

CITY OF SAN ANTONIO
CENTER CITY DEVELOPMENT AND OPERATIONS DEPARTMENT



REQUEST FOR PROPOSAL
("RFP")

for

RIVER BARGE CONCESSION

RFP 14-006

Release Date: SUNDAY, JUNE 15, 2014
Proposals Due: MONDAY, SEPTEMBER 15, 2014

This solicitation has been identified as High-Profile.

Notice Regarding Prohibition on Campaign or Officeholder Contributions for Individuals and Entities Seeking High-Profile Contracts. Under Section 2-309 of the Municipal Campaign Finance Code, the following are prohibited from making a campaign or officeholder contribution to any member of City Council, candidate for City Council or political action committee that contributes to City Council elections from the 10th business day after a contract solicitation has been released until 30 calendar days after the contract has been awarded ("black out" period):

- 1 legal signatory of a high-profile contract;
- 2 any individual seeking a high-profile contract;
- 3 any owner or officer of an entity seeking a high-profile contract;
- 4 the spouse of any of these individuals;
- 5 any attorney, lobbyist or consultant retained to assist in seeking contract.

A high-profile contract cannot be awarded to the individual or entity if a prohibited contribution has been made by any of these individuals during the "black out" period.

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003 - BACKGROUND

The San Antonio River Walk is nationally and internationally recognized as one of the premier attractions of its kind. There are many reasons for its prominence, not the least of which is the service provided by the river barge concession operator, which is the subject of this Request for Proposals (RFP). The river barge operation is vitally important to the image conveyed to the large number of out-of-town visitors, and equally important to the economies of San Antonio's hotel, restaurant, and convention and tourism industries. The river barge operation is also a significant component of the River Walk's image as promoted by the San Antonio Convention and Visitors Bureau.

Since improvements completed in 2009, the portion of San Antonio River now navigable by river barge stretches from near Grayson Street on the north to Nueva Street on the south and includes a lock and dam system at Brooklyn Street. River barges provide tours to over one million persons annually and provide a unique method of sightseeing and people watching. Restaurants may charter river barges to provide open-air dining while cruising the river and this offering is considered one of the signature elements of the River Walk. Some river barges serve as "river taxis" and may deliver passengers to multiple destinations, including Rivercenter Mall, the Henry B. Gonzalez Convention Center, La Villita's Arneson River Theatre, The Pearl, and other destinations along the river.

The river barge concession operates in a highly regulated environment, and the San Antonio Historic and Design Review Commission must approve design elements related to the river barge concession operation. All signs proposed to be erected and visible from the River Walk must be approved in writing by the City prior to installation. No advertising, signs, posters, or display advertising by renters of barges shall be permitted unless approved in writing by the City. Noise and queuing on the River Walk are regulated by City ordinance and City Code. Portions of the river are within a flood control channel, which requires the river barge operator to maintain open lines of communication with governmental agencies to respond promptly and safely during inclement weather.

River barges are operated from the City-owned Nueva Street Marina, located at 202 E. Nueva Street, as well as the marina at the International Center, 203 S. St. Mary's Street, which provides additional, but less, capacity. Compressed natural gas (CNG) powers the river barges and the City provides fuel at cost to the operator's river barge fleet from the City-owned CNG compressor station at the Nueva Street Marina. In addition to slips for river barges, the Nueva Street Marina includes a paint booth, space for maintenance and repair, and office space for the river barge operator.

The existing river barge concession contract has been in effect since September 1, 2005 and expires August 31, 2015. The current operator utilizes a fleet of up to 40 barges and 3 maintenance/operations watercraft on the San Antonio River, operates five ticket stations (four are City-owned property), and begins river barge tour cruises from three downtown locations. At multiple ticket stations, retail sales are conducted in addition to ticket sales. The following table identifies revenue from the river barge concession and payment to the City.

Contract Year	Total Annual Revenue		Payment to City
	Barge Revenue	Retail & Adv. Revenue	
Year 1, 9/1/05-8/31/06	\$8,484,956	\$254,919	\$4,469,681
Year 2, 9/1/06-8/31/07	\$8,905,336	\$239,430	\$4,679,289
Year 3, 9/1/07-8/31/08	\$9,694,342	\$290,207	\$5,132,628
Year 4, 9/1/08-8/31/09	\$9,917,172	\$273,225	\$5,244,712
Year 5, 9/1/09-8/31/10	\$10,024,170	\$153,551	\$5,291,188
Year 6, 9/1/10-8/31/11	\$10,664,210	\$218,101	\$5,656,719
Year 7, 9/1/11-8/31/12	\$10,871,619	\$151,844	\$5,752,156
Year 8, 9/1/12-8/31/13	\$10,842,472	\$154,709	\$5,751,392

Year 9, 9/1/13-4/30/14	\$6,015,202	\$90,207	\$3,141,147
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The river barge concession operator donates toward a scholarship fund for area students, which is administered by the City of San Antonio. The following scholarship donations apply:

Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8
\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000

The following tables identify attendance by year and category of the river barge concession:

Contract Year	Adult	Adult Matinee	Local Resident	Child	Military	Senior Citizen
Year 1, 9/1/05-8/31/06	963,904	30,314	48,249	127,606	102,970	155,741
Year 2, 9/1/06-8/31/07	907,418	21,958	43,899	125,247	93,387	171,532
Year 3, 9/1/07-8/31/08	953,799	19,108	63,048	133,698	94,466	175,903
Year 4, 9/1/08-8/31/09	928,796	11,110	64,920	133,621	105,250	179,441
Year 5, 9/1/09-8/31/10	827,367	NA	79,651	123,437	127,402	187,647
Year 6, 9/1/10-8/31/11	891,287	NA	86,565	135,957	131,990	191,942
Year 7, 9/1/11-8/31/12	915,215	NA	100,668	139,222	111,954	188,664
Year 8, 9/1/12-8/31/13	901,437	NA	99,532	131,805	106,427	195,122
Year 9, 9/1/13-4/30/14	431,471	NA	62,940	61,584	60,940	115,331

Contract Year	1 Way Taxi Downtown	1 Day Pass Taxi Downtown	3 Day Pass Taxi Downtown	1 Day Pass Taxi Museum Reach	1 Day Pass Taxi Combination Museum Reach & Downtown	3 Day Pass Taxi Museum Reach
Year 1, 9/1/05-8/31/06	59,860	14,949	715	NA	NA	NA
Year 2, 9/1/06-8/31/07	45,820	15,073	854	NA	NA	NA
Year 3, 9/1/07-8/31/08	48,585	16,336	770	NA	NA	NA
Year 4, 9/1/08-8/31/09	35,655	16,226	518	5,089	12,418	7
Year 5, 9/1/09-8/31/10	23,325	16,807	656	5,397	27,142	49
Year 6, 9/1/10-8/31/11	25,086	16,605	1,123	3,448	34,186	47
Year 7, 9/1/11-8/31/12	27,367	16,924	1,035	1,158	35,522	39

Year 8, 9/1/12-8/31/13	27,737	16,630	1,139	1,087	34,910	93
Year 9, 9/1/13-4/30/14	12,379	7,941	486	396	18,994	60
Note: River Walk's Museum Reach is portion between Lexington and Grayson Street.						

The following table identifies the number of river barge charters by year:

Contract Year	# of Barge Charters
Year 1, 9/1/05-8/31/06	4,576
Year 2, 9/1/06-8/31/07	4,151
Year 3, 9/1/07-8/31/08	3,708
Year 4, 9/1/08-8/31/09	3,197
Year 5, 9/1/09-8/31/10	3,395
Year 6, 9/1/10-8/31/11	3,459
Year 7, 9/1/11-8/31/12	3,293
Year 8, 9/1/12-8/31/13	3,466
Year 9, 9/1/13-4/30/14	2,407

The following tables identify the river barge rates, which have been adjusted per authority of the San Antonio City Council:

Effective Date	Adult	Adult Matinee	Local Resident	Child	Military	Senior
9/1/2005	\$6.50	\$4.50	\$4.50	\$1.50	\$4.50	\$4.50
1/1/2007	\$7.75	\$5.75	\$5.00	\$2.00	\$5.00	\$5.00
6/1/2009	\$8.25	Deleted	\$6.00	\$2.00	\$6.00	\$6.00

Effective Date	1 Way Taxi Downtown	1 Day Pass Taxi Downtown	3 Day Pass Taxi Downtown	1 Day Pass Taxi Museum Reach	1 Day Pass Taxi Combination Museum Reach & Downtown	3 Day Pass Taxi Museum Reach
9/1/2005	\$4.00	\$10.00	\$25.00	NA	NA	NA
1/1/2007	\$4.00	\$10.00	\$25.00	NA	NA	NA
6/1/2009	\$5.00	\$10.00	\$25.00	\$10.00	\$15.00	\$25.00

The following tables identify the rates for consignment/incentive tickets (sold in blocks of 25), which have been adjusted per authority of the San Antonio City Council:

Effective Date	Adult	Adult Matinee	Local Resident	Child	Military	Senior
9/1/2005	\$146.25	\$101.25	\$101.25	\$33.75	\$101.25	\$101.25
1/1/2007	\$174.38	\$129.38	\$112.50	\$45.00	\$112.50	\$112.50
6/1/2009	\$185.63	NA	\$135.00	\$45.00	\$135.00	\$135.00

Effective Date	1 Way Taxi Downtown	1 Day Pass Taxi Downtown	3 Day Pass Taxi Downtown	1 Day Pass Taxi Museum Reach	1 Day Pass Taxi Combination Museum Reach & Downtown	3 Day Pass Taxi Museum Reach
9/1/2005	\$90.00	\$225.00	\$562.50	NA	NA	NA
1/1/2007	\$90.00	\$225.00	\$562.50	NA	NA	NA
6/1/2009	\$112.50	\$225.00	\$562.50	\$225.00	\$337.50	\$562.50

The table below identifies rental rates to charter river barges.

Rental Rates to Charter River Barges			
	Peak Time	Non-Peak Time	Non-Peak Time
Effective Date	General Public	General Public	Schools & Senior Citizen Groups
9/1/2005	\$125.00 per hour	\$100.00 per hour	\$50.00 per hour
Peak hours are after 5:30 pm each weekday and all day on weekends and City holidays.			

The table below identifies utility charges from City to river barge operator.

Contract Year	Barge Operator's Natural Gas Costs as Charged by City*	Barge Operator's Electric Costs as Charged by City**
Year 1, 9/1/05-8/31/06	\$38,646.99	\$25,875.05
Year 2, 9/1/06-8/31/07	\$34,607.17	\$25,651.47
Year 3, 9/1/07-8/31/08	\$39,549.68	\$27,643.47
Year 4, 9/1/08-8/31/09	\$35,700.72	\$28,796.39
Year 5, 9/1/09-8/31/10	\$33,873.38	\$29,316.69
Year 6, 9/1/10-8/31/11	\$35,935.28	\$26,109.08
Year 7, 9/1/11-8/31/12	\$36,737.72	\$23,872.33
Year 8, 9/1/12-8/31/13	\$30,421.87	\$24,648.76
Year 9, 9/1/13-4/30/14	\$21,023.81	\$16,383.17
*Natural gas costs are 100% from Nueva Street Marina meter. **Electric utility costs are 50% from Nueva Street Marina meter and 50% from International Center Marina.		

004 - SCOPE OF SERVICE

The operator shall conduct the river barge concession to ensure the River Walk remains a “must see” tourist destination that enhances San Antonio’s image while balancing the requirement to maximize revenues and provide affordable rates. The operator of the river barge concession will bear the overall responsibility for the ownership, management, and day-day operation of river barges and river barge concession on the San Antonio River between the Nueva Street Marina and the turnaround basin located just south of Grayson Street bridge, which shall include:

- River barge tour services
- River barge charters
- River barge taxi service
- Retail sales (may include consumables and merchandise)

In addition, the operator shall provide regularly scheduled, reliable, and affordable barge service that shall serve as a legitimate transportation option linking downtown to Museum Reach destinations and residential sites.

The City shall have no direct supervision or obligation to the employees of the operator. The operator shall operate upon its own credit, maintain a good credit rating as determined by the City, and provide a performance guarantee acceptable to the City for the term of the agreement in an amount equal to the minimum annual guarantee.

The operator shall provide high quality customer service, financial accountability and stability, operational safety and reliability, and ethical business practices throughout the term of the agreement.

The operator of the river barge concession shall offer superior transportation and entertainment services to San Antonio visitors and residents while providing excellent customer service and boosting the City’s reputation as a leading destination.

Operating Information & Requirements.

- A. A maximum of forty-four (44) watercraft may be proposed for use in support of the river barge concession. A maximum of three (3) watercraft may be proposed for maintenance support.
- B. The maximum acceptable size of watercraft for the river barge concession operation is 24’ long and 9’ wide. The height of watercraft shall accommodate safe passage for passengers and watercraft under all structures that cross the river. The City shall not alter any structure that crosses the river to accommodate watercraft designs.
- C. A minimum of ten (10) river barges must be available for charter during all peak hours of operation and a minimum of three (3) river barges must be available during all other operating hours. Peak hours shall be Saturdays, Sundays, City holidays, and after 5:30 p.m. any other day.
- D. Customers must be able to reserve charter barges no less than twelve (12) months in advance of the date of use.
- E. Each day after 12:00 p.m. a minimum of two (2) watercraft must be dedicated to river taxi service; each day prior to 12:00 p.m. a minimum of one (1) watercraft must be dedicated to river taxi service.
- F. The operator shall be assigned space in the International Center Marina at 203 S. St. Mary’s Street and in the Nueva Street Marina at 202 E. Nueva Street for purposes of mooring, maintaining, and/or servicing barges.
- G. All barges to be operated on the San Antonio River as part of the proposed agreement will require approval from the Office of Historic Preservation and/or the Historic & Design Review Commission.
- H. All signs to be erected by operator must be approved in writing by the City prior to installation. No advertising, signs, posters, or display advertising by renters of barges shall be permitted without written City approval. A small, non-commercial, informational sign may be placed on chartered barges to identify such boats as chartered for a specific group with the name of the firm, organization, or entity sponsoring the charter.
- I. The operator shall be responsible for 100% of utility costs (except water) at the Clearwater Ticket Station (near Rivercenter Mall) and the Historia Ticket Station (near Hilton Palacio del Rio Hotel).
- J. The operator shall be responsible for 50% of monthly electric costs at the International Center Marina. The operator shall be responsible for 50% of the monthly electric costs and 100% of the monthly natural gas costs at the Nueva Street Marina. However, if the operator utilizes and recharges electric-powered watercraft at the marinas, the utility percentages for which the operator is responsible shall be adjusted.
- K. In addition to space for the operator’s watercraft at both marinas, the City shall provide the following at the Nueva Street Marina for use by the operator: 11’ x 7’ mechanic office, 24’ x 23’ work area, 12’ x 11’ parts room, 32’ x 18’ paint booth, 32’ x 18’ boat preparation booth, 12’ x 20’ mechanic office, 22’ x 12’ motor storage cage, 12’ x 8’ supply cage, 15’ x 8’ dispatch office, and 22’ x 7’ supervisor office. At the International Center Marina, the following shall be made available for use by the operator: 11’ x 13’ operations office, 24’ x 14’ enclosed storage space, and 14’ x 13’ enclosed storage space.
- L. The City shall provide seven (7) free parking spaces to the operator at the Nueva Street Marina.

