



Amendment No. 5
to
Contract No. MA 8600 NR120000004
for
Management and Operation of Waller Creek Boathouse
between
Austin Rowing Club
and the
City of Austin, Texas

- 1.0 The City hereby extends the above referenced contract for a period of three years. Effective March 1, 2023, the term for the extension will be March 1, 2023, to February 28, 2026.
- 2.0 By signing this Amendment, the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated and made a part of the above referenced contract.

Signature and Date:

A handwritten signature in black ink, appearing to read "Kevin Reinis".

11FEBRUARY2023

Kevin Reinis, Executive Director
Authorized Representative

Austin Rowing Club
74 Trinity Street
Austin, TX 78701
512-472-0726
info@austinrowing.org

Signature and Date:

Adrianna
Broniszewski

Digitally signed by Adrianna
Broniszewski
Date: 2023.02.24 07:35:44 -06'00' 2/24/23

Didi Broniszewski, Procurement Specialist IV
City of Austin

Cyrenthia Ellis

Digitally signed by Cyrenthia Ellis
Date: 2023.03.06 10:55:15 -06'00'

Cyrenthia Ellis, Procurement Manager
City of Austin



Amendment No. 4
to
Contract No. NR120000004
for
Management and Operation of Waller Creek Boathouse
between
Austin Rowing Club
and the
City of Austin

1.0 The City hereby amends the above referenced contract to replace section 15.06 Force Majeure with the following statement:

1.1 Contractor may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, pandemic, sovereign conduct, or court order provided that the Contractor experiences the event of force majeure and prudently and promptly acts to take any and all steps that are within the Contractor's control to ensure performance and to shorten the duration of the event of force majeure. Contractor shall provide notice of the force majeure event to the City within three (3) business days of the event or delay, whichever occurs later, to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, the City may terminate an order under the Contract if it is determined by the City that the Contractor will not be able to deliver goods or services in a timely manner to meet the business needs of the City. The City reserves the right to provide the vendor with written notice when the City: 1) decides to suspend, waive or reduce the vendor's concession payments to the City in response to the force majeure event; and 2) determines concession payments are to resume.

2.0 Add the examples of concession payment waiver notification and concession payment resumption template.

3.0 The total contract authorization is recapped below:

Action	Contract Amount for the Item	Total Contract Amount
Initial Term: 03/01/2012 – 02/28/2017		
Amendment No. 1: Option 1 03/01/2017 – 02/28/2019		
Amendment No. 2: Extension 03/01/2019 - 02/28/2023		
Amendment No. 3: Waive monthly installment May 2020 and June 2020	-2,000	0.00
Amendment No. 4: Replace Force Majeure language and add templates	0.00	0.00

4.0 MBE/WBE goals do not apply to this contract.

5.0 By signing this Amendment, the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of

Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

6.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: 12/24/2020

Printed Name: _____

Authorized Representative

Austin Rowing Club
74 Trinity Street
Austin, TX 78701
512-472-0726

Sign/Date: **Al Drayton** Digitally signed by Al Drayton
Date: 2020.12.28 16:37:22
-06'00'

Alfonso Drayton
Procurement Specialist III
City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701



Amendment No. 3
to
Contract No. NR120000004
for
Management and Operation of Waller Creek Boathouse
between
Austin Rowing Club
and the
City of Austin

- 1.0 The City hereby amends the above referenced contract due to the extenuating circumstances created by the COVID-19 pandemic. The City closed the Waller Creek Boathouse operations on March 16, 2020. As of this date the Waller Creek Boathouse operations are open under restrictions.
- 2.0 The City hereby amends the above referenced contract to waive monthly installment that are due from contractor in May and June 2020. Should new orders be released that extend the governor's stay at home orders, the City will notify concessions if additional fee waivers will go into effect.
- 3.0 The total contract authorization is recapped below:

Action	Contract Amount for the Item	Total Contract Amount
Initial Term: 03/01/2012 – 02/28/2017		
Amendment No. 1: Option 1 03/01/2017 – 02/28/2019		
Amendment No. 2: Extension 03/01/2019 - 02/28/2023		
Amendment No. 3: Waive monthly installment May 2020 and June 2020	-2,000	0.00

