Lessee (and unless otherwise specified, such representations, warranties and covenants are true as of the Effective Date and shall continue and be effective during the Term) that:

(a) Lessor is a Florida for-profit limited liability company, duly incorporated and validly existing under the laws of the State of Florida. Lessor is authorized to conduct business and is in good standing in the State of Florida. Lessor has full power and authority (including the Lessor obtaining any and all required third party consents) to execute and deliver this Agreement and all documents contemplated hereby, to perform its obligations arising hereunder and thereunder, and that the Lessor's entering into this Agreement will not conflict with or result in a breach of any other agreement to which the Lessor is a party. The individuals signing on behalf of Lessor have full power and authority to do so and the Lessor shall promptly deliver to the Lessee, upon request, all documents reasonably requested by the Lessee to evidence such authority.

(b) The making, execution and delivery of this Agreement and performance of all obligations hereunder by Lessor have been duly authorized and approved by the shareholders, members, partners, or Board of Directors (as the case may be) of Lessor.

(c) This Agreement and all documents contemplated hereby each constitute a legal, valid and binding obligation of Lessor, enforceable in accordance with their respective terms, assuming execution of the same by Lessee.

(d) This Agreement and all documents contemplated hereby do not and will not contravene any provision of the governing documents of Lessor, any judgment, order, decree, writ or injunction to which Lessor is bound, or any provision of any applicable law or regulation to which Lessor is bound. The execution and delivery of this Agreement and all documents contemplated hereby, and performance of its obligations hereunder and thereunder will not result in a breach of or constitute a default under any agreement or require the consent from any third party.

(e) Lessor intends to become the owner of the Vessels and obtain all necessary licenses, permits and authorizations required by all applicable governmental agencies and authorities, in connection with the ownership of the Vessels.

(f) the Vessels will be in compliance with any applicable Governmental Requirements.

(g) When the Vessels are delivered to Lessee, the Vessels will have been inspected and approved for operation by all applicable federal, state and local governmental agencies, including but not limited to the United States Coast Guard and the State of Florida.

18. Representations and Warranties by Lessee. Without limiting the representations, warranties and covenants of Lessee set forth elsewhere in this Agreement, as a material inducement for Lessor to enter into this Agreement, Lessee represents and warrants to Lessor (and unless otherwise specified, such representations, warranties and covenants are true as of the Effective Date and shall continue and be effective during the Term) that:

(a) Lessee is a Florida municipal corporation. Lessee has full power and authority (including the Lessee obtaining any and all required third party and governmental consents) to execute and deliver this Agreement and all documents contemplated hereby, to perform its obligations arising hereunder and thereunder, and that the Lessee's entering into this Agreement will not conflict with or result in a breach of any other agreement to which the Lessee is a party. The individuals signing on behalf of Lessee have full power and authority to do so and the Lessee shall promptly deliver to the Lessor, upon request, all documents reasonably requested by the Lessor to evidence such authority.

(b) The making, execution and delivery of this Agreement and performance of all obligations hereunder by Lessee are duly authorized by the Lessee and are in compliance with all laws, regulations and ordinances, including without limitation those of the State of Florida and the City of Jacksonville.

(c) This Agreement and all documents contemplated hereby each constitute a legal, valid and binding obligation of Lessee, enforceable in accordance with their respective terms, assuming execution of the same by Lessor.

(d) this Agreement and all documents contemplated hereby do not and will not contravene any provision of the governing documents of Lessee, any judgment, order, decree, writ or injunction to which Lessee is bound, or any provision of any applicable law, regulation or ordinance to which Lessee is bound. The execution and delivery of this Agreement and all documents contemplated hereby, and performance of its obligations hereunder and thereunder will not result in a breach of or constitute a default under any agreement or require the consent from any third party or any other governmental agency or body.