- M. The operator shall cooperate with the City and special event providers to accommodate activities on both the San Antonio River and River Walk. A minimum of twenty-two (22) events shall be held annually on the San Antonio River and River Walk, including parades, festivals, and arts & crafts shows.
- N. San Antonio Park Police patrol the River Walk 24/7 and patrol both marinas from 10 p.m. until 7 a.m. daily.
- O. The operator must provide a ticketing system and cash management system that integrates with a point of sale accounting system.
- P. Operator's retail sales of any and all products, merchandise, gifts, souvenirs, snacks, and/or beverages shall be subject to City approval. Operator shall obtain City's written approval for all items to be sold.
- Q. The operator shall comply with all applicable City, State, and Federal ordinances, laws, and regulations.
- R. The operator shall implement a recycling program upon the commencement of river barge operations and maintain the program throughout the contract term.
- S. The City encourages low emission propulsion sources for use with all proposed watercraft. Compressed natural gas (CNG) powers the current operator's river barges and is dispensed from the City-owned CNG compressor station at the Nueva Street Marina. Respondents proposing alternate propulsion sources will be responsible for all costs related to the support of same, including capital improvements, if applicable. All respondents should be prepared to demonstrate their propulsion source.
- T. The operator may provide complimentary or reduced rates for promotional, marketing, or special events that shall not exceed \$100,000.00 in total rate value each calendar year. \$50,000.00 annually in concession services value shall be reserved for the City's use in promotional, marketing, or special events activities free of charge to the City, and all usage by the City must be approved and scheduled through the Director of the Center City Development and Operations Department with the operator no less than 48 hours prior to river barge need date. Any unused portion of the City's annual \$50,000.00 concession service funds shall carry over and be added to the subsequent year's concession service fund balance, except at the end of Years 5 and 10 when unused concession service funds shall be paid to the City within 30 calendar days of the end of the contract year.
- U. The operator shall conduct river barge tour and taxi services everyday of the year with minimum hours of operation from 9 a.m. until 10 p.m. unless river conditions, weather, or special events make doing so unfeasible. The operator shall offer charter services everyday of the year with minimum hours of operation from 8 a.m. until 10 p.m.
- V. River barge tours shall be no less than 35 minutes.
- W. River Walk Capital Improvement Fee: With each ticket sold for a tour or a taxi ride operator shall collect a River Walk Capital Improvement Fee of \$0.50 per ticket for Contract Years 1 through 5 and \$0.75 per ticket for Contract Years 6 through 10. With each barge charter rental, operator shall collect a River Walk Capital Improvement Fee of \$20 for Contract Years 1 through 5 and \$30 for Contract Years 6 through 10. Operator shall pay such funds collected, less taxes if any, to City along with its monthly Concession Fee payment on the 10th of each month of the Contract Term. Operator shall not advertise the collection of this fee on any signage or tickets sold or in any other manner but shall collect it as part of a combined charge for the services being provided.

005 - ADDITIONAL REQUIREMENTS

Proposal Bond.

Respondent must submit a Proposal Bond, in a form acceptable to City, made payable to the City of San Antonio, executed by a corporate surety acceptable to the City who is licensed pursuant to the Texas Insurance Code and listed on the United States Department of the Treasury's Listing of Approved Sureties (Dept. Circular 570) in the amount of **\$25,000.00**. The Proposal Bond shall be valid for 180 calendar days following the deadline for submission of proposals. The Proposal Bond must be accompanied by an original signed and notarized Power-of-Attorney bearing the seal of the issuing surety company and reflecting that the signatory to the bond is a designated Attorney-in-Fact. If Respondent is not selected, the City will not collect on the bond, but will keep the original document pursuant to the Local Government Records Act and applicable retention schedule.

Proposal bond must accompany the "original" proposal. Any proposals received without a Proposal Bond will be disqualified from consideration for award.

Performance Guarantee.

If selected for contract award, Respondent shall provide a letter of credit or performance bond made payable to the City of San Antonio in an amount equal to the Respondent's minimum annual payment guarantee and in a form acceptable to the City. If a performance bond is the chosen security instrument, the performance bond shall be executed by a corporate surety acceptable to City who is licensed pursuant to the Texas Insurance Code and listed on the United States Department of the Treasury's Listing of Approved Sureties (Dept. Circular 570) **in the amount equal to the Respondent's minimum annual payment guarantee**. Said bond must be in a form acceptable to City. Said bond shall further provide that the surety shall indemnify the obligee for all damages or losses resulting from the

principal's default. Said bond shall further guarantee the principal's performance of all terms and obligations under this contract. Said performance bond must have attached a Power of Attorney as evidence of the authority of the person executing the bond to bind the surety. The performance bond must clearly and prominently display on the bond or on an attachment to the bond: (1) the name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent; or (2) the toll-free telephone number maintained by the Texas Department of Insurance pursuant to §521.051, Texas Insurance Code, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number. The bond or letter of credit must be executed and delivered to City no later than 30 calendar days prior to commencement of this contract.

006 - TERM OF CONTRACT

The anticipated term of the proposed contract is ten (10) years, beginning October 1, 2015 and ending September 30, 2025.

007 - PRE-SUBMITTAL CONFERENCE & SITE TOURS

A Pre-Submittal Conference will be held in the C Room of the Municipal Plaza Building, 114 W. Commerce, San Antonio, TX 78205, beginning at 9:00 a.m., local time, on Tuesday, July 15, 2014. Respondents are encouraged to prepare and submit their questions in writing seven (7) calendar days in advance of the Pre-Submittal Conference in order to expedite the proceedings. City's responses to questions received by this due date may be distributed at the Pre-Submittal Conference and posted with this solicitation. Attendance at the Pre-Submittal Conference is optional, but highly encouraged. A Site Tour of both marinas will immediately follow the Pre-Submittal Conference. One (1) additional Site Tour of both marinas will be conducted on Wednesday, July 30, 2014, beginning at 9:00 a.m., local time, from front entrance at 202 E. Nueva Street.

The Municipal Plaza Building is wheelchair accessible. The accessible entrance is located at the building's east-facing door onto Main Plaza. Accessible parking spaces are located on the north side of the City Hall Building, 100 Military Plaza. Auxiliary aids and services are available upon request, including interpreters for the Deaf, which must be requested at least 48 hours prior to the meeting. For assistance, call (210) 207-7245 or 711 Texas Relay Service for the Deaf.

Any oral response given at the Pre-Submittal Conference and/or Site Tour(s) that is not confirmed in writing and posted with this solicitation shall not be official or binding on the City. Only written responses shall be official and all other forms of communication with any officer, employee or agent of the City shall not be binding on the City. Interested parties are encouraged to resubmit their questions in writing, to the City Staff person identified in the Restrictions on Communication section, after the conclusion of the Pre-Submittal Conference.

008 - PROPOSAL REQUIREMENTS

Respondent's Proposal shall include the following items in the following sequence, noted with the appropriate heading as indicated below. If Respondent is proposing as a team or joint venture, provide the same information for each member of the team or joint venture.

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EXECUTIVE SUMMARY. The summary shall highlight the key points and strengths of the proposal, including challenges perceived by Respondent and their solutions. Executive Summary shall not exceed two (2) pages.

GENERAL INFORMATION FORM. Use the Form found in this RFP as Attachment A, Part One. Response shall not exceed ten (10) pages.

EXPERIENCE AND FINANCIAL CAPABILITY. Use the Form found in this RFP as Attachment A, Part Two. Response shall not exceed fifteen (10) pages.

QUALITY OF PROPOSAL. Use the Form found in this RFP as Attachment A, Part Three. Response shall not exceed thirty-five (40) pages.

ECONOMIC TERMS. Use the Economic Terms Schedule that is found in this RFP as Attachment B.

CONTRACTS DISCLOSURE FORM. Instructions regarding Contracts Disclosure Form are in RFP Attachment C and restated below:

<https://www.sanantonio.gov/eforms/atty/ContractsDisclosureForm.pdf>

Instructions for completing the Contracts Disclosure form:

Download form and complete all fields. All fields must be completed prior to submitting the form.

Click on the "Print" button and place copy in your proposal as indicated in the Proposal Checklist.

LITIGATION DISCLOSURE FORM. Complete and submit the Litigation Disclosure Form, found in this RFP as Attachment D. If Respondent is proposing as a team or joint venture, then all persons or entities who will be parties to the contract (if awarded) shall complete and return this form.

SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) PROGRAM FORM(S)
Complete, sign and submit any and all SBEDA form(s), found in this RFP as Attachment E.

LOCAL PREFERENCE PROGRAM (LPP) ORDINANCE IDENTIFICATION FORM. Complete, sign, and submit LPP Identification Form found in this RFP as Attachment F.

VETERAN-OWNED SMALL BUSINESS (VOSB) PREFERENCE PROGRAM IDENTIFICATION FORM. Complete, sign, and submit VOSB Identification Form found in this RFP as Attachment G.

PROPOSAL BOND. Submit proposal bond payable to the City of San Antonio in the amount of \$25,000.00. Proposal Bond must be included with your "original" response only, copies are not necessary. See RFP Section 005 for additional requirements regarding Proposal Bond.

PROOF OF INSURABILITY. Submit a letter from insurance provider stating provider's commitment to insure the Respondent for the types of coverages and at the levels specified in RFP Exhibit 15.2 if awarded a contract in response to this RFP. Respondent shall also submit a copy of their current insurance certificate.

FINANCIAL INFORMATION. Due to the anticipated investment and length of resultant contract between the parties, submittal of audited financial statements, for the most recent year is preferred. In the event audited financial statements are not available, state the reason why. If audited financial statements are not available, respondents may submit other financial statement(s) or documentation, for the same one (1) year period, such as a Trial Balance Income Statement along with the most recent Annual Tax Submission that validates and ensures the long term financial viability of the organization. Failure to provide requested information may impact your firm's final score.

SIGNATURE PAGE. Respondent must complete, sign and submit the Signature Page found in this RFP as Attachment H. The Signature Page must be signed by a person, or persons, authorized to bind the entity, or entities, submitting the proposal. Proposals signed by a person other than an officer of a corporate respondent or partner of partnership respondent shall be accompanied by evidence of authority.

PROPOSAL CHECKLIST. Complete and submit the Proposal Checklist found in this RFP as Attachment I.

Respondent is expected to examine this RFP carefully, understand the terms and conditions for providing the services listed herein and respond completely. FAILURE TO COMPLETE AND PROVIDE ANY OF THESE PROPOSAL REQUIREMENTS MAY RESULT IN THE RESPONDENT'S PROPOSAL BEING DEEMED NON-RESPONSIVE AND THEREFORE DISQUALIFIED FROM CONSIDERATION.

009 - CHANGES TO RFP

Changes to the RFP, made prior to the due date for proposals shall be made directly to the original RFP. Changes are captured by creating a replacement version each time the RFP is changed. It is Respondent's responsibility to check for new versions until the proposal due date. City will assume that all proposals received are based on the final version of the RFP as it exists on the day proposals are due.

No oral statement of any person shall modify or otherwise change or affect the terms, conditions or specifications stated in the RFP.

010 - SUBMISSION OF PROPOSAL

Hard Copy Submission.

Respondent shall submit one (1) original proposal, signed in ink and clearly marked "ORIGINAL," ten (10) proposal copies, and one (1) copy of the proposal on compact disk (CD) containing an Adobe PDF version of the entire proposal. All documents shall be placed within a sealed package clearly marked on the front of the package the project name, "River Barge Concession."

Proposals must be received in the City Clerk's Office no later than 4:00 p.m., local time, on Monday, September 15, 2014 at the address below. Any proposal or modification received after this time shall not be considered, and will be returned, unopened to the Respondent. Respondents should note that delivery to the P.O. Box address in a timely manner does not guarantee its receipt in the City Clerk's Office by the deadline for submission. Therefore, Respondents should strive for early submission to avoid the possibility of rejection for late arrival and/or deliver directly to the City Clerk's Office (physical address below).

Mailing Address:

Office of the City Clerk
Attn: River Barge Concession
P.O. Box 839966
San Antonio, Texas 78283-3966

Physical Address:

Office of the City Clerk
Attn: River Barge Concession
100 Military Plaza
2nd Floor, City Hall San Antonio, Texas 78205

Proposals sent by facsimile or email will not be accepted.

Proposal Format. Each proposal shall be typewritten, single spaced and submitted on 8 ½" x 11" white paper. Proposals may be placed inside a three ring binder or other securely bound method. The use of recycled paper and materials is encouraged. Unnecessarily elaborate brochures, artwork, bindings, visual aids, expensive paper or other materials beyond that sufficient to present a complete and effective submission are not required. Font size shall be no less than 12-point type. All pages shall be numbered and may be printed on both sides. Margins shall be no less than 1" around the perimeter of each page. Websites, or URLs shall not be submitted in lieu of the printed proposal. Each proposal must include the sections and attachments in the sequence listed in the RFP Section 008, Proposal Requirements, and each section and attachment must be indexed and divided by tabs and indexed in a Table of Contents page. Failure to meet the above conditions may result in disqualification of the proposal or may negatively affect scoring.

Modified Proposals. Proposals may be modified provided such modifications are received prior to the due date for submission of proposals and submitted in the same manner as original proposal. For hard copy proposals, provide a cover letter with the proposal, indicating it is a modified proposal and that the Original proposal is being withdrawn.

Correct Legal Name.

Respondents who submit proposals to this RFP shall correctly state the true and correct name of the individual, proprietorship, corporation, and /or partnership (clearly identifying the responsible general partner and all other partners who would be associated with the contract, if any). No nicknames, abbreviations (unless part of the legal title), shortened or short-hand, or local "handles" will be accepted in lieu of the full, true and correct legal name of the entity. These names shall comport exactly with the corporate and franchise records of the Texas Secretary of State and Texas Comptroller of Public Accounts. Individuals and proprietorships, if operating under other than an individual name, shall match with exact Assumed Name filings. Corporate Respondents and limited liability company Respondents shall include the 11-digit Comptroller's Taxpayer Number on the General Information Form found in this RFP as Attachment A.

If an entity is found to have incorrectly or incompletely stated its name or failed to fully reveal its identity on the General Information form, the Director of Center City Development and Operations shall have the discretion, at any point in the contracting process, to suspend consideration of the proposal.

Firm Offer. All provisions in Respondent's proposal, including any estimated or projected costs, shall remain valid for one hundred and eighty (180) calendar days following the deadline date for submissions or, if a proposal is accepted, throughout the entire term of the contract.

Confidential or Proprietary Information. All proposals become the property of the City upon receipt and will not be returned. Any information deemed to be confidential by Respondent should be clearly noted; however, City cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Respondent may not be considered confidential under Texas law, or pursuant to a Court order.

Cost of Proposal. Any cost or expense incurred by the Respondent that is associated with the preparation of the Proposal, attendance at the Pre-Submittal Conference and Site Tours, or during any phase of the selection process, shall be borne solely by Respondent.

011 - RESTRICTIONS ON COMMUNICATION

Respondents are prohibited from communicating with: 1) elected City officials and their staff regarding the RFP or proposals from the time the RFP has been released until the contract is posted as a City Council agenda item; and 2) City employees from the time the RFP has been released until the contract is awarded. These restrictions extend to "thank you" letters, phone calls, emails and any contact that results in the direct or indirect discussion of the RFP and/or proposal submitted by Respondent. Violation of this provision by Respondent and/or its agent may lead to disqualification of Respondent's proposal from consideration.

Exceptions to the Restrictions on Communication with City employees include:

Respondents may ask verbal questions concerning this RFP at the Pre-Submittal Conference.

Respondents may submit written questions concerning this RFP to the Staff Contact Person listed below until 4:00 p.m., local time, on Friday, August 15, 2014. Questions received after the stated deadline will not be answered. All questions shall be sent by e-mail. Questions submitted and the City's responses will be posted with this solicitation.

Laura Sambrano, Procurement Specialist III
City of San Antonio, Finance Department – Purchasing Division
laura.sambrano@sanantonio.gov

Respondents and/or their agents are encouraged to contact the Small Business Office of the International and Economic Development Department for assistance or clarification with issues specifically related to the City's Small Business Economic Development Advocacy (SBEDA) Program policy and/or completion of the SBEDA form(s). The point of contact is Edson Ives Zavala. Mr. Zavala may be reached by telephone at (210) 207-3962 or by e-mail at Edson.Zavala@sanantonio.gov. This exception to the restriction on communication does not apply, and there is no contact permitted to the Small Business Office regarding this solicitation, after the solicitation closing date. Mr. Zavala may be contacted at any time prior to the solicitation closing date.

Respondents may provide responses to questions asked of them by the Staff Contact Person after proposals are received and opened. During interviews, if any, verbal questions and explanations will be permitted. If interviews are conducted, Respondents shall not bring lobbyists. The City reserves the right to exclude any persons from interviews as it deems in its best interests.

Upon completion of the evaluation process, Respondents shall receive a notification letter indicating the recommended firm and anticipated City Council agenda date. Respondents desiring a review of the solicitation process may submit a written request no later than seven (7) calendar days from the date notification letter was sent. The notification letter will indicate the name and address for submission of requests for review.