- 4.0 MBE/WBE goals do not apply to this contract.
- 5.0 By signing this Amendment, the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 6.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: Kevin A. Reinis May 19, 2020

Printed Name: Kevin A. Reinis
Authorized Representative

Austin Rowing Club
74 Trinity Street
Austin, TX 78701
512-472-0726

Sign/Date: Al Drayton Digitally signed by Al Drayton
Date: 2020.05.19 16:24:43 -05'00'

Alfonso Drayton
Procurement Specialist III
City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701

SECOND AMENDMENT TO
MANAGEMENT AND OPERATION AGREEMENT
BETWEEN THE CITY OF AUSTIN AND
THE AUSTIN ROWING CLUB
RELATING TO THE WALLER CREEK BOATHOUSE

This amendment (the "Amendment") to the Management and Operation Agreement between the CITY OF AUSTIN and the AUSTIN ROWING CLUB relating to the Waller Creek Boathouse is entered into effective as of March 1, 2019 (the "Effective Date"), by and between the CITY OF AUSTIN, TEXAS, a Texas home rule city and municipal corporation (the "City") and the AUSTIN ROWING CLUB, a Texas non-profit corporation ("ARC" and, together with the City, the "Parties").

RECITALS:

WHEREAS, the City and ARC are parties to that certain Management and Operation Agreement between the CITY OF AUSTIN and the AUSTIN ROWING CLUB relating to the Waller Creek Boathouse effective as of March 1, 2012, (the "Original Agreement", and, as amended by this Amendment, the "Agreement").

WHEREAS, the Original Agreement was executed to provide for management and operation of the boathouse on Lady Bird Lake for the Parks and Recreation Department (PARC).

WHEREAS, the City and the ARC are parties to that certain First Amendment to the Original Agreement, which provided for a renewal of the contract term and which expires February 28, 2019.

WHEREAS, the City Council, pursuant to Resolution No. 20180628-070, resolved to extend the current contract with ARC.

WHEREAS, the City Council, pursuant to Resolution No. 20180628-070, directed the City Manager to negotiate and execute an amendment with ARC for an appropriate period of time.

AGREEMENT:

NOW THEREFORE, in consideration of the covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by each of the Parties, the City and ARC hereby agree as follows, effective as of the Effective Date:

1. City and the ARC agree to amend Article 1. Definitions, Section 1.04 Commercial Gross Revenue to read as follows:

~~1.04. Commercial Gross Net Revenue. All revenue actually received by ARC or its Boathouse Partners in connection with the sale of goods or services associated with the operation of the concession minus sales tax, allowing services provided at the Boathouse: café food and beverage sales; kayak rentals and lessons; stand-up paddle rentals and lessons; bike rental and repair; Boathouse memberships; event space rental; boat bay rental; Boathouse-branded merchandise and other merchandise sold by the Principal Vendors; and interest on the foregoing revenue. Commercial Gross Revenue shall not include revenue derived by ARC from charitable grants and donations; rowing memberships, rowing lessons and camps, regattas, sale of ARC-branded merchandise and rowing equipment; and interest on the foregoing revenue.~~

2. City and the ARC agree to amend Article 2. Term to read as follows:

2.01. Term. The initial term of this Agreement ("Term") shall begin on March 1, 2012 and shall expire on February 28, 2017; this Agreement may be extended for one 24-month period through February 28, 2019, subject to approval of the City.

Pursuant to City Council Resolution No. 20180628-070, this Agreement is extended for a four-year term through February 28, 2023.

3. Upon execution of this amendment, the City agrees to repair the current damages to the dock and upper deck as soon as funding becomes available. At the completion of these repairs, inclusive of a warranty period for the repairs, ARC will be responsible for maintenance and repair pursuant to Section 3.13 Maintenance and Repair, 3.13.2 ARC Obligations.
4. City and the ARC agree to delete Section 5.01 Revenue Sharing and replace with the following:

Revenue Sharing.