19. **Breach.** If any party fails to comply with or perform, in any material respect, any of the conditions to be complied with or any of the covenants, agreements or obligations to be performed under the terms and provisions of this Agreement, the non-defaulting party shall provide the defaulting party with written notice specifying the nature of the default. The defaulting party shall have thirty (30) days after receipt of the non-defaulting party's notice of default within which to cure the specified default. Except as provided in Section 6 of this Agreement, if such defaulting party does not cure such default within said thirty (30) day period, the non-defaulting party shall be entitled to (a) waive such default; (b) pursue specific performance of this Agreement; or (c) terminate this Agreement. Except as expressly and specifically provided in this Section 19, in Section 6 and in Section 13 (with respect to the indemnification provisions for third party claims and the loss of or damage to a Vessel or the Vessels) of this Agreement, notwithstanding (despite) anything to the contrary contained in this Agreement, neither party shall be entitled to any other remedies and/or damages with respect to this Agreement and/or breaches of this Agreement, including but not limited to any direct, indirect, consequential, special, punitive and/or exemplary damages and any lost revenues and profits..

20. **Termination.** Lessee may terminate and cancel this Agreement at any time after sixty (60) days from the Delivery Date by providing Lessor with Ten (10) business days advance written notice of Lessee's need to terminate and cancel its obligations hereunder and designating the termination date. In such event, the Agreement shall terminate and cease as of the effective date of Lessee's termination hereunder and the parties shall be released from all obligations hereunder which do not specifically survive termination.

21. **Purchase Option.** The Lessee shall have an option to purchase the Vessels from the Lessor during the Term of this Agreement and may exercise this option during the Term of this Agreement subject to a mutually agreeable price and other terms to be negotiated by the parties and approval of said vessel purchase agreement by the Jacksonville City Council.

22. **Expiration of Term.** At the expiration or termination of this Agreement, Lessee will peaceably yield up to Lessor the Vessels in good repair, normal wear and tear excepted. All personal property on the Vessel shall remain the property of Lessee. It is understood and agreed

between the parties, unless otherwise agreed to in writing by the lessor, that Lessee shall remove from the Vessels any improvements installed by Lessee pursuant to Section 11 above, at Lessee's expense, anytime on or before the expiration date or upon the termination of this Agreement. In the event that such removal by Lessee shall materially damage the Vessels, Lessee agrees to restore, at Lessee's expense, the Vessels to as good a state of repair as the Vessels were prior to the installation of said improvements by Lessee.

23. **Procurement Code Provisions.** The following provisions are required by the City of Jacksonville's Ordinance Code:

(a) As required by Section 126.108, Ordinance Code, in its performance of the Agreement, Lessor must comply with any and all applicable federal, state and local laws, rules, regulations and ordinances (hereinafter collectively referred to as the "**Laws**"), with respect to the Vessels, as such Laws exist and may be amended from time to time. Such Laws 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).

(b) As required by Section 126.404, Ordinance Code, Lessor 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. Lessor agrees that, on written request, they 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 Human Rights Commission, or successor agency or commission, for the purpose of investigation to ascertain compliance with the nondiscrimination provisions of this Agreement; provided however, that Lessor 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.

(c) The parties will follow the provisions of Section 126.110, Ordinance Code, with respect to required disclosures by public officials who have or acquire a financial interest in a bid or contract with Lessee, to the extent the parties are aware of the same.

(d) Lessor must retain all records pertinent to Lessor's obligations under this Agreement ("**Records**") for a period of three (3) years after expiration of the Agreement. Records shall be retained for longer periods when the retention period exceeds the time frames required by law or ordinance. At all reasonable times for as long as the Records are maintained, Lessor must allow persons duly authorized by Lessee to have full access to and the right to examine the Records, relative to the Agreement, regardless of the form in which kept.

24. **Condition Precedent.** This Agreement is conditional upon Lessee's receipt of Three Hundred and Thirty-Two Thousand and Five Hundred Dollars (\$332,500) directly or indirectly from Trident Pontoons, Inc. If this condition is not met by August 1, 2014, then (i) this Agreement may be terminated by either party upon written notice to the other party, and (ii) upon such termination, neither party will have any liability to the other party under or with respect to

this Agreement.