City reserves the right to contact any Respondent to negotiate if such is deemed desirable by City. Such negotiations, initiated by City staff persons, shall not be considered a violation by Respondent of this section.

012 - EVALUATION CRITERIA

The City will conduct a comprehensive, fair and impartial evaluation of all proposals received in response to this RFP. The City may appoint a selection committee to perform the evaluation. Each Proposal will be analyzed to determine

overall responsiveness and qualifications under the RFP. Criteria to be evaluated may include the items listed below. The selection committee may select all, some or none of the Respondents for interviews. If the City elects to conduct interviews, Respondents may be interviewed and re-scored based upon the same criteria. The City may also request additional information from Respondents at any time prior to final approval of a selected Respondent. The City reserves the right to select one, or more, or none of the Respondents to provide services. Final approval of a selected Respondent is subject to the action of the City of San Antonio City Council.

Evaluation Criteria:

A. Experience and Financial Capability (30 points)

B. Quality of Proposal (25 points)

C. Economic Terms (20 points)

- Percentage payment to City, 15 points
- Minimum annual guarantee, 5 points

D. SBEDA Program

Small Business Enterprise (SBE) - Prime Contract Program, 10 points

Certified SBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area responding to this solicitation as Prime Contractors proposing at least 51% SBE participation (prime and/or subcontractor) will receive ten (10) evaluation criteria percentage points.

No evaluation criteria percentage points will be awarded to non-SBE Prime Contractors through subcontracting to certified SBE firms.

SUBCONTRACTING REQUIREMENT:

*SBE Subcontracting Program - **Subcontract at least fifteen percent (15%) of its prime contract value** to certified SBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA).

*M/WBE Subcontracting Program - **Subcontract at least ten percent (10%) of its prime contract value** to certified SBE firms headquartered or have a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA).

***No evaluation criteria percentage points will be awarded for subcontracting goals. However, failure to meet these requirements will deem your proposal unresponsive.**

E. Local Preference Program (10 points)

10 evaluation points for local businesses headquartered within the incorporated San Antonio city limits,

OR;

5 evaluation points for a business with an office within the incorporated limits of the City, which has been established for at least one year, from which at least 100% of its employees OR at least 20% of its total full-time, part-time and contract employees are regularly based; and from which a substantial role in the business's performance of a commercially useful function or a substantial part of its operations is conducted by those employees.

F. Veteran Owned Small Business Preference Program (VOSBPP) Ordinance - 5 points

5 evaluation points for a prime business that is certified as a veteran-owned small business.

013 - AWARD OF CONTRACT AND RESERVATION OF RIGHTS

City reserves the right to award one, more than one or no contract(s) in response to this RFP.

The Contract, if awarded, will be awarded to the Respondent(s) whose Proposal(s) is deemed most advantageous to City, as determined by the selection committee, upon approval of the City Council.

City may accept any Proposal in whole or in part. If subsequent negotiations are conducted, they shall not constitute a rejection or alternate RFP on the part of City. However, final selection of a Respondent is subject to City Council approval.

City reserves the right to accept one or more proposals or reject any or all proposals received in response to this RFP, and to waive informalities and irregularities in the proposals received. City also reserves the right to terminate this RFP, and reissue a subsequent solicitation, and/or remedy technical errors in the RFP process.

City will require the selected Respondent(s) to execute a contract with the City, prior to City Council award. No work shall commence until City signs the contract document(s) and Respondent provides the necessary evidence of insurance as required in this RFP and the Contract. Contract documents are not binding on City until approved by the City Attorney. In the event the parties cannot negotiate and execute a contract within the time specified, City reserves the right to terminate negotiations with the selected Respondent and commence negotiations with another Respondent.

This RFP does not commit City to enter into a Contract, award any services related to this RFP, nor does it obligate City to pay any costs incurred in preparation or submission of a proposal or in anticipation of a contract.

If selected, Respondent will be required to comply with the Insurance and Indemnification Requirements established herein.

The successful Respondent must be able to formally invoice the City for services rendered, incorporating the SAP-generated contract and purchase order numbers that shall be provided by the City.

Conflicts of Interest. Respondent acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with City or any City agency such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: the City officer or employee; his parent, child or spouse; a business entity in which he or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; or a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

Respondent is required to warrant and certify that it, its officers, employees and agents are neither officials nor employees of the City, as defined in Section 2-42 of the City's Ethics Code. (Contracts Disclosure Form may be found online at <https://www.sanantonio.gov/eforms/atty/ContractsDisclosureForm.pdf>).

Independent Contractor. Respondent agrees and understands that, if selected, it and all persons designated by it to provide services in connection with a contract, are and shall be deemed to be an independent contractors, responsible for their respective acts or omissions, and that City shall in no way be responsible for Respondent's actions, and that none of the parties hereto will have authority to bind the others or to hold out to third parties, that it has such authority.

Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that persons, or their agents, who seek to contract for the sale or purchase of property, goods, or services with the City, shall file a completed conflict of interest questionnaire with the City Clerk not later than the 7th business day after the date the person: (1) begins contract discussions or negotiations with the City; or (2) submits to the City an application, response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with the City. The conflict of interest questionnaire form is available from the Texas Ethics Commission at <http://www.ethics.state.tx.us/forms/CIQ.pdf>. Completed conflict of interest questionnaire s may be mailed or delivered by hand to the Office of the City Clerk. If mailing a completed conflict of interest questionnaire, mail to: Office of the City Clerk, P.O. Box 839966, San Antonio, TX 78283-3966. If delivering a completed conflict of interest questionnaire, deliver to: Office of the City Clerk, City Hall, 2nd floor, 100 Military Plaza, San Antonio, TX 78205. Respondent should consult its own legal advisor for answers to questions regarding the statute or form.

014 - SCHEDULE OF EVENTS

Following is a list of **projected dates/times** with respect to this RFQ:

RFP Release Date	Sunday, June 15, 2014
Pre-Submittal Conference/Site Tour	Tuesday, July 15, 2014 at 9:00 a.m.
2 nd Scheduled Site Tour	Wednesday, July 30, 2014 at 9:00 a.m.
Final Questions Accepted	Friday, August 15, 2014 at 4:00 p.m.
Proposal Due	Monday, September 15, 2014 at 4:00 p.m.

015 - RFP EXHIBITS

RFP EXHIBIT 15.1

SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) PROGRAM

A. Solicitation Response and Contract Requirements and Commitment

Respondent understands and agrees that the following provisions shall be requirements of this solicitation and the resulting contract, if awarded, and by submitting its Response, Respondent commits to comply with these requirements. In the absence of a waiver granted by the SBO, failure of a Prime Contractor to commit in its response, through fully-documented and signed SBO-promulgated Subcontractor/Supplier Utilization Plan form, to satisfying the SBE subcontracting goal shall render its response NON-RESPONSIVE.

Waiver Request - A Respondent may request, for good cause, a full or partial Waiver of a **specified subcontracting goal** included in this solicitation by submitting the *Respondent Subcontracting Waiver Request* form (*which is available at <http://www.sanantonio.gov/edd/SmallBusiness>*) with its solicitation response. The Respondent's Waiver request must fully document subcontractor unavailability despite the Respondent's good faith efforts to comply with the goal. Such documentation shall include all good faith efforts made by Respondent including, but not limited to, which subcontractors were contacted (with phone numbers, e-mail addresses and mailing addresses, as applicable) and the method of contact. **Late Waiver requests will not be considered.**

Exception Request - A Respondent may, for good cause, request an Exception to the application of the SBEDA Program if the Respondent submits the *Exception to SBEDA Program Requirements Request* form (*available at <http://www.sanantonio.gov/edd/SmallBusiness>*) with its solicitation response. The Respondent's Exception request must fully document why: (1) the value of the contract is below the \$50,000 threshold for application of the SBEDA Program; or (2) no commercially-useful subcontracting opportunities exist within the contract scope of work; or (3) the type of contract is outside of the scope of the SBEDA Ordinance. **Late Exception Requests will not be considered.**

B. SBEDA Program

The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531 and as amended, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's Economic Development (EDD) website page and is also available in hard copy form upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the CITY pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

C. Definitions

Affirmative Procurement Initiatives (API) – Refers to various Small Business Enterprise, Minority Business Enterprise, and/or Women Business Enterprise ("S/M/WBE") Program tools and Solicitation Incentives that are used to encourage greater Prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE program tools, see Section III. D. of Attachment A to the SBEDA Ordinance.)

Certification or "Certified" – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, the City accepts any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in this Ordinance in Section III.E.6 of Attachment A.

Centralized Vendor Registration System (CVR) – a mandatory electronic system wherein the City requires all prospective Respondents and Subcontractors that are ready, willing and able to sell goods or services to the City to register. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

Commercially Useful Function – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE firms by CONTRACTOR to perform such “pass-through” or “conduit” functions that are not commercially useful shall be viewed by the CITY as fraudulent if CONTRACTOR attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE subcontractor or joint venture partner towards attainment of S/M/WBE utilization goals, and the CONTRACTOR and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

Evaluation Preference – an API that may be applied by the Goal Setting Committee (“GSC”) to Construction, Architectural & Engineering, Professional Services, Other Services, and Goods and Supplies contracts that are to be awarded on a basis that includes factors other than lowest price, and wherein responses that are submitted to the City by S/M/WBE firms may be awarded additional Points in the evaluation process in the scoring and ranking of their proposals against those submitted by other prime CONTRACTORS or Respondents.

Good Faith Efforts – documentation of the CONTRACTOR's or Respondent's intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the Respondent's commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office's directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor's posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of CONTRACTOR's Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

HUBZone Firm – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

Independently Owned and Operated – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

Individual – an adult person that is of legal majority age.

Industry Categories – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering (A&E), Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as “business categories.”

Minority/Women Business Enterprise (M/WBE) – firm that is certified as a Small Business Enterprise and also as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.

M/WBE Directory – a listing of minority- and women-owned businesses that have been certified for participation in the City's M/WBE Program APIs.

Minority Business Enterprise (MBE) – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified a Small Business Enterprise and also as being at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the CITY. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term “MBE” as used in this Ordinance is not inclusive of women-owned business enterprises (WBEs).

Minority Group Members – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:

African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.

Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.

Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

Originating Department – the CITY department or authorized representative of the CITY which issues solicitations or for which a solicitation is issued.

Payment – dollars actually paid to CONTRACTORS and/or Subcontractors and vendors for CITY contracted goods and/or services.

Points – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, and Other Services contracts (e.g., up to 10 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).

Prime Contractor – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City. For purposes of this agreement, this term refers to the CONTRACTOR.

Relevant Marketplace – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the MGT Studies, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

Respondent – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City. For purposes of this agreement, CONTRACTOR is the Respondent.

Responsible – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

Responsive – a firm's submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.

San Antonio Metropolitan Statistical Area (SAMSA) – also known as the Relevant Marketplace, the geographic market area from which the CITY's MGT Studies analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

SBE Directory - a listing of small businesses that have been certified for participation in the City's SBE Program APIs.

Significant Business Presence – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

Small Business Enterprise (SBE) – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

Small Business Office (SBO) – the office within the Economic Development Department (EDD) of the CITY that is primarily responsible for general oversight and administration of the S/M/WBE Program.

Small Business Office Manager – the Assistant Director of the EDD of the CITY that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager is also responsible for enforcement of contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

Small Minority Women Business Enterprise Program (S/M/WBE Program) – the combination of SBE Program and M/WBE Program features contained in the SBEDA Ordinance.

Subcontractor – any vendor or contractor that is providing goods or services to a Prime Contractor or CONTRACTOR in furtherance of the Prime Contractor's performance under a contract or purchase order with the City. A copy of each binding agreement between the CONTRACTOR and its subcontractors shall be submitted to the CITY prior to execution of this contract agreement and any contract modification agreement.

Suspension – the temporary stoppage of the SBE or M/WBE firm's beneficial participation in the CITY's S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7 of Attachment A to the SBEDA Ordinance, or the temporary stoppage of CONTRACTOR's and/or S/M/WBE firm's performance and payment under CITY contracts due to the CITY's imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

Subcontractor/Supplier Utilization Plan – a binding part of this contract agreement which states the CONTRACTOR's commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract agreement, and states the name, scope of work, and dollar value of work to be performed by each of CONTRACTOR's Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this agreement to be approved by the EDD Director or designee.

Women Business Enterprises (WBEs) - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being a Small Business Enterprise and that is at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term "WBE" as used in this Agreement is not inclusive of MBEs.

D. SBEDA Program Compliance – General Provisions

As CONTRACTOR acknowledges that the terms of the CITY's SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the CITY's SBEDA Policy & Procedure Manual are in furtherance of the CITY's efforts at economic inclusion and, moreover, that such terms are part of CONTRACTOR's scope of work as referenced in the CITY's formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. CONTRACTOR voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, CONTRACTOR further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. CONTRACTOR shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding CONTRACTOR's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subcontractors with this term;
2. CONTRACTOR shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of CONTRACTOR or its Subcontractors or suppliers;
3. CONTRACTOR shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;
4. CONTRACTOR shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to CONTRACTOR's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by CONTRACTOR to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by CONTRACTOR of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.
5. CONTRACTOR shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.
6. CONTRACTOR shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.
7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a CONTRACTOR's Subcontractor / Supplier Utilization Plan, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE or HUBZone subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the CONTRACTOR and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
8. CONTRACTOR acknowledges that the CITY will not execute a contract or issue a Notice to Proceed for this project until the CONTRACTOR and each of its Subcontractors for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System, and CONTRACTOR has represented to CITY which primary commodity codes each registered Subcontractor will be performing under for this contract.

E. SBEDA Program Compliance – Affirmative Procurement Initiatives

The CITY has applied the following contract-specific Affirmative Procurement Initiatives to this contract. CONTRACTOR hereby acknowledges and agrees that the selected API requirement shall also be extended to any change order or subsequent contract modification and, absent SBO's granting of a waiver, that its full compliance with the following API terms and conditions are material to its satisfactory performance under this Agreement:

SBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 7. (a), this contract is being awarded pursuant to the SBE Prime Contract Program, and as such, CONTRACTOR affirms that if it is presently certified as an SBE, CONTRACTOR agrees not to subcontract more than 49% of the contract value to a non-SBE firm; **and**

SBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 7. (e), this contract is being awarded pursuant to the SBE Subcontracting Program. CONTRACTOR agrees to subcontract at least **fifteen percent (15%)** of its prime contract value to certified SBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor / Supplier Utilization Plan that CONTRACTOR submitted to CITY with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified SBE Subcontractors to be used by CONTRACTOR on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE Subcontractor, and documentation including a description of each SBE Subcontractor's scope of work and confirmation of each SBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of CONTRACTOR to attain this subcontracting goal for SBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with the CITY, and may result in debarment from performing future CITY contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon SBE subcontracting goal, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law; **and**

MWBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 8. (d), this contract is being awarded pursuant to the M/WBE Subcontracting Program. CONTRACTOR agrees to subcontract at least **ten percent (10%)** of its prime contract value to certified M/WBE firms headquartered or have a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor / Supplier Utilization Plan that CONTRACTOR submitted to CITY with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified M/WBE Subcontractors to be used by CONTRACTOR on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each M/WBE Subcontractor, and documentation including a description of each M/WBE Subcontractor's scope of work and confirmation of each M/WBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of CONTRACTOR to attain this subcontracting goal for SBE or M/WBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with the CITY, and may result in debarment from performing future CITY contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon SBE or M/WBE subcontracting goals, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

Subcontractor Diversity: The City of San Antonio strongly encourages each bidder to be as inclusive as possible, and to reach out to all segments of the M/WBE community in its efforts to exercise good faith in achieving the SBE subcontractor goal of 15% and MWBE subcontractor goal of 10% that have been established for this contract. While the relative availability of ready, willing, and able firms within various ethnic and gender categories will vary significantly from contract to contract based upon the particular trades that are involved, overall in the San Antonio Other Services industry, as reflected in the City's Centralized Vendor Registration system for the month of March 2014, African-American owned firms represent approximately 2.04% of available subcontractors, Hispanic-American firms represent approximately 11.17%, Asian-American firms represent approximately 0.85%, Native American firms represent approximately 0.18%, and Women-owned firms represent approximately 4.94% of available other services subcontractors.

F. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, CONTRACTOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide

equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONTRACTOR's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. CONTRACTOR shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

G. Prompt Payment

Upon execution of this contract by CONTRACTOR, CONTRACTOR shall be required to submit to CITY accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the CONTRACTOR's reported subcontract participation is accurate. CONTRACTOR shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from CITY. In the event of CONTRACTOR's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to CONTRACTOR, and no new CITY contracts shall be issued to the CONTRACTOR until the CITY's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

H. Violations, Sanctions and Penalties

In addition to the above terms, CONTRACTOR acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;
2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;
3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;
4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and
5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

Any person who violates the provisions of this section shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions and remedies available under law including, but not limited to:

1. Suspension of contract;
2. Withholding of funds;
3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;
4. Refusal to accept a response or proposal; and
5. Disqualification of CONTRACTOR or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

RFP EXHIBIT 15.2

INSURANCE REQUIREMENTS

Prior to the commencement of any work under this Agreement, Respondent shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Center City Development and Operations Department, which shall be clearly labeled "River Barge Concession" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to City. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City's Center Development and Operations Department. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.

City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.

A Respondent's financial integrity is of interest to City; therefore, subject to Respondent's right to maintain reasonable deductibles in such amounts as are approved by City, Respondent shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Respondent's sole expense, insurance coverage written on an occurrence basis, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory \$500,000/\$500,000/\$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$5,000,000 per occurrence; \$5,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage f. \$100,000
4. Business Automobile Liability* a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Marine Protection & Indemnity**	\$5,000,000 per occurrence, or its equivalent in umbrella or excess liability coverage
6. Marine Hull Physical Damage	Actual Cash Value
7. Liquor Legal Liability***	\$5,000,000 per occurrence; \$5,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
* If Respondent owns or uses any automobiles in the operation of the Contract.	
**Coverage may also be provided by deleting the Watercraft Exclusion from the Commercial General Liability policy.	
*** Required if alcoholic beverages are	

sold. May be included under the Commercial General Liability policy, or as a stand alone.	
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Respondent agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Respondent herein, and provide a certificate of insurance and endorsement that name Respondent and City as additional insureds. Respondent shall provide City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

As they apply to the limits required by City, City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Respondent shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Respondent shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Center City Development and Operations Department
P.O. Box 839966
San Antonio, Texas 78283-3966

Respondent agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where City is an additional insured shown on the policy;

Workers' compensation and employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City; and

Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Respondent shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Respondent's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

In addition to any other remedies the City may have upon Respondent's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Respondent to stop work hereunder, and/or withhold any payment(s) which become due to Respondent hereunder until Respondent demonstrates compliance with the requirements hereof.

Nothing herein contained shall be construed as limiting in any way the extent to which Respondent may be held responsible for payments of damages to persons or property resulting from Respondent's or its subcontractors' performance of the work covered under this Agreement.

It is agreed that Respondent's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of City shall be limited to insurance coverage provided.

Respondent and any subcontractors are responsible for all damage to their own equipment and/or property.

RFP EXHIBIT 15.3

INDEMNIFICATION

RESPONDENT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to RESPONDENT' activities under this Agreement, including any acts or omissions of RESPONDENT, any agent, officer, director, representative, employee, respondent or subcontractor of RESPONDENT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, it s officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT RESPONDENT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. RESPONDENT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or RESPONDENT known to RESPONDENT related to or arising out of RESPONDENT' activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at RESPONDENT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving RESPONDENT of any of its obligations under this paragraph.

RFP EXHIBIT 15.4

SAMPLE CONTRACT

DOWNTOWN SAN ANTONIO RIVER CONCESSION CONTRACT

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DOWNTOWN SAN ANTONIO RIVER BARGE CONCESSION CONTRACT

This CONTRACT IS made by and between the CITY OF SAN ANTONIO (hereinafter called ("CITY")), acting by and through its City Manager pursuant to Ordinance No. _____ and. (hereinafter called "CONTRACTOR"), WITNESSTH:

ARTICLE I.

TERM

- 1.1 The term of this CONTRACT shall be for ten (10) years, with the Effective Date being October 1, 2015, and ending on September 30, 2025.
- 1.2 Should CONTRACTOR holdover the Concession, or any part thereof, after the expiration or termination of the term of this contract, unless otherwise agreed in writing, such holding over shall constitute and be construed as a CONTRACT from month to month only. The inclusion of the preceding sentence shall not be construed as CITY'S consent for the CONTRACTOR to holdover.

ARTICLE II.

PAYMENT TO CITY

- 2.1 CONTRACTOR shall pay to CITY a CONCESSION FEE based on the percentages of ADJUSTED GROSS SALES ("AGS") indicated in this Article, provided, however, that payments to CITY shall not be less than _____ per Contract Year. CONTRACTOR shall pay the CONCESSION FEE in twice monthly payments as follows: on the 25th of each month during the term of the contract, CONTRACTOR shall pay CITY \$250,000.00 as a partial payment of the CONCESSION FEE for such month and on the 10th day of the succeeding month CONTRACTOR shall pay CITY the balance of the percentage payment due from the preceding month's business activity. The payment on the 10th shall be accompanied by a report of monthly AGS in a form prescribed by the DIRECTOR, Department of FINANCE.
- 2.2 CONCESSION FEE PERCENTAGES:
 - 2.2.1 TOURS, CHARTERS AND TAXI SERVICES: CONTRACTOR agrees to pay to CITY a CONCESSION FEE of _____% of its ADJUSTED GROSS SALES of or on all Tours, Charters and Taxi services provided under this CONTRACT.
 - 2.2.2 MERCHANDISE: _____%
 - 2.2.3 FOOD AND BEVERAGE: _____%
 - 2.2.4 ADVERTISING: _____%
 - 2.2.5 ALL OTHER SALES: _____%

This payment based on the percentage of AGS indicated above is based on AGS accumulated over a period of one (1) Contract Year. Beginning on the first (1st) day of each new Contract Year, the accumulation of AGS and the payment of specified percentage thereon shall begin anew.

- 2.3 ADJUSTED GROSS SALES ("AGS") shall mean payments received, less sales tax and a credit for refunds, whether in cash or in kind, (subject to the provisions of Paragraph 12.3) from sales of barge rides as further detailed in paragraph 12.1, sales of merchandise, sales advertising, or sales of any other product or service related to this Contract, by CONTRACTOR or an authorized subcontractor to customers, net of sales taxes or refunds. Products and services related to this Contract shall include (1) any sales of Concession Services to include all sales of river tours, river taxi services, river barge rentals, and any other service provided by CONTRACTOR from the Concession Area (2) any and all sales by CONTRACTOR from stores located in the DOWNTOWN Business District, as currently defined in the CITY Code, which are owned, operated or controlled by CONTRACTOR or which are substantially branded or marketed as an operation of the River Walk barge tour concessions operator; (3) catalogue, phone or Internet sales which are marketed as sales by the River Walk barge tour concessions operator and (4) any and all sales, regardless of where located, of branded merchandise related to the River Walk, river tour, dinner barge, river taxi.

The value of "in kind" payments shall be deemed to be the value of the goods or services provided by CONTRACTOR or any authorized subcontractor to the customer. If the goods or services are of the type for which a regulated fee has been established, then said fee shall be the value for such "in kind" payments.

- 2.4 River Walk Capital Improvement Fee: With each ticket sold for a Tour or a Taxi ride CONTRACTOR shall collect a River Walk Capital Improvement Fee of \$0.50 per ticket for Contract Years 1 through 5 and \$0.75 per ticket for Contract Years 6 through 10. With each Charter Rental, CONTRACTOR shall collect a River Walk Capital Improvement Fee of \$20 for Contract years 1 through 5 and \$30 for Contract Years 6 through 10. CONTRACTOR shall pay 100% of all such funds collected to CITY along with its monthly Concession Fee payment on the 10th of

each month of the Contract Term. Contractor shall not advertise the collection of this fee on any signage or tickets sold or in any other manner but shall collect it as part of a combined charge for the services being provided.

2.5 Payments to CITY shall be adjusted as follows in the event barge operation is rendered impossible by drainage of the river:

2.5.1 For each day the Main Channel of the San Antonio River, from the Nueva Street Marina to the turnaround basin located just south of Grayson Street is drained in excess of eleven (11) days per Contract Year, CONTRACTOR shall deduct \$565.00 from the payment due to CITY. Such deduction shall be made from the payment made for the months during which the Contract Year's accumulative downtime in excess of the allowable amount occurred. In addition to the deductions allowed above, in the event that the North Channel is drained in excess of thirty days CONTRACTOR shall have the right to extend this CONTRACT one day for each day in excess of thirty (30) days per Contract Year the North Channel is drained. In the event the North Channel is drained in excess of ninety (90) days per Contract Year, CONTRACTOR shall have the right to terminate this CONTRACT upon written notice to CITY. Such termination by CONTRACTOR shall release CONTRACTOR from further liability herein, except for Concession Fees owing to CITY for operations prior to the effective date of termination.

2.5.2 For each day all of the reaches of the San Antonio River behind the two flood control gates (the "River Bend") is drained in excess of eleven (11) days per Contract Year, CONTRACTOR shall deduct \$5,085.00 from the payment due to CITY. Such deduction shall be made from the payment made for the month(s) during which the Contract Year's accumulative downtime in excess of the allowable amount occurred. In addition to the deductions allowed above, in the event that the River Bend is drained in excess of thirty 30 days CONTRACTOR shall have the right to extend this CONTRACT one day for each day in excess of thirty (30) days per Contract Year the River Bend is drained. In the event the River Bend is drained in excess of sixty (60) days per Contract Year, CONTRACTOR shall have the right to terminate this CONTRACT upon written notice to CITY. Such termination by CONTRACTOR shall release CONTRACTOR from further liability herein, except for Concession Fees owing to CITY for operations prior to the effective date of termination.

2.5.3 There shall be no deduction from payment to CITY for operations time lost due to (a) inclement weather or (b) temporary halting of operations for security reasons in connection with visits or events for which cessation of barge service is deemed necessary by local, state or federal police authorities that does not exceed more than three (3) days per contract year.

Other than the express deductions authorized in the CONTRACT, CITY accepts no liability of any kind, including, but not limited to, loss of revenue or equipment incurred by CONTRACTOR as a result of natural disasters or by river down time because of work related to San Antonio River flood control or any other improvements project (s) that do not substantially interfere with CONTRACTOR operations under this agreement, or by reason of other denial of use of the river by operation of law or the orders of a court of competent jurisdiction.

ARTICLE III. TRADEMARKS, DOMAIN NAMES AND IMAGES

3.1 CONTRACTOR shall retain exclusive ownership of any right title and interest in and to all worldwide trademarks, service marks, trade names, domain names, and trade dress (collectively referred to as the "MARKS") created by CONTRACTOR. CITY shall retain exclusive ownership of any right title and interest in and to all worldwide trademarks, service marks, trade names, domain names and trade dress (collectively referred to as the "MARKS") created by CITY. Any use by either party of the other party's Marks shall be prohibited without the prior written consent of the party owning Mark in question. The Director shall have authority to grant such requests for use on behalf of the CITY.

3.2 The CITY shall have the right, without payment to CONTRACTOR, to make use of images of the operator's watercraft, other property, and personnel, with such personnel's agreement, for advertising, and other CITY purposes.

ARTICLE IV. CONCESSION AREA

4.1 With the exception of the provisions in Article VI hereinafter, CONTRACTOR shall have exclusive rights to operate dinner barges, tour barges, and taxi barges on that portion of the San Antonio River between the turnaround basin located just south of Grayson Street and Nueva Street Marina, and including the areas known as the River Bend, the river extension beginning at the Casa Rio Restaurant and terminating at the Henry B. Gonzalez Convention Center, the river extension into Rivercenter Mall. In addition to the forgoing, the CONCESSION AREA is hereby defined to

include all of the area of the former bed and banks of the San Antonio River now contained between the retaining walls and encompassing all of the area, within the above defined stretches, known as the San Antonio River Walk, as well as all the approved Ticket Stations, Queuing and Loading areas and Marina spaces. The Concession Area designation herein in no way limits CITY'S ability to use or license the Concession Area for purposes which do not interfere with CONTRACTOR'S operations authorized hereunder. CONTRACTOR'S use of the Concession Area is limited to those uses specifically authorized under this agreement. No sales of any kind shall take place on the walkways and other areas adjacent to the river channel all of which shall be used by CONTRACTOR for no other purpose than passenger loading and unloading

- 4.2 Barge Traffic patterns shall be coordinated with and approved by the DIRECTOR, whose decision as to acceptable traffic patterns shall be final. CONTRACTOR understands and agrees that CITY shall continue to operate CITY boats and barges in the Concession Area to accomplish municipal purposes.
- 4.3 CONTRACTOR understands and agrees that access in the Concession Area may be temporarily limited to accommodate construction; however, such temporary intrusion in the Concession Area must be reasonable in time and scope.

ARTICLE V. ACCEPTANCE AND CONDITION OF CONCESSION AREA AND MARINAS

- 5.1 CONTRACTOR has had full opportunity to examine the Concession Area and marinas and agrees that no representations respecting the condition of the Concession Area and marinas and no promises to alter, repair or improve the Concession Area or marinas, either before or after the execution hereof, have been made by CITY or its agents to CONTRACTOR unless the same are contained herein. CONTRACTOR's execution shall be conclusive evidence of CONTRACTOR's acceptance thereof in good order and satisfactory condition, and CONTRACTOR hereby accepts the Concession Area and marinas in their present condition, AS IS, WITH ALL FAULTS, as suitable for the purpose of conducting its operations hereunder. CONTRACTOR accepts the Concession Area and marinas with the full knowledge, understanding, and agreement that CITY disclaims any warranty of suitability for CONTRACTOR's operations hereunder.
- 5.2 CONTRACTOR shall not construct, or allow to be constructed, any improvements or structures on the Concession Area, or any areas abutting the Concession Area where associated boarding of barges or queuing of passengers is to take place, regardless of whether owned by CITY, nor any other spaces in which it is allowed use under this CONTRACT without the prior written approval of the CITY through the Director and any and all other necessary departments, boards or commissions of the CITY OF SAN ANTONIO, including, the Historic and Design Review Commission (HDRC), if applicable.

ARTICLE VI. SPECIAL RIVER EVENTS

- 6.1 During CITY sanctioned Special River Events on the Water ("Water Events") watercraft other than those operated by CONTRACTOR under this CONTRACT shall be permitted to operate in the Concession Area within the River channel in or on the water. CONTRACTOR may make its barges available to event operators and may charge the established charter rental rate. All regular CONTRACTOR barge traffic shall be suspended on the River in the area of the river impacted by the Water Event least thirty (30) minutes before the start and shall remain suspended until the conclusion of the Water Event
- 6.2 CONTRACTOR understands and agrees that listed below are the currently approved Water Events. CONTRACTOR understands and agrees that the approved Water Events shall be modified from time to time according to the sole discretion of the DIRECTOR.

Texas Cavaliers Events

1. Fiesta River Parade, 1 day

Paseo del Rio Association

1. Mariachi Festival, 4 days
2. America's Armed Forces Parade, 1 day
3. Canoe Challenge, 1 day
4. Taste of River Walk, 2 days
5. Lucky Duck Race, 1 day
6. Coffins on Parade, 1 day
7. Holiday River Parade, 1 day
8. Holiday Boat Caroling, 19 days
9. Fiesta de las Luminarias, 9 days
10. RiverFest – Royalty and Battle of the Bands, 2 days
11. Mardis Gras, 2 days
12. St. Patrick's Day River Parade and Festival, 2 days

6.3 During CITY sanctioned Special River Events on the Dry Land ("Land Events") CITY or CITY'S contractors shall be permitted to operate in the Concession Area on the dry land adjacent to the River Channel within the Concession Area. City shall attempt to ensure that such Land Events do not unduly interfere with CONTRACTOR'S operations under this agreement.

6.4 CONTRACTOR understands and agrees that listed below are the currently approved Land Events CONTRACTOR understands and agrees that the approved Land Events shall be modified from time to time according to the sole discretion of the DIRECTOR.