5.01.1 ARC shall pay the City:

5.01.1.1 A monthly installment of \$1,000 no later than the 15th day of each month;

5.01.1.2 One percent of annual Net Revenue less than and up to \$80,000, and eight percent of annual Net Revenue above \$80,000 in an annual lump sum payment to be made no later October 31 of each calendar year of operations. In this Section, annual means the City's fiscal year.

5.01.2 The annual amount that ARC provides in financial assistance for ARC memberships, ARC lessons, or ARC camps, , along

with charitable grants and charitable donations annually received by ARC may be deducted from annual Net Revenue amount used to calculate the payments required in Section 5.01.1.2 above. Additionally, revenue from regattas and Underserved Youth Programming as defined in the Original Agreement Section 3.15.14 may also be deducted from the annual Net Revenue amount used to calculate the payments required in Section 5.01.1.2

5. All other provisions of the Agreement shall remain in full force and effect.

EXECUTED by the authorized representatives of the Parties to be effective as of March 1, 2019, regardless of the date the Parties execute this Agreement.

This Agreement is executed by:

Austin Rowing Club

By 


Name: Kevin A. Reinis


Title: Executive Director

Date: April 11, 2019

**City of Austin
Parks and Recreation Department**

Approved as to form:

By 
Sara L. Hensley, CPRP,

By 
Assistant City Attorney

Director
Austin Parks and Recreation Department

Date: 4/16/19

Date: 4-22-19

RESOLUTION NO. 20180628-070

WHEREAS, Austin Rowing Club (ARC) is a non-profit organization dedicated to promoting the sport of rowing in Austin; and

WHEREAS, ARC offers a variety of low-cost and no-cost rowing programs for eligible youth and adult rowers; and

WHEREAS, ARC entered into a contract with the City for the management and operation of the boathouse on Lady Bird Lake for the Parks and Recreation Department (PARD); and

WHEREAS, the 5-year revenue concession contract with ARC included one 2-year option for renewal; and

WHEREAS, the contract renewal was granted in February of 2017, and the contract expires in late February of 2019; and

WHEREAS, per the terms of the agreement ARC has provided expanded rowing programs, kayaking, stand up paddle boarding, dragon boating, nationally recognized rowing events, and a cafe to park users; and

WHEREAS, the contract stipulated that ARC bring an initial capital investment of \$240,680 and program specific equipment exceeding \$870,000; and

WHEREAS, ARC's contract also includes provisions relating to programs and services that benefit the general public, differently abled individuals, youth, and seniors; and

WHEREAS, ARC has collaborated with the Austin Independent School District, Front Steps, at-risk youth, breast cancer awareness groups, Paralympic athletes, and other non-profits to provide inclusive programming at the boathouse; and

WHEREAS, due to ARC's commitment to the facility and community, ARC is requesting that the non-profit be permitted to operate and manage the boathouse for an additional five years; and

WHEREAS, construction at Waller Creek lasted approximately four years longer than expected and impacted the Austin Rowing Club's operations and ability to maximize revenue opportunities; and

WHEREAS, Resolution No. 980312-25 states that the City should bid concessions contracts in accordance with the provisions contained within Resolution No. 980312-25; **NOW, THEREFORE:**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

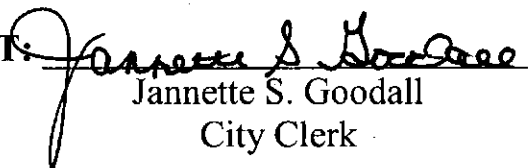
The requirements regarding concessions on parkland adopted by City Council in Resolution No. 980312-25 are waived for a concession agreement extension with Austin Rowing Club.

BE IT FURTHER RESOLVED:

The City Manager is directed to consult the Parks and Recreation Board's Concessions and Contracts Committee to solicit feedback on the appropriate process to use in this circumstance and potential contract terms. Pending those recommendations, the City Manager is directed to negotiate and execute a contract with Austin Rowing Club for the management and operation of the boathouse on Lady Bird Lake for an appropriate period.