25. Miscellaneous.

(a) Notices. Any and all notices which are permitted or required in this License shall be in writing and shall be duly delivered and given when personally served, or mailed to the person at the address designated below. If notice is mailed, the same shall be mailed, postage prepaid, in the United States mail by certified or registered mail - return receipt requested. Notice shall be deemed given on the date of personal delivery or upon receipt if by mail, and receipt shall be deemed to have occurred on the date of receipt of the same; in the case of receipt of certified or registered mail, the date of receipt shall be evidenced by return receipt documentation. Failure to accept certified or registered mail shall be deemed a receipt thereof within ten (10) days after the first notice of delivery of the certified or registered mail. Any entity may change its address as designated herein by giving notice thereof as provided herein.

If to Lessee: Parks, Recreation and Community Services Department
214 N. Hogan Street, Third Floor
Jacksonville, Florida 32202
Attention: Director
Phone: (904) 255-7903

With Copy To: Office of General Counsel
City Hall at St. James
117 West Duval Street, Suite 480
Jacksonville, Florida 32202
Phone: (904) 630-1700

If to Lessor: Attn: Hans Frisch
Frisch Services, LLC
9252 San Jose Blvd., Unit # 4401
Jacksonville, FL 32257
Phone: (904) 354-8533

With a copy to: Beaver Street Fisheries, Inc.
1741 W. Beaver Street
Jacksonville, FL 32209
Attention: General Counsel
Phone: (904) 634-6643

or such other address either party from time to time may specify in writing to the other in accordance with the procedures provided in this Section 25(a).

(b) Legal Representation. Each respective party to this Agreement has been represented by counsel in the negotiation of this Agreement and, accordingly, no provision of this Agreement shall be construed against a respective party due to the fact that it or its counsel

drafted, dictated or modified this Agreement or any covenant, condition or term thereof.

(c) Further Instruments. Each respective party hereto shall, from time to time, execute and deliver such further instruments as any other party or parties or its counsel may reasonably request to effectuate the intent of this Agreement.

(d) Severability of Invalid Provision. If any one or more of the agreements, provisions, covenants, conditions and terms of the Agreement shall be contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such agreements, provisions, covenants, conditions or terms shall be null and void with no further force or effect and shall be deemed separable from the remaining agreements, provisions, covenants, conditions and terms of the Agreement to the extent that they are contrary, against public policy or held invalid and shall in no way affect the validity of any of the other provisions hereof.

(e) No Personal Liability. No representation, statement, covenant, warranty, stipulation, obligation or agreement contained herein shall be deemed to be a representation, statement, covenant, warranty, stipulation, obligation or agreement of any member, officer, employee or agent of Lessor or Lessee in his or her individual capacity and none of the foregoing persons shall be liable personally or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

(f) Third Party Beneficiaries. Nothing herein express or implied is intended or shall be construed to confer upon any entity other than Lessor and Lessee any right, remedy or claim, equitable or legal, under and by reason of this Agreement or any provision hereof, all provisions, conditions and terms hereof being intended to be and being for the exclusive and sole benefit of Lessor and Lessee.

(g) Assignment: Successors and Assigns. This Agreement may not be assigned without the written consent of the parties. To the extent permitted by the Agreement, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

(h) Survival of Representations and Warranties. The respective indemnifications, representations and warranties of the respective parties to this Agreement shall survive the expiration or termination of the Agreement and remain in effect.

(i) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without regard to any of its conflict of laws provisions. Any legal proceedings brought pertaining to this Agreement shall be brought in any federal or state court or courts of competent jurisdiction located in Duval County, Florida.

(j) Section Headings. The section headings inserted in this Agreement are for convenience only and are not intended to and shall not be construed to limit, enlarge or affect the scope or intent of this Agreement, nor the meaning of any provision, condition or term hereof.