Paseo del Rio Association

1. Fiesta Arts and Crafts Show, 3 days
2. Memorial Day Arts and Crafts Show, 4 days
3. July 4th Arts and Crafts Show, 4 days
4. Labor Day Arts and Crafts Show, 4 days
5. Fall Arts and Crafts Show, 3 days
6. Holiday Arts and Crafts Show, 3 days
7. Winter Arts and Crafts Show, 4 days
8. Mardis Gras Arts and Crafts Show, 3 days
9. St. Patrick's Day Arts and Crafts Show, 3 days

6.5 CONTRACTOR acknowledges and agrees that CITY'S License Agreement (in its current form or as amended or extended in the future) with the Paseo del Rio Association (PDRA) authorizes at least 21 Water and Land Events per

year. CONTRACTOR agrees to work closely and cooperate with PDRA to maximize safety and minimize disruptions to both parties' operations.

- 6.6 Notwithstanding any other provision of this Contract to the contrary, no Special River Event, whether on the water or on the adjacent land within the Concession Area shall be allowed or permitted to incorporate tours, taxi service, or dinner charters as part of such event within Concession Area without the written consent of CONTRACTOR.

ARTICLE VII.

CONTRACTOR USE OF MARINA SPACE AND EQUIPMENT

- 7.1 During the term of this CONTRACT, CONTRACTOR shall be assigned space in the marina beneath the International Center located at 203 South St. Mary's Street and in the Nueva Street Marina or other like facilities for the purpose of mooring and for maintaining and servicing CONTRACTOR's barges. Space in each marina shall also be provided by CITY for CONTRACTOR's operational functions, as identified below.
- 7.2 Except for payment of utilities as specified in Article X, no rental fees other than commission payments specified in Article II shall be charged for CONTRACTOR's use of marina space and equipment described below.
- 7.3 CONTRACTOR shall be assigned at no charge, a maximum of seven (7) parking spaces at the Nueva Street Marina. Location of such spaces shall be determined by the DIRECTOR in their sole discretion. Such locations may be relocated from time to time.
- 7.4 CONTRACTOR shall be allowed use of sufficient space to store CONTRACTOR's approved barges and the following existing spaces and equipment in the Nueva Street Marina and the International Center:

A. MARINA SPACE

INTERNATIONAL CENTER

- Operations storage cage: 24'x14'
- Operations office: 11'x13'
- Operations storage cage: 14'x13'

NUEVA STREET MARINA FACILITY

- Mechanic office: 11'x7'
- Mechanic work area: 24'x 23'
- Parts room: 12'x11'
- Paint booth: 32'x18'
- Paint prep booth: 32'x18'
- Head mechanic office: 12'x20'
- Boat motor storage cage: 22'x12'
- Supply cage: 12'x8'
- Dispatch office: 15'x8'
- Supervisors office: 22'x7'

All listed measurements are approximate and are for reference purposes only. Said space is for the purpose of CONTRACTOR's operations. CITY accepts no responsibility for providing any other space for CONTRACTOR than those spaces listed above.

CONTRACTOR has had full opportunity to examine the marinas and agrees that no representations respecting the condition of the marinas and no promises to alter, repair or improve the marinas, either before or after the execution hereof, have been made by CITY or its agents to CONTRACTOR. CONTRACTOR's execution shall be conclusive evidence of CONTRACTOR's acceptance thereof in good order and satisfactory condition, and CONTRACTOR hereby accepts the marinas in their present condition, AS IS, WITH ALL FAULTS, as suitable for the purpose of conducting its operations hereunder. CONTRACTOR accepts the marinas with the full knowledge, understanding, and agreement that CITY disclaims any warranty of suitability for CONTRACTOR's operations hereunder.

B. MARINA EQUIPMENT

Marina Equipment shall mean the Paint Booth, Paint Prep Booth, Cranes and Tracks, Large and Small Air Compressors lift, and other barge servicing equipment in aforesaid marinas, and any other Equipment installed in the

Marinas. CONTRACTOR is authorized access to and use of Marina Equipment. CONTRACTOR has had full opportunity to examine the Marina Equipment and agrees that no representations respecting the condition of the Marina Equipment and no promises to alter, repair or improve the Marina Equipment, either before or after the execution hereof, have been made by the CITY or its agents to CONTRACTOR unless the same are contained herein or made a part thereof by reference herein. CONTRACTOR's acceptance thereof in good order and satisfactory condition, and CONTRACTOR hereby accepts the Marina Equipment in its present condition, AS IS, WHERE IS, WITH ALL FAULTS, as suitable for the purpose of conducting its operations hereunder. CONTRACTOR accepts the Marina Equipment with the full knowledge, understanding, and agreement that CITY disclaims any warranty of suitability for CONTRACTOR's operations hereunder.

CONTRACTOR shall, at its sole cost and expense, be responsible for all maintenance and repair of all Marina Equipment. CONTRACTOR understands and agrees that CITY shall be allowed use of the Marina Equipment and both parties agree to work in good faith to coordinate all use of the Marina Equipment; except, however, CITY shall be responsible for repair of any Marina Equipment damaged by the CITY's use.

7.5 CONTRACTOR's use of fuel storage tanks, associated pumps, and the compressed natural gas-dispensing facility, all located, or to be located, in the Nueva Street Marina, shall be conducted pursuant to rules adopted by the DIRECTOR. Notwithstanding the above, the CITY shall be responsible for maintaining such tanks, pumps, and facilities and shall perform regular maintenance.

7.6 CITY accepts no responsibility or liability for any loss or damage to CONTRACTOR-owned equipment or to CONTRACTOR's barges which may occur while CONTRACTOR's barges are moving into or out of said marinas, while moored, stored or being serviced in said marinas, or while said barges are being operated in the Concession area by CONTRACTOR's employees, assignees or subcontractors.

7.7 CONTRACTOR shall be responsible for any damage or loss of CITY-owned equipment and facilities in the marinas while such CITY-owned equipment and facilities are being used by CONTRACTOR's employees, assignees, or subcontractors.

7.8 In the performance of its operations hereunder, CONTRACTOR shall comply with all water quality related federal, state and local laws and regulations, including, but not limited to, the Clean Water Act and the National Pollutant Discharge Elimination system. CONTRACTOR shall develop a BEST PRACTICES MANAGEMENT PLAN as required by said statutes and shall dispose of all waste fuel, cleaning agents, solvents, lubricants, chemicals, oil, oil filters, and batteries using methods prescribed by applicable statutes and regulations and according to the CONTRACTOR'S management plan.

ARTICLE VIII.

EQUIPMENT AND FACILITIES FURNISHED BY CONTRACTOR

8.1 CONTRACTOR shall provide, at its sole cost and expense, all office equipment, and furniture required for CONTRACTOR's operation hereunder.

8.2 Any supplies, materials and equipment not installed by CITY in the marinas but needed to maintain, service and repair CONTRACTOR's watercraft shall be provided by CONTRACTOR at CONTRACTOR's sole cost and expense. Any such installations shall be at the Sole discretion and approval of the Director, but such approval shall not be unreasonably be withheld.

8.3 CONTRACTOR shall provide, at its sole cost and expense, a ticketing system and cash management system that integrates with a point of sale accounting system, and shall work with the CITY to achieve compatibility with the CITY's SAP financial system. Any such ticketing system or cash management system shall be of the first class and consistent with operating the premier urban river cruise tour service in North America and shall, at a minimum, allow the monitoring of the number of tickets used as well as allow the reconciliation of daily receipts and track daily sales.

8.4 CONTRACTOR shall utilize a credit card processing system capable of processing credit card purchases in less than 5 seconds.

ARTICLE IX.

SCHEDULING USE OF INSTALLED EQUIPMENT

9.1 CITY-installed barge maintenance and servicing equipment and/or facilities are for joint use by CITY and CONTRACTOR. Conflicts, if any, shall be resolved by the DIRECTOR and CONTRACTOR, with decision of the DIRECTOR being final.

ARTICLE X.
UTILITIES

- 10.1 CONTRACTOR shall pay, at CONTRACTOR's sole cost and expense, all charges for communication services required for its operations at the marinas, ticket sales stations, reservation lines, and other administrative or operational communications requirements.
- 10.2 CITY shall pay all water and sewer services costs at the two marinas and the restrooms adjacent to the Historia ticket station.
- 10.3 All costs of utilities, at the ticket stations within the Concession Area shall be at CONTRACTOR'S sole cost and expense. Garbage from the ticket stations, other than from the ticket station located at the Brooklyn Street Dam, shall be bagged and placed, by CONTRACTOR on CITY maintenance barges for disposal at CITY'S expense.
- 10.4 All costs of collection and/or disposal of CONTRACTOR-generated garbage and refuse at the marinas shall be borne by CONTRACTOR at CONTRACTOR's sole cost and expense. If CONTRACTOR and the DIRECTOR mutually agree that CITY hauling of CONTRACTOR-generated garbage and refuse from the marinas is more convenient and effective, such arrangement may be made, provided, however, that CONTRACTOR shall reimburse CITY for such hauling service at a rate mutually agreed upon by CONTRACTOR and the DIRECTOR.
- 10.5 Costs of electrical and gas monthly services at the marinas shall be prorated as follows:
- 10.5.1 At the International Center Marina: CONTRACTOR shall pay fifty percent (50%) of the electric bill, payable to CITY not later than ten (10) days following receipt of a statement of charges from CITY.
- 10.5.2 At the Nueva Street Marina: CONTRACTOR shall pay fifty (50%) of the electric bill and one hundred percent (100%) of the gas bill, payable to CITY no later than ten (10) days following receipt of a statement of charges from CITY.

ARTICLE XI.
TICKET STATIONS, TAXISTOPS, AND LOADING AREAS

ARTICLE XII.
RIVER TOUR, CHARTER AND TAXI TICKET PRICES AND RENTAL RATES

ARTICLE XIII.
NUMBER OF BARGES

ARTICLE XIV.
SERVICES PROVIDED AND OPERATING STANDARD

ARTICLE XV.
MINIMUM HOURS OF OPERATION

ARTICLE XVI.
STYLING, APPEARANCE, SPECIFICATIONS, PROPULSION, AND DISABILITY ACCESS FOR BARGES

ARTICLE XVII.
SAFETY, TRAINING, AND MARINA SECURITY

ARTICLE XVIII.
MARKETING AND TOUR INFORMATION

ARTICLE XIX.
CONTRACTOR'S EMPLOYEES

ARTICLE XX.
SIGNS AND ADVERTISING

ARTICLE XXI.

MAINTENANCE OF BARGES AND CONTRACTOR
ASSIGNED AREAS AND HOUSEKEEPING RESPONSIBILITY

ARTICLE XXII.
INSURANCE

Prior to the commencement of any work under this Agreement, CONTRACTOR shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Center City Development Office, which shall be clearly labeled "River Barge Concession" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to City. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City's Center City Development & Operations Department. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.

City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.

A CONTRACTOR's financial integrity is of interest to City; therefore, subject to CONTRACTOR's right to maintain reasonable deductibles in such amounts as are approved by City, CONTRACTOR shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at CONTRACTOR's sole expense, insurance coverage written on an occurrence basis, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation 2. Employers' Liability	Statutory \$500,000/\$500,000/\$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$5,000,000 per occurrence; \$5,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage f. \$100,000
4. Business Automobile Liability* a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Marine Protection & Indemnity**	\$5,000,000 per occurrence, or its equivalent in umbrella or excess liability coverage
6. Marine Hull Physical Damage	Actual Cash Value
7. Liquor Legal Liability***	\$5,000,000 per occurrence; \$5,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
* If CONTRACTOR owns or uses any automobiles in the operation of the Contract.	
**Coverage may also be provided by deleting the Watercraft Exclusion from the Commercial General Liability policy.	

*** Required if alcoholic beverages are sold. May be included under the Commercial General Liability policy, or as a stand alone.	
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CONTRACTOR agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of CONTRACTOR herein, and provide a certificate of insurance and endorsement that name CONTRACTOR and City as additional insureds. CONTRACTOR shall provide City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

As they apply to the limits required by City, City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). CONTRACTOR shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. CONTRACTOR shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Center City Development Office
P.O. Box 839966
San Antonio, Texas 78283-3966

CONTRACTOR agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where City is an additional insured shown on the policy;

Workers' compensation and employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City; and

Provide advance written notice directly to City of any suspension, cancellation, non-renewal, or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, CONTRACTOR shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend CONTRACTOR's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

In addition to any other remedies the City may have upon CONTRACTOR's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order CONTRACTOR to stop work hereunder, and/or withhold any payment(s) which become due to CONTRACTOR hereunder until CONTRACTOR demonstrates compliance with the requirements hereof.

Nothing herein contained shall be construed as limiting in any way the extent to which CONTRACTOR may be held responsible for payments of damages to persons or property resulting from CONTRACTOR's or its subcontractors' performance of the work covered under this Agreement.

It is agreed that CONTRACTOR's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of City shall be limited to insurance coverage provided.

CONTRACTOR and any subcontractors are responsible for all damage to their own equipment and/or property.

ARTICLE XXIII.
INDEMNITY

CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR' activities under this Agreement, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, CONTRACTOR or subcontractor of CONTRACTOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, it s officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR' activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.

ARTICLE XXIV.
FIRE AND OTHER CASUALTY

24.1 In the event that the marina(s) or any part(s) thereof hereby authorized for use by CONTRACTOR shall be partially damaged by fire, the elements, civil disorder, or other casualty, contractor shall give immediate notice thereof to CITY, and same shall be repaired at the expense of CITY without reasonable delay, unless CITY determines that the damage is so extensive that repair or building is not feasible. During the period of repair, payment due to CITY hereunder shall be prorated or abated to the extent that the damage to the marina(s) shall cause disruption of CONTRACTOR's business and reduction of CONTRACTOR's ADJUSTED GROSS SALES as determined by CITY upon thorough investigation of all the facts related thereto. In the event, that the marina(s) should be damaged by fire or otherwise to such extent as to render it/them necessary, in the exclusive judgment of CITY, not to rebuild the same and CONTRACTOR is no longer able to operate barges as authorized hereunder, then, at the option of the CITY, and upon notice to CONTRACTOR, this CONTRACT shall cease and come to an end. If CITY elects to rebuild the marina(s) and continue this CONTRACT, CITY shall notify CONTRACTOR of such intention within sixty (60) calendar days of the date of damage; otherwise, this CONTRACT shall be deemed cancelled and of no further force effect

24.2 CITY's obligation to rebuild or repair under this Article shall, in any event, be limited to restoring the marina(s) to substantially the condition that existed at the time this CONTRACT was executed, subject to reasonable wear and tear during the time period from execution of the CONTRACT until the damage occurred. CONTRACTOR agrees that promptly after completion of the aforementioned restoration by CITY, CONTRACTOR will proceed with reasonable diligence, and at its sole cost and expense, to rebuild, repair and restore such of its barges, fixtures, equipment and other items provided and/or installed by CONTRACTOR.

ARTICLE XXV.
PERFORMANCE BOND AND LIQUIDATED
DAMAGES FOR CONTRACTOR'S FAILURE TO PERFORM

25.1 No later than Ten (10) days prior to October 1, 2015, and throughout the term of this CONTRACT, CONTRACTOR will cause to be made, executed and furnished to CITY a Performance Bond, letter of credit or other instrument acceptable to CITY in the amount of the minimum annual payment specified in section 2.1 of this CONTRACT, conditioned on the faithful performance of all conditions and covenants of this CONTRACT. If a Performance Bond is the chosen security instrument, it must be executed by a corporate surety acceptable to CITY, who is licensed pursuant to the Texas Insurance Code. Said bond must have attached thereto a Power of Attorney as evidence of

the authority of the person executing the bond to bind the surety. This bond must be furnished in compliance with the statutory requirements of the Texas Government Code, Chapter 2253. Failure to deliver such Performance Bond or other instrument(s) acceptable to CITY within the time specified herein will automatically render CONTRACTOR in default of this CONTRACT with no right to cure. Following the initial bond, continuation of said bond must be evidenced by an authenticated continuation certificate or substantiated bond acceptable to CITY.