ADOPTED: June 28, 2018

ATTEST:


Jannette S. Goodall
City Clerk



Amendment No. 2
of
Contract No. NR120000004
for
Management and Operation of Waller Creek Boathouse
between
Austin Rowing Club
and the
City of Austin

1.0 The City hereby extends the expiration date for the subject contract for 120 days. This extension will be effective March 1, 2019 to June 30, 2019 and there are no remaining options.

2.0 The total Contract authorization is recapped below:

Basic Term: 03/01/2012 – 02/28/2017
Amendment No. 1: Option 1 03/01/2017 – 02/28/2019
Amendment No. 2: Extension 03/01/2019 - 06/30/2019

3.0 MBE/WBE goals were not established for this contract.

4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature:

Printed Name: Kevin A. Reinis

Authorized Representative

Austin Rowing Club
PO Box 1741
Austin, TX 78767-1741
512-472-0726

Signature:

Claudia Rodriguez, Procurement Specialist IV
Purchasing Office
City of Austin



Amendment No. 1
of
Contract No. NR120000004
for
Management and Operation of Waller Creek Boathouse
between
Austin Rowing Club
and the
City of Austin

- 1.0 The City hereby exercises the extension option for the subject contract. This extension option will be effective March 1 2017 to February 28, 2019 and there are no remaining options.
- 2.0 The total Contract authorization is recapped below:

Basic Term: 03/01/2012 - 02/28/2017
Amendment No. 1: Option 1 03/01/2017 - 02/28/2019

- 3.0 MBE/WBE goals were not established for this contract.
- 4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature: Elizabeth Webb
Printed Name: Elizabeth Webb
Authorized Representative

Signature: Cindy Reyes
Cindy Reyes, Senior Contract Compliance Specialist
City of Austin
Purchasing Office

Austin Rowing Club
PO Box 1741
Austin, TX 78767-1741
512-472-0726



**Financial and Administrative Service Department
Purchasing Office**
PO Box 1088, Austin, Texas, 78767

March 22, 2012

Austin Rowing Club
PO BOX 1741
Austin, Texas 78767-1741
Attention: President

The City has awarded the contract to your company for the MANAGEMENT AND OPERATION AGREEMENT OF THE WALLER CREEK BOATHOUSE for the City of Austin, Parks and Recreation Department in accordance with the referenced documents.

Responsible Department:	PARD
Department Contact Person:	Beverly Mendez
Department Contact Email Address:	beverly.mendez@austintexas.gov
Department Contact Telephone:	512-974-6784
Project Name:	Management and Operation of Waller Creek Boathouse
Contractor Name:	Austin Rowing Club
Contract Number:	NR120000004
Contract Period:	March 1, 2012 through February 28, 2017
Contract Amount:	Revenue
Extension Options:	One 24-month Period
Extension Amount Per Option:	Revenue
Requisition Number:	RQS 860010030300263
Solicitation Number:	RFP CB30017
Agenda Item Number:	NO. 28
Council Approval Date:	March 1, 2012

A copy of the contract/purchase order will be forwarded by mail.

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact the person referenced under Department Contact Person.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cruz Banda".

Cruz Banda, Buyer II
Purchasing Office
Finance and Administrative Service Department

cc:



**MANAGEMENT AND OPERATION AGREEMENT
BETWEEN THE CITY OF AUSTIN AND THE AUSTIN ROWING CLUB RELATING
TO THE WALLER CREEK BOATHOUSE**

This Agreement (“**Agreement**”) relating to the management and operation of the Waller Creek Boathouse, approved by the Austin City Council on March 1, 2012, is made between the **CITY OF AUSTIN**, a home rule municipal corporation of the State of Texas located within Travis, Hays, and Williamson Counties, Texas (“**City**”), and the **AUSTIN ROWING CLUB**, a Texas nonprofit corporation established under the Texas Nonprofit Corporation Act (“**ARC**”) (collectively, “**Parties**”).