(k) Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one (1) and the same document.

(l) Entire Agreement. This Agreement contains the entire agreement between the respective parties hereto and supersedes any and all prior agreements and understandings between the respective parties hereto relating to the subject matter hereof. No statement or representation of the respective parties hereto, their agents or employees, made outside of this Agreement, and not contained herein, shall form any part hereof or bind any respective party hereto. This Agreement shall not be supplemented, amended or modified except by written instrument signed by the respective parties hereto.

(m) Attorney's Fees and Costs. In any litigation arising out of or pertaining to this Agreement, each party shall be responsible for their own attorneys' fees and costs whether incurred before, during or after trial, or upon any appellate level.

(n) Time. Time is of the essence of this Agreement. When any time period specified herein falls upon a Saturday, Sunday or legal holiday, the time period shall be extended to 5:00 P.M. on the next ensuing business day.

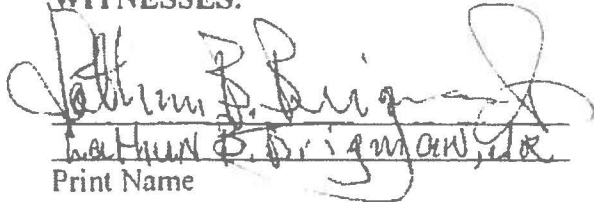
(o) Waiver of Defaults. The waiver by either party of any breach of this Agreement by the other party must be made in writing and signed by the non-breaching party to be effective, and shall not be construed as a waiver of any subsequent breach of any duty or covenant imposed by this Agreement.

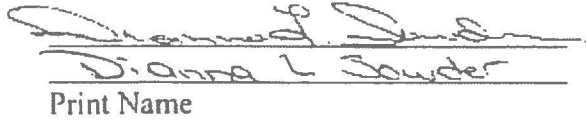
(p) Exhibits. The exhibits attached hereto are incorporated herein by reference.

[Signature Page Follows]

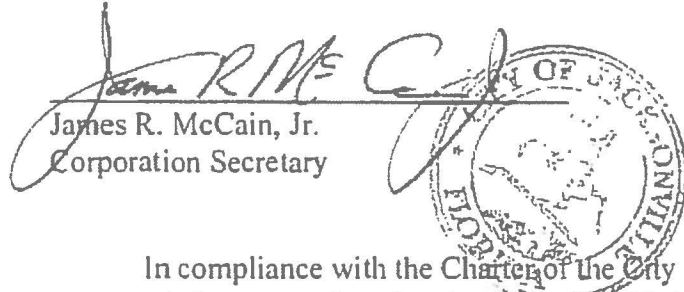
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

WITNESSES:


Matthew B. Brigman, JR.
Print Name


Diana L. Souder
Print Name

ATTEST:

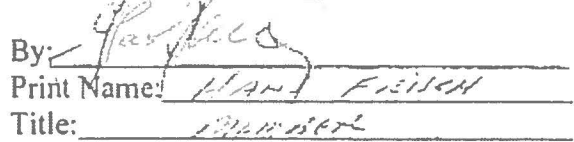

James R. McCain, Jr.
Corporation Secretary



In compliance with the Charter of the City of Jacksonville, I do certify that there is an unexpended, unencumbered and unimpounded balance in the appropriation sufficient to cover the foregoing lease and provision has been made for the payment of the moneys provided therein to be paid.