25.2 It is of primary importance to the CITY, both for revenue continuity and for general downtown tourism and convention appeal, that there not be any interruption in the barge services provided under this contract. The damage to the CITY in the event of such an interruption is not capable of being reasonably calculated. "Interruption" shall mean a substantial and material reduction in services provided to the public. CONTRACTOR shall pay to CITY, in addition to the minimum payments as required in section 2.1 of this CONTRACT, five thousand dollars (\$5,000.00) per day, as liquidated damages and not as penalty, for every day beginning October 1, 2015, on which CONTRACTOR fails to provide operational barge services as required by this CONTRACT, unless the failure is caused by one of the following causes:

- (1) Inclement weather which in the opinion of the DIRECTOR is sufficient to cause a shutdown of operations.
- (2) Drainage of the river.
- (3) Orders from the DIRECTOR, or other lawful authority, to cease operations for any reasons of safety or security
- (4) Force Majeure

ARTICLE XXVI.
CITY'S EMERGENCY RIGHTS IN THE EVENT
OF SERVICE INTERRUPTION

26.1 CONTRACTOR understands the imperative of providing uninterrupted service required by this CONTRACT throughout the term of this CONTRACT. Therefore, should CONTRACTOR cease operations for a period of five (5) consecutive days for any reason other than those enumerated in paragraph 25.2., CITY shall deem such interruption an emergency and shall, in addition to its recourses provided in Article XXV and Article XXVII, have, at CITY's sole discretion, the option to implement the following actions:

- A. Immediate and temporary managerial and operational control of CONTRACTOR's barges and associated equipment, supplies and materials and the operation thereof in order to provide barges services. During such temporary operations by CITY, CITY shall retain all revenue generated by such operations and shall pay to CONTRACTOR for use of CONTRACTOR's barges and associated equipment, supplies and materials based on fair market value lease rates.
- B. CITY'S temporary management and operational control of CONTRACTOR's barges shall cease immediately upon presentation of proof by CONTRACTOR that CONTRACTOR is capable of resuming uninterrupted service as required by this CONTRACT or, in the event that the CONTRACT has been terminated, for a period of time as long as necessary for the CITY to select another regular operator, which possibly could be CITY, and to allow that new operator time to either 1) have new barges and associated equipment manufactured or 2) negotiate a lease or a purchase of the barges and associated equipment from the CONTRACTOR, provided however, such temporary use shall in no event exceed 9 months without the approval of CONTRACTOR.
- C. The provisions of this section shall be enforceable by a court order of specific performance. CONTRACTOR waives its right to object to an injunction to specifically enforce this use of the barges or for the necessity on the part of CITY to prove irreparable harm or to post a bond in any such action.
- D. CONTRACTOR hereby waives any objection to CITY seeking out and employing CONTRACTOR's employees in an effort to continue uninterrupted service. CONTRACTOR shall make no claim against CITY for contractual interference caused by this action.

26.2 Should this CONTRACT be terminated by reason of default by CONTRACTOR, CITY, or a third party selected by CITY to operate the barge services shall have the option to purchase CONTRACTOR's barges, equipment, supplies, and materials at fair market value as determined by a competent appraiser mutually agreed upon by CITY and CONTRACTOR. Nothing herein shall suggest or imply a CITY commitment to make such purchase.

- 26.3 In any case, CONTRACTOR agrees, in the event of CONTRACT termination due to default by CONTRACTOR, to make CONTRACTOR's barges equipment, supplies and materials available for CITY's operation as outlined above until such time as CITY awards a contract to another CONTRACTOR or until CITY determines if purchase is in CITY's best interest
- 26.4 CONTRACTOR shall execute a UCC 1 financing statement suitable for recording with the Secretary of State recording the contractual rights of CITY as contained in this Article. Any liens placed upon the barges in any manner including in the financing of the purchase of the barges shall be subject to the City's rights of usage as stated herein.

ARTICLE XXVII.
DEFAULT AND REMEDIES

- 27.1 In addition to the conditions of default cited above, the following events shall be deemed to be events of default by CONTRACTOR under this CONTRACT:
- A. CONTRACTOR shall fail to pay any installment of the required concession fees as provided herein and such failure shall continue for a period of ten (10) calendar days;
 - B. CONTRACTOR fails to comply with any material term, provision or covenant of this CONTRACT and, or after CITY having provided written notice of such failure, CONTRACTOR does not come into compliance within thirty (30) calendar days; or
- 27.2 Upon the occurrence of an event of default as heretofore provided and after compliance with the procedures set forth herein, CITY may, at its option, declare this CONTRACT and all rights and interests created by it to be terminated. Upon CITY electing to terminate, this CONTRACT shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof. CITY, its agents, or attorney may resume possession of the Concession Area and space in the marinas assigned to CONTRACTOR hereunder and may, if not earlier implemented, implement its emergency rights as provided in paragraph 26.1.

Any termination of this CONTRACT shall not relieve CONTRACTOR from the payment of any sum or sums that shall then be due and payable to CITY hereunder, or any claim for damages previously accruing against CONTRACTOR hereunder, and any such sum or sums or claim for damages from CONTRACTOR for any default, and any such termination shall not prevent CITY from enforcing the payment of any such sum or sums or claim for damages from CONTRACTOR for any default. All rights, options, and remedies of CITY contained in this CONTRACT shall be construed and held to be cumulative of the other, and not one of them shall be exclusive of the other. CITY shall have the right to pursue any one or all of such remedies or any other remedy or relief available at law or in equity, whether or not stated in this CONTRACT. No waiver by CITY of a breach of any of the covenants, conditions, or restrictions of this contract shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition or restriction herein contained.

Except in the event CITY exercises its emergency rights as provided in paragraph 26.1, CONTRACTOR shall have the right, within thirty (30) calendar days after the termination of this CONTRACT, whether such termination be by the expiration of the term or an earlier termination under any provision of this CONTRACT, to remove from the marinas and ticket sales stations all of its furniture, fixtures, equipment and furnishings and other property which are not the property of CITY and have not become the property of CITY as herein provided or by attachment to the Concession Area, marinas, ticket sales stations, and passenger loading locations, with respect to any damage caused thereby, CONTRACTOR shall have the obligation to restore the Concession Area, marinas, and ticket sales stations, restrooms, and passenger loading locations to their condition prior to such removal, and, provided that if any of CONTRACTOR's property remains in or on the Contracted Premises after thirty (30) calendar days following termination of this CONTRACT and no renewal agreement has been executed, such property so remaining shall be deemed to have become the property of CITY and may be disposed of as CITY sees fit, without liability to account to CONTRACTOR for the proceeds for any sale thereof. No prior notice to sell property at public private sale need be given to CONTRACTOR, unless required by law.

Upon such expiration or termination of this CONTRACT, CONTRACTOR agrees to quit and peacefully surrender this Contracted Premises; and, CITY, upon or at any time after such expiration or termination, may, without further notice, enter and re-enter the Contracted Premises and possess and repossess itself

thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess CONTRACTOR and remove CONTRACTOR and all other persons and property from the Contracted Premises.

If CITY elects not to terminate this CONTRACT or elects not to exercise its emergency rights under paragraph 26.1, CITY, its agent or attorney may take possession of the Contracted Premises assigned to CONTRACTOR and relet the same for the remainder of the term at the best commission CITY, its agent or attorney may obtain for the account of CONTRACTOR, who shall make good any deficiency.

ARTICLE XXVIII. RECORDS AND AUDITS

- 28.1 During the term of this CONTRACT, CONTRACTOR and any authorized subcontractor shall maintain, in accordance with generally accepted accounting principles, full, complete and accurate permanent reports and accounts of all sums of money paid or payable to CONTRACTOR and any Authorized SUBCONTRACTOR for or on account or arising out of the business transaction authorized hereunder for each day of the term of this CONTRACT.
- 28.2 CONTRACTOR and any authorized SUBCONTRACTOR shall furnish such financial reports, relating to Adjusted Gross Revenue, as may be reasonably requested by the DIRECTOR.
- 28.3 CONTRACTOR and any SUBCONTRACTOR shall furnish to the City Treasurer and the DIRECTOR a monthly report of ADJUSTED GROSS SALES generated during each month of each Contract Year. Said report shall be due not later than the tenth (10) day of each month of this CONTRACT.
- 28.3.1 CONTRACTOR further agrees to furnish to the DIRECTOR a monthly inventory reconciliation report that outlines all ticket stock purchases (ticket stock shall be pre-numbered), ticket stock sold, collected, consigned, voided, returned, wasted, tickets used for training, credit card stubs and tickets used for any other purpose. All supporting documentation for each such report shall be maintained by CONTRACTOR in accordance with section 28.4 hereof. CONTRACTOR agrees that its procedures for collecting and accounting for the above required information are subject to review by DIRECTOR, and CONTRACTOR further agrees to make reasonable changes to such procedures as DIRECTOR deems necessary for an adequate reconciliation. Said inventory reconciliation report shall be due not later than the tenth (10th) day of each calendar month of this CONTRACT.
- Notwithstanding anything contained herein to the contrary, the parties agree to use their best efforts to agree upon systems to achieve necessary record keeping and reasonable reconciliations while recognizing that, despite such efforts, thefts or other unintended disappearances may occur and, due to the nature of the operations of the Concession Contract, exact reconciliation of ticket stubs and AGS may not occur.
- 28.4 CONTRACTOR shall annually engage an independent Certified Public Accountant (CPA) to perform procedures, agreed-upon with DIRECTOR, to analyze and assess the accuracy of Riverwalk Capital improvement fees and CONTRACTOR'S ADJUSTED GROSS SALES related to the accordance with the Statements on Standards for Attestation Engagements, as well as any other standards as they may apply. The independent CPA shall furnish, within ninety (90) calendar days of the end of the year, the written report on agreed-upon procedures to the Director, [Center City Development Office](#), P.O. Box 839966, San Antonio, TX 78283-3966. The Independent CPA must state in his report an opinion whether the ADJUSTED GROSS SALES as defined within the CONTRACT and the amounts paid to the CITY during the preceding year of the agreement, were made in accordance with the applicable terms of the agreement and are accurately stated. In the event the report shows that there has been a deficiency in the adjusted gross sales reported to the CITY or the payments due to CITY, then such deficiency shall become immediately due and payable with interest at the maximum legal rate under applicable law from the date when said payment should have been made. In the event that the report shows an overpayment to the CITY, CONTRACTOR shall be entitled to a credit against future CONCESSION FEE Payments. CONTRACTOR shall retain records for this CONTRACT for seven (7) years after the end of each operating year in question, but in no event longer than two (2) years after the expiration date of this CONTRACT.
- 28.5 Right to Audit. CITY Reserves the right to audit CONTRACTOR's and its subcontractors' books and records which the CITY determines relevant to this agreement for the purpose of determining the accuracy of the reported ADJUSTED GROSS SALES and CONTRACTOR's and its subcontractor's compliance with this agreement. CONTRACTOR shall maintain its books and records in sufficient detail to allow determination of sales revenue and taxes related to each category of revenue and the applicable percent pertaining to each category. Any refunds, allowances, or adjustments shall be documented and maintained for review. CITY, if it elects, has the right to require that any or all such books and records be submitted for audit to the CITY or to a Certified Public Accountant selected by CITY, or any other CITY designee. If it shall be determined, as a result of such audit, that there has

been a deficiency in the ADJUSTED GROSS SALES reported to the CITY or the payments due to CITY, then such deficiency shall become immediately due and payable with interest at the maximum legal rate under applicable law from the date when said payments should have been made. In addition, if gross revenues or payment have been understand by more than two percent (2%) of the gross revenues reported to the CITY during the previous reporting period, then the entire expense of the audit shall be borne by the contractor; otherwise, the cost such audit shall be borne by the CITY.

CONTRACTOR may dispute the findings of audits performed under 28.5 within thirty (30) days of receiving results of said audit, by submitting such additional information as may be required to correct the auditor's report. If upon examination of additional information by the DIRECTOR the DIRECTOR determines that;

- A) such report reflects that a refund is owed to CONTRACTOR, the CONTRACTOR shall be entitled a credit against future concession fee payments; or
- B) such report reflects that monies are owed to CITY by CONTRACTOR from unreported Gross Receipts, then CONTRACTOR shall pay such monies to the CITY, together with interest to not exceed the maximum legal rate under applicable law from date when such payment should have been made until the date payment is received by CITY, within thirty (30) days thereafter.

28.6 Revenue Control. Prior to commencement of operations, CONTRACTOR shall provide CITY with written documentation of proposed revenue control system related to the agreement, including examples of reports, journals, ledgers, forms, etc. Thereafter, at the end of each year during the term of the agreement, CONTRACTOR shall provide the CITY updated documentation of its revenue control system. The CITY may require, no more than three (3) times during the term of the agreement, that CONTRACTOR engage an independent CPA to report on the effectiveness of CONTRACTOR's revenue control system.

ARTICLE XXIX
COMPLIANCE WITH APPLICABLE LAWS, SMALL, MINORITY
AND WOMAN OWNED BUSINESS ENTERPRISES POLICY,
NON-DISCRIMINATION AND EQUAL EMPLOYMENT
OPPORTUNITY POLICY

Non-Discrimination. As a party to this contract, Contractor understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

ARTICLE XXX
ASSIGNMENT AND SUBCONTRACTING

30.1 CONTRACTOR shall not assign this CONTRACT, or allow same to be assigned by operation of law or otherwise, or sublet the Contract or any part thereof without the prior written consent of the CITY, which may be given only by an ordinance passed by CITY COUNCIL giving such specific consent. Any unauthorized assignment, subcontracting, or subletting by CONTRACTOR shall constitute grounds for termination of this CONTRACT by CITY.

CONTRACTOR shall continue to be liable under this CONTRACT upon and throughout the duration of any and all such assignments, subcontracts, or subleases regardless of whether CITY's consent was obtained. For purposes of this CONTRACT, the term "subcontract" shall include all agreements between CONTRACTOR and any third party whereby CONTRACTOR authorizes such third party to conduct a portion of the concession business activity related to this CONTRACT, including all sales of services, such as tours, charters or any form of barge rides on the San Antonio River, or any other services offered to the public or sales of merchandise of any kind or nature, but shall not include merely selling of consignment or incentive tickets resold to the public, nor shall it include any subcontract for the provision of advertising. In addition, _____ shall not sell, or allow the loss of _____ controlling ownership interest in CONTRACTOR without the prior written consent of the CITY, which may be given only by an ordinance passed by the CITY COUNCIL giving specific consent. Any unauthorized loss of majority ownership control of CONTRACTOR by _____ shall constitute grounds for termination of this CONTRACT by CITY. Provided, however the death of _____ shall not constitute grounds for termination and any transfer of interests directly resulting from _____ death shall not require the approval of the CITY COUNCIL.

30.2 CONTRACTOR shall provide the DIRECTOR an OWNERSHIP REPORT along with the written annual statement required in the "Records and Audits" section. The OWNERSHIP Report will provide names, addresses and percentages of ownership for each person with an interest in this CONTRACT or any subcontract. In the event the OWNERSHIP REPORT reflects any changes in ownership, the CITY shall have the right, for good cause and in

good faith, to revoke its previous approval of any subcontract. In order to exercise this revocation right, CONTRACTOR must be notified by the DIRECTOR within thirty (30) days of the submittal of the OWNERSHIP REPORT that the DIRECTOR is recommending revocation and outlining the reasons why.

- 30.3 Any approvals, or revocations of approvals included in this ARTICLE shall be exercised only for good cause and in good faith and shall be based on such non-exclusive factors as the owner's financial integrity, competence and experience in the applicable business area, other current or past contracts between any owner and CITY, an potential conflicts of interest and any current litigation or unresolved disputes with the CITY.

ARTICLE XXXI ATTORNEY'S FEE

- 31.1 In case it should be necessary or proper for CITY to bring any action under this CONTRACT for the enforcement of any of CITY's rights hereunder, then CONTRACTOR agrees in each and any such case to pay to CITY reasonable attorney's fees.

ARTICLE XXXII SEPARABILITY

- 32.1 If any clause or provision of this CONTRACT is found to be illegal, invalid or unenforceable under present or future laws effective during the term of this CONTRACT, then and in the event, it is the intention of the parties that the remainder of this CONTRACT shall not be affected thereby, and it is also the intention of the parties to this CONTRACT that in lieu of each clause or provision of this CONTRACT that is found to be illegal, invalid or unenforceable, there be added as part of this CONTRACT a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and legal, valid and enforceable.

ARTICLE XXXIII ENTIRE AGREEMENT

- 33.1 It is understood and agreed that this CONTRACT, together with the authorized ordinance, any attached exhibits which have not otherwise been modified by this contract, constitutes the entire CONTRACT between parties hereto and shall not be modified or amended in any manner except by instrument in writing executed by the parties hereto.