RECITALS

1. The Austin City Council adopted the Waller Creek Master Plan in March, 2010 to create a vision for the revitalization and redevelopment of the Waller Creek District. At the southernmost end of the Waller Creek District is Lady Bird Lake Park where the newly constructed Waller Creek Boathouse (“**Boathouse**”) will be instrumental in reinstating the environmental value of the Waller Creek District as a natural feature within Austin’s urban landscape.

2. The Boathouse is designed and intended to be a premier water recreational facility that will showcase the water-related recreational activities available to citizens and visitors to Austin in and around Lady Bird Lake Park.

3. The City issued Request for Proposal #CB30017 on March 15, 2010 seeking responses from private entities experienced in the management and operation of facilities offering water-related activities willing to enter into a public-private partnership with the City to manage and operate the Boathouse for the benefit of the public.

4. The successful proposer, ARC, is a 501(c)(3) nonprofit organization founded in 1986 that has established itself as a premier rowing community in the State of Texas by hosting numerous regattas and university-level rowing teams. The City and ARC have a thirty year history of working together to advance water-related activities on Lady Bird Lake.

5. Residents of the City as well as visitors will derive substantial benefits from the partnership between the City’s Parks and Recreation Department and ARC; the combination of this experience will provide enhanced quality of life for all Austin citizens and visitors by

providing organized, consistent opportunities for water-related activities and will set the way for a successful beginning project related to the revitalization of the Waller Creek District.

NOW THEREFORE, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

1.01 Boathouse Facility. The building commonly known as the Waller Creek Boathouse is a resource for the public to assemble and meet during normal operating hours. The ARC, as manager of the Facility is entrusted by the City to provide access and equal opportunity to services and programs administered by the ARC that are comparable to other water-related facilities, that meet the needs of the community, and for which the ARC may charge fees that are reasonable, consistent with other water-related facilities in the Austin area.

1.02 Boathouse Partners. The businesses with whom ARC has or will contract in order to provide recreational services at the Boathouse. The initial Boathouse Partners are Row Paddle Brushy Creek, SUP Jam Austin, Yellow Bike Project, and Juan Pelota Café. The term Boathouse Partners includes all such businesses and any future providers of the services provided by the Boathouse Partners or similar recreational services at the Boathouse. Use of the term “Partners” does not mean or imply that the Boathouse Partners legally qualify as partners or joint venturers of ARC’s. Each is an independent contractor.

1.03 City. City means the City of Austin, a home rule municipality.

1.04 Commercial Gross Revenue. All revenue actually received by ARC or its Boathouse Partners in connection with the following services provided at the Boathouse: café food and beverage sales; kayak rentals and lessons; stand-up paddle rentals and lessons; bike rental and repair; Boathouse memberships; event space rental; boat bay rental; Boathouse-branded merchandise and other merchandise sold by the Principal Vendors; and interest on the foregoing revenue. Commercial Gross Revenue shall not include revenue derived by ARC from charitable grants and donations; rowing memberships, rowing lessons and camps; regattas, sale of ARC-branded merchandise and rowing equipment; and interest on the foregoing revenue.

1.05 Director. Director means the Director of the City’s Parks and Recreation Department or her designee (**PARD**).

1.06 Emergency Repair. Emergency Repair means any repair or replacement of any portion of the Facility (as defined below), necessary to protect the public and the integrity of the building or its systems in a timely and reasonable manner. See also, Section 3.14 below.

1.07 Evaluation Team. The City will establish an evaluation team consisting of the Director, Chief Financial Officer, City Purchasing Officer and the Project Manager for the Waller Creek Tunnel Project. This team will report to the Assistant City Manager charged with management of the Parks and Receptions Department (PARD).

ARTICLE 2. TERM

2.01 Term. The initial term of this Agreement (“**Term**”) shall begin on March 1, 2012 and shall expire on February 28, 2017; this Agreement may be extended for one 24-month period through February 28, 2019, subject to the approval of the City. The City will issue an initial Notice to Proceed to ARC once a Certificate of Occupancy is authorized on the Facility allowing ARC access to commence the management and operations of the Boathouse.