LESSOR:

FRISCH SERVICES, LLC, a Florida limited liability company

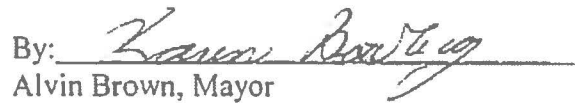
By: 
Print Name: MARY FRISCH
Title: OWNER

Dated: JULY 15 2014


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

LESSEE:

CITY OF JACKSONVILLE, a Florida municipal corporation

By: 
Alvin Brown, Mayor

Dated: July 16, 2014



Finance Director
CONTRACT NUMBER: n/a 4272-01

Form Approved:


Office of General Counsel

Compare Result 1

Exhibit "A"

Description of Vessels

The following described pontoon vessels (photographs to immediately follow):

Vessel No. 1:

Name: "Sea Charm I"

HIN: TXR000821405

USCG Doc # or FL# 1188654

Port engine serial number _____

Starboard Engine Serial Number _____

Vessel No. 2:

Name: "Native Sun"

HIN: TXR00053L404

USCG Doc # or FL# _____

Port engine serial number _____

Starboard Engine Serial Number _____

Exhibit "B"

Administrative Award
(To immediately follow this page)

ADMINISTRATIVE AWARD
BID No.: AD-0559-14

DESCRIPTION OF GOODS/SERVICES:

Recommend approval of Direct Negotiations and award to Frisch Services, LLC for the lease of two (2) pontoon vessels to be utilized for temporary water taxi service on the St. Johns River (Downtown Jacksonville). Period of service is for six (6) months in the total amount of \$5,000.00 to include the lease amount of \$360.00 (\$1.00/day per vessel) and a total not to exceed amount of \$4,640.00 for title, registration and inspection of both vessels. Total maximum indebtedness to the City in the amount of \$5,000.00.

FUNDING SOURCE: RPWF011-04938

FOR AGENCY/DEPARTMENT: Parks, Recreation and Community Services

REQUISITION NUMBERS: N/A

NUMBER FIRMS SOLICITED: N/A **NUMBER FIRMS BIDDING:** N/A

REASON FOR LESS THAN REQUIRED MINIMUM SOLICITATION/QUOTATION:

In accordance with Procurement Code 126.201(n) Direct Negotiations and Section XIV of the Procurement Manual, Direct Negotiation with this vendor is determined to be in the best interest of the City due to the expectation that the solicitation of the same offering would result in less than three bids due to its uniqueness. Guidelines and criteria for Direct Negotiations pursuant to the code have been submitted to Council and approved via Resolution 2001-122-A.

Department Memo attached. Lease to be executed by agreement.

RECOMMEND AWARD TO: Frisch Services, LLC

CONCURRENCE BY: Tera Meeks, Chief, Natural and Marine Resource Division

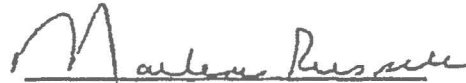
PRICE: \$5,000.00

TERMS: Net 30

REASON FOR NOT ACCEPTING LOW BID: N/A



Buyer / Analyst



Mgr. of Purchasing Services

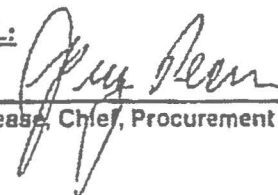
7/10/14

Date

7/10/14

Date

APPROVAL:



Gregory Pease, Chief, Procurement Division

7/10/14

Date

Exhibit "C"

- **Acknowledgement of Delivery and Acceptance Form**

The undersigned hereby acknowledges receipt of the two pontoon vessels (collectively, the "Vessels") more particularly described in that certain Rental Agreement for Vessels dated July ____, 2014 (the "Agreement"), between Frisch Services, LLC., a Florida limited liability company, as lessor, and the City of Jacksonville, a Florida municipal corporation, as lessee.

This form shall serve as the Lessee's acceptance of the Vessels pursuant to Section 6 of the Agreement.

IN WITNESS WHEREOF, the undersigned has caused this document to be executed in its name on the _____ day of _____, 2014.

Signature

Title

Exhibit "D"
Required Insurance

1. Marine Insurance. Lessee and Operator shall at all times during the term of this Agreement, procure and maintain, at their sole expense, insurance of the types and amounts not less than stated below, and upon signing the Agreement, provide a certificate or applicable endorsements on a form that is acceptable to the Lessor, evidencing the following required coverages:

Hull Coverage. Coverage for direct damage to vessels written on American Institute Hull clauses form, specifically including "Running Down clauses," "Agreed Valuation clauses," and amount of insurance based on value of vessels. The policy shall cover collision liability on a primary basis.