ARTICLE XXXIV TAXES AND LICENSES

- 34.1 CONTRACTOR shall pay, on or before their respective due dates, to the appropriate collecting authority, all federal, state and local taxes and fees which are now or may hereafter be levied upon CONTRACTOR, or upon CONTRACTOR's business, or upon any of CONTRACTOR's property used in connection with this CONTRACT, and shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by CONTRACTOR. Failure to comply with the foregoing provisions shall constitute grounds for termination of this CONTRACTOR by CITY.

ARTICLE XXXV CONDEMNATION

- 35.1 It is agreed and understood that in the event the Contracted Premises are taken, in whole or part, by any governmental authority other than CITY, this CONTRACT and all rights to permission to use hereunder shall, at the option of CITY, cease on the date that title to such land so taken or transferred vests in the condemning authority. CONTRACTOR hereby waives all rights to any precedes of such condemnation. Notwithstanding the above, should condemnation materially affect CONTRACTOR's operations herein, then CONTRACTOR shall have the right to terminate this CONTRACTOR upon written notice to the CITY. Such termination shall release CONTRACTOR from further liability hereunder.

ARTICLE XXXVI WAGES

- 36.1 CONTRACTOR shall pay wages that are not less than the minimum wages required by federal and state statutes and CITY ordinances of general applicability to persons employed in CONTRACTOR's operations hereunder. CONTRACTOR further covenants and agrees that it shall in no event pay less than the current wage rates as stated in its proposal.

ARTICLE XXXVII
NO SUBSTANTIAL INTEREST

- 37.1 CONTRACTOR acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a “prohibited financial interest” in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.
- 37.2 Pursuant to the subsection above, CONTRACTOR certifies, and this Agreement is made in reliance thereon, that neither the Consultant, nor any of its officers, employees and agents performing under this Agreement is an officer or employee of the City as defined by the City Ethics Code. CONTRACTOR further certifies that is has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City’s Ethics Code.

ARTICLE XXXVIII
NOTICES

- 38.1 Notices to CITY required or appropriate under this CONTRACT shall be deemed sufficient if in writing and mailed, via certified mail, postage prepaid, addressed to:

City Clerk
P.O. Box 839966
San Antonio, Texas 78283-3966

and

Director, Center City Development & Operations Department
P.O. Box 839966
San Antonio, Texas 78283-3966

or

to such other addresses as may be designated in writing by CITY. Notices to CONTRACTOR shall be deemed sufficient if in writing and mailed if in writing and mailed, via certified mail, postage prepaid, addressed to CONTRACTOR at the address below:

_____.

ARTICLE XXXIX
INDEPENDENT CONTRACTOR

- 39.1 Independent Contractor. CONTRACTOR agrees and understands that it and all persons designated by it to provide services in connection with a contract, is (are) and shall be deemed to be an independent contractor (s), responsible for its (their) respective acts or omissions, and that CITY shall in no way be responsible for CONTRACTOR’s actions, and that none of the parties hereto will have authority to bind the others or to hold out to third parties, that it has such authority.

ARTICLE XL
TEXAS LAW TO APPLY

40.1 THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

ARTICLE XLI
GENDER

41.1 Words of any gender used in this CONTRACT shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

ARTICLE XLII
CAPTIONS

42.1 The captions contained in this CONTRACT are for convenience of reference only and in no way limit or enlarge the terms and conditions of this CONTRACT.

ARTICLE XLIII
SCHOLARSHIPS

43.1 CONTRACTOR agrees to fund _____ in scholarships over the term of this CONTRACT. Said scholarships shall be administered by CITY at its cost. CONTRACTOR shall make an annual payment of _____ to CITY for said scholarship fund on March 1 of each year of the CONTRACT (beginning in 2016).

(Remainder of page left intentionally blank).

ARTICLE XLIV
PUBLIC INFORMATION

44.1 CONTRACTOR acknowledges this document is public information per the Texas Government Code and may be disclosed to the public.

ACCEPTED and AGREED TO in all things this _____ day of _____, 201_.

CITY OF SAN ANTONIO

NAME OF CONTRACTOR

BY : _____
Sheryl Sculley
City Manager

BY: _____
Name
Title

ATTEST:

APPROVED AS TO FORM:

City Attorney

RFP EXHIBIT15.5

LOCAL PREFERENCE PROGRAM (LPP) ORDINANCE

The 82nd Texas Legislature adopted a revision to the law that allowed the City of San Antonio ("City") to adopt a policy that would grant contracting preferences to local businesses for certain types of contracts. The City adopted such a policy, known as the Local Preference Program, by Ordinance No. 2013-03-21-0167, effective for solicitations issued after May 1, 2013.

This solicitation is subject to the Local Preference Program. For more information on the program, refer to the Local Preference Program Identification Form attached to this solicitation.

In order to receive consideration the Local Bidder must complete and return the attached Local Preference Identification Form.

RFP EXHIBIT 15.6

VETERAN-OWNED SMALL BUSINESS PREFERENCE PROGRAM (VOSBPP) ORDINANCE

Pursuant to Ordinance No. 2013-12-05-0864, effective for solicitations issued after January 15, 2014, all solicitations issued by the City are subject to tracking of Veteran Owned Small Business (VOSB) participation.

For more information on the program, refer to the Veteran-Owned Small Business Program Identification Form attached to this solicitation.

Respondent must complete and return the attached Veteran-Owned Small Business Preference Program Identification Form.

016 - RFP ATTACHMENTS

**RFP ATTACHMENT A, PART ONE
GENERAL INFORMATION FORM**

Limit response to 10 pages.

1. Respondent Information: Provide the following information regarding the Respondent.

(NOTE: Co-Respondents are two or more entities proposing as a team or joint venture with each signing the contract, if awarded. Sub-contractors are not Co-Respondents and should not be identified here. If this proposal includes Co-Respondents, provide the required information in this Item #1 for each Co-Respondent by copying and inserting an additional block(s) before Item #2.)

Respondent Name: _____

(NOTE: Give exact legal name as it will appear on the contract, if awarded.)

Principal Address: _____

City: _____ State: _____ Zip Code: _____

Telephone No. _____ Fax No: _____

Website address: _____

Year established: _____

Provide the number of years in business under present name: _____

Social Security Number or Federal Employer Identification Number: _____

Texas Comptroller's Taxpayer Number, if applicable: _____

(NOTE: This 11-digit number is sometimes referred to as the Comptroller's TIN or TID.)

DUNS NUMBER: _____

Business Structure: Check the box that indicates the business structure of the Respondent.

☐ Individual or Sole Proprietorship If checked, list Assumed Name, if any: _____

☐ Partnership

☐ Corporation If checked, check one: ☐ For-Profit ☐ Nonprofit

Also, check one: ☐ Domestic ☐ Foreign

☐ Other If checked, list business structure: _____

Printed Name of Contract Signatory: _____

Job Title: _____

(NOTE: This RFP solicits proposals to provide services under a contract which has been identified as "High Profile". Therefore, Respondent must provide the name of person that will sign the contract for the Respondent, if awarded.)

Provide any other names under which Respondent has operated within the last 10 years and length of time under for each:

Provide address of office from which this project would be managed:

City: _____ State: _____ Zip Code: _____

Telephone No. _____ Fax No: _____

Annual Revenue: \$ _____

Total Number of Employees: _____

Total Number of Current Clients/Customers: _____

Briefly describe other lines of business that the company is directly or indirectly affiliated with:

List Related Companies:

- 2. Contact Information:** List the one person who the City may contact concerning your proposal or setting dates for meetings.

Name: _____ Title: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone No. _____ Fax No: _____

Email: _____

- 3.** Does Respondent anticipate any mergers, transfer of organization ownership, management reorganization, or departure of key personnel within the next twelve (12) months?

Yes ____ No ____

- 4.** Is Respondent authorized and/or licensed to do business in Texas?

Yes ____ No ____ If "Yes", list authorizations/licenses.

- 5.** Where is the Respondent's corporate headquarters located? _____

- 6. Local/County Operation:** Does the Respondent have an office located in San Antonio, Texas?

Yes ____ No ____ If "Yes", respond to a and b below:

- a. How long has the Respondent conducted business from its San Antonio office?

Years _____ Months _____

- b. State the number of full-time employees at the San Antonio office.

If "No", indicate if Respondent has an office located within Bexar County, Texas:

Yes ____ No ____ If "Yes", respond to c and d below:

- c. How long has the Respondent conducted business from its Bexar County office?

Years _____ Months _____

- d. State the number of full-time employees at the Bexar County office. _____

- 7. Debarment/Suspension Information:** Has the Respondent or any of its principals been debarred or suspended from contracting with any public entity?

Yes ____ No ____ If "Yes", identify the public entity and the name and current phone number of a representative of the public entity familiar with the debarment or suspension, and state the reason for or circumstances surrounding the debarment or suspension, including but not limited to the period of time for such debarment or suspension.

- 8. Surety Information:** Has the Respondent ever had a bond or surety canceled or forfeited?

Yes ____ No ____ If "Yes", state the name of the bonding company, date, amount of bond and reason for such cancellation or forfeiture.

- 9. Bankruptcy Information:** Has the Respondent ever been declared bankrupt or filed for protection from creditors under state or federal proceedings?

Yes ____ No ____ If "Yes", state the date, court, jurisdiction, cause number, amount of liabilities and amount of assets.

- 10. Disciplinary Action:** Has the Respondent ever received any disciplinary action, or any pending disciplinary action, from any regulatory bodies or professional organizations? If "Yes", state the name of the regulatory body or professional organization, date and reason for disciplinary or impending disciplinary action.

11. Previous Contracts:

- a. Has the Respondent ever failed to complete any contract awarded?

Yes ____ No ____ If "Yes", state the name of the organization contracted with, services contracted, date, contract amount and reason for failing to complete the contract.

- b. Has any officer or partner proposed for this assignment ever been an officer or partner of some other organization that failed to complete a contract?

Yes ____ No ____ If "Yes", state the name of the individual, organization contracted with, services contracted, date, contract amount and reason for failing to complete the contract.

- c. Has any officer or partner proposed for this assignment ever failed to complete a contract handled in his or her own name?

Yes ____ No ____ If "Yes", state the name of the individual, organization contracted with, services contracted, date, contract amount and reason for failing to complete the contract.

12. REFERENCES

Provide three (3) references that Respondent has provided services to within the past three (3) years. The contact person named should be familiar with the day-to-day management of the Respondent and be willing to respond to questions regarding the type, level, and quality of service provided.

Reference No. 1:

Firm/Company Name _____

Contact Person: _____ Title: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Email: _____ Phone: _____

Date and Type of Service(s) Provided: _____

Reference No. 2:

Firm/Company Name _____

Contact Person: _____ Title: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Email: _____ Phone: _____

Date and Type of Service(s) Provided: _____

Reference No. 3:

Firm/Company Name _____

Contact Person: _____ Title: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Email: _____ Phone: _____

Date and Type of Service(s) Provided: _____

RFP ATTACHMENT A, PART TWO

EXPERIENCE AND FINANCIAL CAPABILITY

Limit response to 10 pages.

Restate questions and provide narrative responses. If Respondent is proposing as a team or joint venture, provide the same information for each member of the team or joint venture.

1. Describe Respondent's background relevant to the successful operation of the proposed river barge concession.
2. Describe specific experience with similar or identical operations, including previous contracts with public entity clients – particularly large municipalities, if any.
3. Identify qualifications of key personnel and their proposed functions.
4. Additional Information. Identify any additional skills, experiences, qualifications, and/or other relevant information regarding Respondent's background.

RFP ATTACHMENT A, PART THREE

QUALITY OF PROPOSAL

Limit response to 40 pages.

Restate questions and provide narrative responses.

1. Financial Plan.

- a. Describe the proposed financing plan and timeline as it relates to the proposed operation. Indicate if Respondent intends to obtain all, part, or none of financing from lenders; if all or part, indicate dollar amount and include statement of intent, irrevocable letter of credit, and/or financially appropriate statement signed by financial backer unequivocally committing financial backing to Respondent should Respondent be awarded contract as a result of this RFP.
- b. Provide proof that Respondent will be able to provide irrevocable letter of credit or performance bond equivalent to minimum annual guarantee.
- c. Provide copies of any proposed financing instruments for financing the manufacture of the proposed barges, including copies of any and all contracts which may affect the ownership of the barges during the term of the contract, whether by property lien or otherwise. All such financing or other contractual instruments must expressly allow for the superiority of the City's rights to use the barges for an interim time period in the event of operator default and termination and allow for City to prevent foreclosure of any liens on the barges until such time as the interim use has been completed. All respondents will be required to maintain clear title to the entire fleet of barges and shall not allow the placement of any encumbrance whatsoever on their ownership. Submittal of proposed financing instruments shall not count against page limit.

2. Operating Plan.

- a. Operations. Identify & describe all proposed service categories, including the provision of regularly scheduled, reliable, and affordable barge service to link downtown to Museum Reach destinations and residential sites. Highlight any points of uniqueness. Minimum service categories shall include barge tours of no less than 35 minutes, charter barges, taxi barges, and the provision of regularly scheduled, reliable, and affordable barge service to link downtown to Museum Reach destinations and residential sites.
- b. Describe the proposed plan of operations for the river barge concession, including fueling/charging of watercraft. If non-CNG fuel is proposed for fleet propulsion, describe necessary supporting infrastructure (type, location, design) and amount of proposed capital investment.
- c. The American with Disabilities Act (ADA) mandates that persons with disabilities must be served in the least restrictive and most integrated environment possible. Given that federal mandate, specifically state how you propose to achieve ADA compliance through both customer service and barge design for seating /loading.
- d. Identify proposed hours of operation. Minimum acceptable hours of operation for tours and taxis are from 9 a.m. until 10 p.m. daily, and minimum acceptable hours of operation for barge charters are from 8 a.m. until 10 p.m. daily.
- e. Describe level of commitment and plan to achieve well-maintained and conditioned fleet, including fleet replacement and repair policies.
- f. Identify the number of maintenance watercraft proposed to support the river barge fleet. Describe the proposed maintenance watercraft – at a minimum, include dimensions, propulsion method, primary material of manufacture, and manufacturer's name. Maximum number of maintenance watercraft shall be three (3).
- g. Identify minimum response time for repair or replacement of river barges which become inoperable during a tour or charter.
- h. Identify the total number of barges proposed to support the river barge concession (not including maintenance watercraft), specifying the number of barges to be utilized in support of river cruise tours, charters, river taxi operations, and other services, if any. Maximum number of river barges shall be forty-four (44).
- i. Provide a schedule for tour barge cycle times. Minimum length of river barge tours shall be 35 minutes.
- j. Identify maximum time from on-site tour barge ticket purchase until tour barge departure.
- k. Describe plan to address queuing lines and minimize customer waiting time to purchase tickets and board tour barges.

- l. Identify proposed locations of ticket sales stations. City shall make available use of four City-owned ticket stations near Rivercenter Mall, across river from Hilton Palacio del Rio Hotel, Losoya Street Trolley Station (street level near Commerce Street bridge), and Brooklyn Street bridge.
- m. Identify proposed locations for tour barge loading and unloading.
- n. Explain how and to what degree quality standards will be established and maintained.
- o. Describe proposed reservation system for chartering of river barges; include hours of operation of reservation system, options to reserve charter (ie, phone, on-line, fax, etc.), means of confirming reservations, period of time from reservation request until confirmation provided to requestor, number of months in advance reservations accepted, required deposits, if any, and conditions required for full refund upon cancellation. Identify any particular strengths and/or points of uniqueness your proposed reservation system will offer to customers.
- p. Describe proposed ticketing system and point of sale accounting system with an emphasis on how accuracy will be ensured. Identify highlights and capabilities of the systems and how they will enhance river barge operations.
- q. Indicate method of payment options which shall be available to customers at each of the following: When chartering barges; When purchasing tour tickets at ticket stations; When purchasing tickets on board taxi barges.
- r. River Barge. Describe the river barge design; at a minimum include dimensions, seating layout & capacity, method of propulsion (CNG, etc.), paint color and design, and other features.
- s. Include a color image of the proposed river barge.
- t. Identify significant and/or unique features of the proposed river barge.
- u. Identify the manufacturer of the proposed river barges (not the maintenance watercraft).
- v. Include evidence of barge manufacturer's experience building quality barges of the type proposed.
- w. If new river barges are proposed, include a single page letter from the manufacturer indicating their commitment to produce and deliver the entire quantity of proposed barges – fully prepared for operation – no later than August 2015 in the event that Respondent is selected for award.
- x. If existing river barges are proposed, identify age, condition, and source of each barge.
- y. Employee Mgt Plan. Describe staffing plan to support front and back office aspects of proposed river barge operation.
- z. Describe plans for any initial and follow-up personnel training to ensure accuracy of historical information presented to barge patrons and to ensure superior customer service from all staff, including boat drivers and reservation agents.
- aa. Describe cash handling practices.
- bb. Describe employee benefits, if any.
- cc. Identify proposed hourly wage positions by job title and hourly pay range. Indicate which of the identified positions are subject to receipt of tips and the best estimate of tips received per hour.
- dd. Describe level of commitment and plan to ensure river barge concession staff represents a clean and neat appearance at all times.
- ee. Describe staff uniforms, uniform policy, and clothing allowance, if any.
- ff. Include color images of proposed uniforms.