2.02 Start-Up Period. ARC will be provided a period of time to initiate the management and operation of the Facility. The start-up period will begin on the later of (i) the issuance of the initial Notice to Proceed and (ii) the City provides ten (10) temporary parking spaces for ARC use, and will result in a right of access to the Facility by ARC. ARC will be provided a period of time, no later than through the end of the calendar year, December 31, 2012, to finish build-out, finalize location of staff and visitor parking locations, prepare risk management, safety and other plans, secure approval for the sale and consumption of alcohol and complete any other deliverable to the City required by this Agreement. The Start-Up Period ends at the earlier of December 31, 2012, or the completion of work to finish build-out, finalize location of staff and visitor parking locations, prepare risk management, safety and other plans, secure approval for the sale and consumption of alcohol and complete any other deliverable to the City required by this Agreement. This schedule will be compatible with the timeframe contained in Exhibit 2 which provides the revenues to the City are delayed until the second year of the Agreement. The City will issue a second Notice to Proceed no later than January 1, 2013 which will commence the revenue sharing described in Exhibit 2.

Within the first 18 months of the Term, periodic evaluations of the Waller Creek Tunnel Project construction will take place to determine the impact, if any, on ARC’s revenues.

During the Start-Up Period, the Director may prepare criteria for programs directed at underserved youth. At the Director’s request, ARC will be available to meet with the Director or her designee to discuss the programs and project dates and locations for programs. These meetings and development of criteria for participation in the Underserved Youth Program are at the Director’s discretion. The Parties agree that programming for the Underserved Youth Program will begin no later than January, 2013.

2.03 Holdover. Unless terminated earlier by either party pursuant to a right stated in this Agreement, this Agreement will expire without further notice when the Initial Term and approved options expire. Upon expiration of the Initial Term or period of extension, the Contractor agrees to holdover under the terms and conditions of this agreement for such a period of time as is reasonably necessary to re-solicit and /or complete the project (not to exceed 120 days unless mutually agreed on in writing).

ARTICLE 3. USE OF PREMISES, OWNERSHIP OF PROPERTY AND SCOPE OF WORK

3.01 Premises. In consideration of the mutual terms and covenants of this Management and Operations Agreement, ARC has the right to occupy and jointly use with the City the Premises described in Exhibit 1. The Land and Facility are collectively referred to as the “Premises”. This Agreement is subject to all existing easements for public roads, channels, highways, public utilities, railroads, pipelines and electrical transmission lines. The area identified on Exhibit 1 as “Waller Creek Tunnel Equipment Area” which houses certain Waller Creek Tunnel equipment are expressly excluded from the Premises.

3.02 Permitted Use of Premises. ARC may use the Premises only for the purpose of operating and maintaining the Boathouse for use by the public. ARC will offer, conduct, and operate non faith-based recreation rowing and on-the-water recreation opportunities including such activities as kayak and stand up paddle rental, recreation-related and other related uses during normal operating hours and as set forth in the Uses Exhibit submitted to the City for approval annually, and for no other purpose without the prior written consent of City. The Uses Exhibit must establish the programs, program rates, Facility fees for both members and non-members, and any access restrictions that might impact the public’s use of the Facility.

3.03 Illegal Use Not Permitted. ARC may not use any part of the Premises or any building situated on them for any use or purpose that violates any applicable law, regulation, or ordinance of the United States, the State of Texas, the County of Travis, or the City of Austin, or other lawful authority with jurisdiction over the Premises.

3.04 Condition of Premises. The parties acknowledge that the Premises are under construction. As of the completion of the Start-Up Period, ARC accepts the Premises described in Exhibit 1 in its present condition, finds it suitable for the purposes intended, and further acknowledges that it is thoroughly familiar with such condition by reason of a personal inspection and does not rely on any representations by City as to the condition of the Premises or its suitability for the purposes intended. ARC further accepts the Premises described in Exhibit 1 subject to all previous recorded easements, if any, that may have been granted on, along, over, under or across said property, and releases City from any and all damages, claims for damages, loss or liabilities that may be caused to all invitees, licensees, or trespassers by reason of the exercise of such rights or privileges granted in these easements.