Protection and Indemnity Coverage: Form "SP 23" Coverage for water taxi operations of the watercraft, as included in "SP23" for damage to any harbor, graving, piers, bumpers, etc.; including but not limited to Crew to the extent coverage is not provided by the Worker's Compensation policy, Passenger and Coverage for property and liability from land while loading and unloading the Water Taxi and on-board during navigation along with Cargo Legal Liability, Dock Liability, Excess Collision over insured hull limit.

\$10,000,000 coverage required (Lessee)

\$ 1,000,000 coverage required (Operator)

War Risk, American Institute Hull War Risk and Strikes, American Protection and Indemnity Clauses

SP 22B, and Missing Vessel Clause and include Terrorism.

- A. Lessee shall at all times during the term of this Agreement maintain a valid Workers' Compensation self-insurance program, as authorized by Section 440, Florida Statutes. With respect to Lessee's self-insurance program, employee injuries caused and covered under Section 440 or Federal Jones Act benefits will be payable with benefits under Section 440, Florida Statutes. Lessee shall provide Lessor with a letter of self-insurance upon execution of this Agreement.
- B. Waiver of Subrogation. All insurance policies shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the Lessor.
- C. Additional Insured and Loss Payee. As respects Protection and Indemnity Liability coverage, the Lessor will be endorsed as an additional insured and a loss payee (as their interests may appear).

- D. The Lessee's Insurance Primary. The insurance provided by the Operator and by the Lessee shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by the Lessor.
- E. Deductible or Self-Insured Retention Provisions/Third Party Insurance Coverages. The Lessee shall be responsible for their deductibles and self-insured retentions which, with respect to the insurance required in Section I of this Exhibit B, Lessee represents and warrants will, in no event exceed, in the aggregate, the waiver limitations provided in Section 768.28 of the Florida Statutes and that all the required third party insurance coverages, as provided herein, will be in addition to and over and above the waiver limitations provided in Section 768.28 of the Florida Statutes.
- F. Each policy shall be written by an insurer holding a current certificate of authority pursuant to chapter 624, Florida Statutes or a company that is declared as an approved Surplus Lines carrier under Chapter 626 Florida Statutes. Such Insurance shall be written by an insurer with an A.M. Best Rating of A-VII or better. The Lessee shall provide 30 days written notice of any change in the above insurance coverage limits or cancellation, including expiration or non-renewal. Until such time as the insurance is no longer required to be maintained by Lessee, Lessee shall provide the Lessor with renewal or replacement evidence of insurance.
- G. Notwithstanding (despite) the prior submission of a Certificate of Insurance, copies of endorsements, or other evidence initially acceptable to Lessor, if requested to do so by the Lessor, the Lessee shall, within Ten (10) days after receipt of a written request from the Lessor, provide the Lessor with a certified, complete copy of the policies of insurance providing the coverage required herein and any other insurance documentation reasonable requested by Lessor. If such copies and documentation are not readily available, a copy of the bound policy shall be provided.
- H. Due to the unique nature of the project and its accompanying exposures and liabilities, to the extent the operations are subcontracted to entities other than the Operator, the City will require any such Subcontractor to provide, at its sole expense, additional insurance coverages in types and amounts responsive to those exposures and liabilities, which shall require that the Lessor be named as an additional insured and as a loss payee.

2. Lessee's Liability Insurance Other Than Marine and Workers' Compensation.

Lessee shall at all times during the term of this Lease maintain a valid self-insurance program, authorized by Section 768.28, Florida Statutes. With respect to Lessee's self-insurance program, liabilities caused by the negligent acts or omissions of Lessee's employees, or authorized agents shall be subject to the limits of Section 768.28, Florida Statutes. In no event shall Lessee's liability under its self insurance program exceed the liability amounts set forth in Section 768.28, Florida Statutes. With respect to Lessee's self-insurance, nothing in this Agreement shall be construed as a waiver of Lessee's sovereign immunity limit beyond the

waiver provided in Section 768.28, Florida Statutes. Lessee shall provide Lessor with a letter of self-insurance prior to the execution of this Lease.