3. Marketing Strategy & Community Outreach.

- a. Describe proposed plan to market river barge operations.
- b. Identify measures to enhance river barge image and maximize revenue, which may include community outreach, time specific ticketing, and joint ticketing with City of San Antonio Visitor Information Center and others.
- c. State the proposed minimum annual expenditures to be dedicated to marketing efforts.
- d. Identify the proposed minimum annual dollar amount of donations to the City in support of community scholarships.
- e. Identify proposed minimum annual dollar amount of any additional proposed donations to the City in support of the community other than scholarships, if any.

RFP ATTACHMENT B

ECONOMIC TERMS

- A. Identify proposed ticket prices for each ticket category throughout term of agreement, including River Walk Capital Improvement fee and sales tax within proposed prices. Identify proposed ticket prices as specific dollar amounts, not hourly rates, percentages, or ranges. River Walk Capital Improvement Fee: With each ticket sold for a tour or a taxi ride, operator shall collect a River Walk Capital Improvement Fee of \$0.50 per ticket for Contract Years 1 through 5 and \$0.75 per ticket for Contract Years 6 through 10. Operator shall pay such funds collected, less taxes if any, to City along with its monthly Concession Fee payment on the 10th of each month of the Contract Term. Contractor shall not advertise the collection of this fee on any signage or tickets sold or in any other manner but shall collect it as part of a combined charge for the services being provided.

River Barge Tour (minimum 35 minutes). Price per ticket.

	Adult	Local Resident	Child	Military	Senior
10/1/15-9/30/16					
10/1/16-9/30/17					
10/1/17-9/30/18					
10/1/18-9/30/19					
10/1/19-9/30/20					
10/1/20-9/30/21					
10/1/21-9/30/22					
10/1/22-9/30/23					
10/1/23-9/30/24					
10/1/24-9/30/25					

River Barge Tour (minimum 35 minutes). Price per package of 25 tickets.

	Adult	Local Resident	Child	Military	Senior
10/1/15-9/30/16					
10/1/16-9/30/17					
10/1/17-9/30/18					
10/1/18-9/30/19					
10/1/19-9/30/20					
10/1/20-9/30/21					
10/1/21-9/30/22					
10/1/22-9/30/23					
10/1/23-9/30/24					
10/1/24-9/30/25					

- B. Identify proposed ticket prices for each ticket category throughout term of agreement, including River Walk Capital Improvement fee and sales tax within proposed prices. Identify proposed ticket prices as specific dollar amounts, not hourly rates, percentages, or ranges. River Walk Capital Improvement Fee: With each ticket sold for a tour or a taxi ride, operator shall collect a River Walk Capital Improvement Fee of \$0.50 per ticket for Contract Years 1 through 5 and \$0.75 per ticket for Contract Years 6 through 10. Operator shall pay such funds collected, less taxes if any, to City along with its monthly Concession Fee payment on the 10th of each month of the Contract Term. Contractor shall not advertise the collection of this fee on any signage or tickets sold or in any other manner but shall collect it as part of a combined charge for the services being provided.

River Barge Taxi Service. Price per ticket.

	1 Way Taxi Downtown	1 Day Pass Taxi Downtown	3 Day Pass Taxi Downtown	1 Day Pass Taxi Museum Reach	1 Day Pass Taxi Combination Museum Reach & Downtown	3 Day Pass Taxi Museum Reach
10/1/15-9/30/16						
10/1/16-9/30/17						
10/1/17-9/30/18						
10/1/18-9/30/19						
10/1/19-9/30/20						
10/1/20-9/30/21						
10/1/21-9/30/22						
10/1/22-9/30/23						
10/1/23-9/30/24						
10/1/24-9/30/25						

River Barge Taxi Service. Price per package of 25 tickets.

	1 Way Taxi Downtown	1 Day Pass Taxi Downtown	3 Day Pass Taxi Downtown	1 Day Pass Taxi Museum Reach	1 Day Pass Taxi Combination Museum Reach & Downtown	3 Day Pass Taxi Museum Reach
10/1/15-9/30/16						
10/1/16-9/30/17						
10/1/17-9/30/18						
10/1/18-9/30/19						
10/1/19-9/30/20						
10/1/20-9/30/21						
10/1/21-9/30/22						
10/1/22-9/30/23						
10/1/23-9/30/24						
10/1/24-9/30/25						

- C. Identify proposed ticket prices for each ticket category throughout term of agreement, including River Walk Capital Improvement fee and sales tax within proposed prices. Identify proposed ticket prices as specific dollar amounts, not hourly rates, percentages, or ranges. River Walk Capital Improvement Fee: With each ticket sold for a tour or a taxi ride, operator shall collect a River Walk Capital Improvement Fee of \$0.50 per ticket for Contract Years 1 through 5 and \$0.75 per ticket for Contract Years 6 through 10. Operator shall pay such funds collected, less taxes if any, to City along with its monthly Concession Fee payment on the 10th of each month of the Contract Term. Contractor shall not advertise the collection of this fee on any signage or tickets sold or in any other manner but shall collect it as part of a combined charge for the services being provided.

Price per ticket. Identify other service categories & ticket prices, if any.

10/1/15-9/30/16						
10/1/16-9/30/17						
10/1/17-9/30/18						
10/1/18-9/30/19						
10/1/19-9/30/20						
10/1/20-9/30/21						
10/1/21-9/30/22						
10/1/22-9/30/23						
10/1/23-9/30/24						
10/1/24-9/30/25						

Price per package of 25 tickets. Identify other service categories & ticket prices, if any.

10/1/15-9/30/16						
10/1/16-9/30/17						
10/1/17-9/30/18						
10/1/18-9/30/19						
10/1/19-9/30/20						
10/1/20-9/30/21						
10/1/21-9/30/22						
10/1/22-9/30/23						
10/1/23-9/30/24						
10/1/24-9/30/25						

- D. Identify proposed rental rate for each charter category throughout term of agreement, including River Walk Capital Improvement fee and sales tax within proposed rates. Identify proposed charter rates as specific dollar amounts per hour and half hour, not percentages or ranges. With each charter, operator shall collect a River Walk Capital Improvement Fee of \$20 for Contract Years 1 through 5 and \$30 for Contract Years 6 through 10. Operator shall pay such funds collected, less taxes if any, to City along with its monthly Concession Fee payment on the 10th of each month of the Contract Term. Operator shall not advertise the collection of this fee on any signage or tickets sold or in any other manner but shall collect it as part of a combined charge for the services being provided.

Rental rate to charter river barge.

Minimum charter period shall be one hour.

Half hour rate shall represent charge for each half hour or portion of half hour following first hour charter.

	Peak Time	Non-Peak Time	Peak Time	Non-Peak Time	See Note.	See Note.
	General Public	General Public	Schools, Sr Citizens, Non-Profits	Schools, Sr Citizens, Non-Profits		
10/1/15-9/30/16	\$__ hour	\$__ hour	\$__ hour	\$__ hour		
	\$__ half hr	\$__ half hr	\$__ half hr	\$__ half hr		
10/1/16-9/30/17	\$__ hour	\$__ hour	\$__ hour	\$__ hour		
	\$__ half hr	\$__ half hr	\$__ half hr	\$__ half hr		
10/1/17-9/30/18	\$__ hour	\$__ hour	\$__ hour	\$__ hour		
	\$__ half hr	\$__ half hr	\$__ half hr	\$__ half hr		
10/1/18-9/30/19	\$__ hour	\$__ hour	\$__ hour	\$__ hour		
	\$__ half hr	\$__ half hr	\$__ half hr	\$__ half hr		
10/1/19-9/30/20	\$__ hour	\$__ hour	\$__ hour	\$__ hour		
	\$__ half hr	\$__ half hr	\$__ half hr	\$__ half hr		
10/1/20-9/30/21	\$__ hour	\$__ hour	\$__ hour	\$__ hour		
	\$__ half hr	\$__ half hr	\$__ half hr	\$__ half hr		
10/1/21-9/30/22	\$__ hour	\$__ hour	\$__ hour	\$__ hour		
	\$__ half hr	\$__ half hr	\$__ half hr	\$__ half hr		
10/1/22-9/30/23	\$__ hour	\$__ hour	\$__ hour	\$__ hour		
	\$__ half hr	\$__ half hr	\$__ half hr	\$__ half hr		
10/1/23-9/30/24	\$__ hour	\$__ hour	\$__ hour	\$__ hour		
	\$__ half hr	\$__ half hr	\$__ half hr	\$__ half hr		
10/1/24-9/30/25	\$__ hour	\$__ hour	\$__ hour	\$__ hour		
	\$__ half hr	\$__ half hr	\$__ half hr	\$__ half hr		
NOTE: Add additional charter barge categories and rates, if any.						

- E. Identify proposed minimum annual guarantee to be paid to the City of San Antonio. Selected firm shall pay City proposed minimum annual guarantee or the proposed percentage of total adjusted gross sales, whichever is greater. Minimum annual guarantee must be no less than \$4,000,000.00.

Contract Year	Minimum Annual Guarantee Payment to City
10/1/15-9/30/16	\$ _____
10/1/16-9/30/17	\$ _____
10/1/17-9/30/18	\$ _____
10/1/18-9/30/19	\$ _____
10/1/19-9/30/20	\$ _____
10/1/20-9/30/21	\$ _____
10/1/21-9/30/22	\$ _____
10/1/22-9/30/23	\$ _____
10/1/23-9/30/24	\$ _____
10/1/24-9/30/25	\$ _____
Minimum annual guarantee must be no less than \$4,000,000.00.	

- F. Identify proposed percentage of adjusted gross sales to be paid to the City of San Antonio. Selected firm shall pay City proposed minimum annual guarantee or the proposed percentage of total adjusted gross sales, whichever is greater.

Service Category	Acceptable Minimum Percentage	Proposed Percentage
Barge Tours, Charters, & Taxis	52%	_____ %
Retail Sales Gross, if any	15%	_____ %
Food & Beverage Gross Sales, if any	No Minimum	_____ %
Advertising Gross Sales, if any	15%	_____ %
If additional service categories proposed, identify same & proposed percentage of adjusted gross sales to be paid to City.		
	-	
	-	
	-	

RFP ATTACHMENT C
CONTRACTS DISCLOSURE FORM

Discretionary Contracts Disclosure Form may be downloaded at
<https://www.sanantonio.gov/efrms/atty/ContractsDisclosureForm.pdf>

Instructions for completing the Contracts Disclosure Form are listed below:

1. Download form and complete all fields. Note: All fields must be completed prior to submitting the form.
2. Click on the "Print" button and place copy in proposal response as indicated in the Proposal Checklist.

RFP ATTACHMENT D

LITIGATION DISCLOSURE FORM

Respond to each of the questions below by checking the appropriate box. Failure to fully and truthfully disclose the information required by this Litigation Disclosure form may result in the disqualification of your proposal from consideration or termination of the contract, once awarded.

Have you or any member of your Firm or Team to be assigned to this engagement ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years?

Yes ____ No ____

Have you or any member of your Firm or Team to be assigned to this engagement been terminated (for cause or otherwise) from any work being performed for the City of San Antonio or any other Federal, State or Local Government, or Private Entity?

Yes ____ No ____

Have you or any member of your Firm or Team to be assigned to this engagement been involved in any claim or litigation with the City of San Antonio or any other Federal, State or Local Government, or Private Entity during the last ten (10) years?

Yes ____ No ____

If you have answered "Yes" to any of the above questions, please indicate the name(s) of the person(s), the nature, and the status and/or outcome of the information, indictment, conviction, termination, claim or litigation, as applicable. Any such information should be provided on a separate page, attached to this form and submitted with your proposal.

RFP ATTACHMENT E

SBEDA FORM(S)

Posted as separate documents.

RFP ATTACHMENT F

LOCAL PREFERENCE PROGRAM FORM(S)

Posted as separate documents.

RFP ATTACHMENT G

VETERAN-OWNED SMALL BUSINESS PROGRAM TRACKING FORM(S)

Posted as separate documents.

RFP ATTACHMENT H

SIGNATURE PAGE

By submitting a proposal, Respondent represents that:

If awarded a contract in response to this RFP, Respondent agrees to execute a contract in the form shown in RFP Exhibit 15.4, with the understanding that the scope and compensation provisions will be included in the final document.

If Respondent is a corporation, Respondent will be required to provide a certified copy of the resolution evidencing authority to enter into the contract, if other than an officer will be signing the contract.

If awarded a contract in response to this RFP, Respondent will be able and willing to comply with the insurance and indemnification requirements set out in RFP Exhibits 15.2 & 15.3.

If awarded a contract in response to this RFP, Respondent agrees to comply with all representations made by Respondent in Respondent's proposal and during proposal presentation & interview process, if any.

Respondent has fully and truthfully submitted a Litigation Disclosure form with the understanding that failure to disclose the required information may result in disqualification of proposal from consideration.

Respondent agrees to fully and truthfully submit the General Information Form and understands that failure to fully disclose requested information may result in disqualification of proposal from consideration or termination of contract, once awarded.

Respondent shall comply with the City's Ethics Code, particularly Section 2-61 that prohibits a person or entity seeking a City contract - or any other person acting on behalf of such a person or entity - from contacting City officials or their staff prior to the time such contract is posted as a City Council agenda item.

(S)he is authorized to submit this proposal on behalf of the entity.

Acknowledgement of Prohibition regarding Campaign and Officeholder Contributions

I acknowledge that this contract has been designated a "high-profile" contract. I have read and understand the provisions regarding high profile contracts that appear on the cover page of this RFP.

If submitting your proposal by paper, complete the following and sign on the signature line below. Failure to sign and submit this Signature Page will result in rejection of your proposal.

Respondent Entity Name

Signature: _____

Printed Name: _____

Title: _____

(NOTE: If proposal is submitted by Co-Respondents, an authorized signature from a representative of each Co-Respondent is required. Add additional signature blocks as required.)

RFP ATTACHMENT I

PROPOSAL CHECKLIST

Use this checklist to ensure that all required documents have been included in the proposal and appear in the correct order.

Document	Initial to Indicate Document is Attached to Proposal
Table of Contents	
Executive Summary	
General Information Form and References RFP Attachment A, Part One	
Experience and Financial Capability RFP Attachment A, Part Two	
Quality of Proposal RFP Attachment A, Part Three	
Economic Terms RFP Attachment B	
*Contracts Disclosure Form Per instructions in RFP Attachment C	
Litigation Disclosure RFP Attachment D	
*SBEDA Form RFP Attachment E; and Associated Certificates, if applicable	
*Local Preference Program Form RFP Attachment F	
*Veteran-Owned Small Business Preference Program Form RFP Attachment G	
*Proposal Bond RFP Section 005	
Proof of Insurability (See RFP Exhibit 15.2) Insurance Provider's Letter Copy of Current Certificate of Insurance	
Financial Information	
*Signature Page RFP Attachment H	
Proposal Checklist RFP Attachment I	
One (1) original, ten (10) copies, and one (1) CD of entire proposal in PDF format.	
*Signed Addendums, if applicable.	

*Documents marked with an asterisk on this checklist require a signature. Be sure they are signed prior to submittal of proposal.