3.05 Zoning Restrictions and Other Laws. The Premises are subject to any statement of facts which an accurate survey or physical inspection might show, all zoning, restrictions, regulations, rulings and ordinances, building restrictions, and other laws and restrictions now in effect or later adopted by any governmental authority having jurisdiction.

3.06 Fees. Fees for memberships and programs shall be reviewed annually by the Director or her designee, who may request that the ARC modify such fees. Fees shall be posted on the Premises so as to be visible to the public.

3.07 Janitorial Services and Housekeeping. The ARC, at its sole cost and expense, shall provide daily janitorial and custodial service for the Boathouse. For the Term of this Agreement, the ARC will employ or subcontract for housekeeping staff whose function shall be daily in-house tasks related to routine and emergency cleanups, room or facilities preparation, minor repairs and other routine function associated with programs and building operations.

3.08 Inspections. The City shall conduct periodic and regular inspections as may be required of the Boathouse to insure that fire, safety and sanitation regulations and other provisions contained in this Agreement or in the City Code are being adhered to by the ARC. The City shall notify the ARC of its findings, specifying any items needing attention. The ARC agrees to grant the City the right to access the Facility for inspections during normal business hours, and after hours, with prior notice as may be necessary. Failure to conduct any inspections as may be required shall not operate as a waiver of the City's right to conduct these inspections and shall not be considered a default of the terms of this Agreement.

3.09 Fire Code Inspections. ARC will permit the City's Fire Marshal or his or her authorized agents to inspect the Premises, and ARC and City will comply with all requirements of the Fire Marshal or his or her authorized agents that are necessary to bring the Premises into compliance with the City Fire Code and Building Code provisions regarding fire safety, as such provisions exist or may later be amended subject to the maintenance and repair obligations under Section 3.13 below. ARC shall maintain in proper condition accessible fire extinguishers of a number and type approved by the Fire Marshal or his or her authorized agents for the particular hazard involved.

3.10 Ownership of Equipment. No City funds shall be used to acquire equipment to be used for private purposes by the ARC. The ARC shall own all equipment and furniture purchased by it. The ARC, at its sole cost and expense, shall be responsible for repair and/or replacement of any equipment during the term of the Agreement.

3.11 Ownership of Building and Fixtures. City shall own the Boathouse and all attached fixtures. The Boathouse and any other buildings, improvements, additions, alterations, and fixtures (except furniture, movable equipment, and trade fixtures) constructed, placed, or maintained on any part of the Premises during the Term are considered part of the real property of the Premises and must remain on the Premises and title to all permanent improvements on the Premises shall vest in the City.

3.12 Right to Remove Personal Property; Trade Fixtures. ARC may, at any time while it occupies the Premises, or within a reasonable time thereafter, not to exceed ninety (90) days, remove personal property, furniture, machinery, equipment, or other trade fixtures owned solely by ARC (including movable docks and boat racks owned solely by ARC), in, under, or on the Premises, or acquired by ARC, whether before or during the Term and any extension; this property is referred to as "ARC Property." On or before the date of expiration of this Agreement, ARC shall vacate the Premises, remove all ARC Property and repair any damage to any buildings or improvements on the Premises resulting from the removal, restoring the Premises to a condition reasonably satisfactory to the City. If the City or ARC terminates this Agreement, ARC shall vacate the Premises, remove the ARC Property and restore the Premises

within such time as the City shall reasonably designate, but in no event less than ninety (90) days. In either event, if ARC shall fail or neglect to remove the ARC Property within a reasonable time after the Agreement termination date, not to exceed ninety (90) days and so restore the Premises, then the ARC Property shall become the property of the City.

3.13 Maintenance and Repair.

3.13.1 City Obligations. Except for repairs required by ARC under Paragraph 3.13.2 below, the City will at all times during the Term, keep and maintain, or cause to be kept and maintained, the Premises, including the Boathouse and all other buildings and improvements erected on the Premises, in compliance with city codes in good state of appearance and repair at the City's sole expense, including without limitation the structure, roof, foundation, HVAC, and parking area.