3. Operator's Workers' Compensation/Employers Liability Coverage. The Operator shall, at all times during the Term of this Agreement, procure and maintain, at its sole expense, workers' compensation and employers' liability insurance coverages in such types and amounts as are required by law.

4. Comprehensive Marine General Liability Insurance. The Operator shall, at all times during the Term of this Agreement, procure and maintain, at its sole expense, comprehensive marine general liability insurance coverage for third party liability, for all potential perils for land based operations to the public and in connection with the taxi operations, with coverage amounts of no less than One Million Dollars (\$1,000,000) for each occurrence and Two Million Dollars (\$2,000,000) per general aggregate, as more specifically described on Schedule I attached hereto.

Schedule 1 to Exhibit D
Operator Marine General Liability Insurance

Comprehensive Marine General Liability Coverage

Coverage for third party liability for land based operations to the public and connection with the taxi operation, specifically including Occurrence form, Bodily Injury, Property Damage, Products & Completed Operations, Medical Payments, Personal Injury, Contractual Liability, Ship Repair Liability.

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those approved by the City's Office of Insurance and Risk Management.

\$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

- A. Waiver of Subrogation. All insurance shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the City of Jacksonville, Frisch Services, LLC, and for all their members, officials, officers, employees and agents.
- B. Additional Insured: All insurance shall be endorsed to name as Additional Insureds the City of Jacksonville, Frisch Services, LLC and all their members, officials, officers, and employees. Additional Insured for General Liability shall be in a form no more restrictive than CG2010.
- C. Operator's Insurance Primary. The insurance provided by the Operator shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by the City of Jacksonville or Frisch Services, LLC
- D. Deductible or Self-Insured Retention Provisions. Except as authorized in writing by the City of Jacksonville, the insurance maintained by the Operator shall apply on a first dollar basis without application of a self-insurance, deductible or self-insured retention. Except as authorized specifically in writing by the City of Jacksonville, no self-insurance, deductible, or self-insured retention for any required insurance provided by Operator will be allowed.
- E. Operator's Insurance Additional Remedy. Compliance with the insurance requirements of this Agreement shall not limit the liability of the Operator or its Subcontractors or Sub-

subcontractors, employees or agent to the City or others. Any remedy provided to City or Frisch Services, LLC shall be in addition to and not in lieu of any other remedy available under this Agreement or otherwise.

- F. No Waiver by City Approval/Disapproval. Neither approval by City nor failure to disapprove the insurance furnished by Operator shall relieve Operator of Operator's full responsibility to provide insurance as required under this Agreement.

- G. Each policy shall be written by an insurer holding a current certificate of authority pursuant to chapter 624, Florida Statutes or a company that is declared as an approved Surplus Lines carrier under Chapter 626 Florida Statutes. Such insurance shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the City and Frisch Services, LLC. Such Insurance shall be written by an insurer with an A.M. Best Rating of A-VII or better. Prior to commencing any Services, Certificates of Insurance approved by City's Division of Insurance & Risk Management demonstrating the maintenance of said insurance shall be furnished to City. The Operator shall provide an endorsement issued by the insurer to provide the City thirty (30) days prior written notice of any change in the above insurance coverage limits or cancellation, including expiration or non-renewal. In the event the Operator is unable to obtain such endorsement, the Operator agrees to provide the City the notice directly. Until such time as the insurance is no longer required to be maintained by Operator, Operator shall provide the City with renewal or replacement evidence of insurance with the above minimum requirements no less than 30 days before the expiration or termination of the insurance for which previous evidence of insurance has been provided.