After City receives notice of needed repairs, the City shall within five (5) working days of notification inspect the Boathouse to determine the extent of repair required. The City shall complete the repairs within ninety (90) days from the date of such notice. If the City is unable to initiate the repairs as required, the City shall notify the ARC in writing and ARC may make and pay for repairs as approved in writing by the Director or her designee. ARC shall submit a request for reimbursement for the cost of an approved repair. The City shall reimburse the ARC for the approved repair within 30 days. Needed repairs as used in this subsection exclude obligations of the ARC in Paragraph 3.13.2 below. For repair and/or replacement expenses less than or equal to \$5,000, ARC may make repairs internally or hire outside contractors, but agrees to solicit at least one bid and provide a copy of the bid if requested by the City. For repair and/or replacement expenses greater than \$5,000 and less than or equal to \$50,000, ARC may make repairs internally and submit a written request for reimbursement or hire outside contractors based on the ARC's determination of the best of three (3) bids. The City may request a copy of the bids solicited prior to reimbursement. For repair and/or replacement expenses greater than \$50,000, the ARC shall use existing standard purchasing procedures currently in place by the City for expenses more than \$50,000, and upon approval by the Director, the City shall reimburse the ARC for approved repairs or replacement.

3.13.2. ARC Obligations. At all times during the Term of this Agreement, the ARC shall, at its sole cost and expense, make all regular and ordinary nonstructural building maintenance and repairs, including but not limited to, painting, wallpaper, tile, flooring, electrical, plumbing and window glass replacement. Such repairs will be made in an expeditious and proper manner. Further, the ARC shall be responsible for keeping any landscaping, including any irrigation system, within the Site Plan approved for construction upon the Premises in a neat, tidy and working condition, with adequate watering and maintenance, and replacing landscaping, including all growth of weeds and other objectionable vegetation on the property from reaching such conditions as to violate governmental requirements, if any, or to be hazardous and/or objectionable to the City or the ARC. Collection and proper disposal of trash, garbage, litter and debris will be the responsibility of ARC, at its sole cost and expense.

3.13.2.1 For repair and/or replacement expenses less than or equal to \$5,000, ARC may make repairs internally or hire outside contractors, but agrees to solicit at least one bid and provide a copy of the bid if requested by the City. For repair and/or replacement expenses greater than \$5,000 and less than or equal to \$50,000, ARC may make repairs internally and submit a written request for reimbursement or hire outside contractors based on the ARC's determination of the best of three (3) bids. The City may request a copy of the bids solicited prior to reimbursement. For repair and/or replacement expenses greater than \$50,000, the ARC shall use existing standard purchasing procedures currently in place by the City for expenses more than \$50,000, and upon approval by the Director, the City shall reimburse the ARC for approved repairs or replacement.

3.13.2.2 ARC shall neither commit nor allow to be committed any waste on the Premises, nor shall ARC maintain, commit or permit the maintenance or commission of any nuisance on the Premises or use the Premises for any unlawful purpose.

3.13.2.3 ARC agrees to maintain at its own expense during the term of this agreement, a preventative maintenance program for all systems, including but not limited to, HVAC systems, elevators, plumbing, pumps and apparatus, fire suppression and sprinkler systems, and other systems that require periodic maintenance to continue operating efficiency and warranty compliance. When notified by maintenance contractors of potential capital replacement issues or, remedial action, ARC shall promptly notify the City in writing of any items that are the responsibility of the City.

3.14 Emergency Repairs

3.14.1 If the ARC and City mutually agree that emergency repairs need to be undertaken immediately, the ARC may undertake the necessary repair waiving the bidding requirements of Paragraph 3.13.2.1 above and the City shall be responsible to reimburse the ARC within thirty (30) days. The City will approve the emergency repair in writing to the ARC as soon as is reasonably possible, but not more than five (5) business days.

3.14.2 If the ARC is unable to reach the City's contact person and action is necessary to prevent further damage to the Boathouse or to prevent imminent danger or injury to persons, the ARC may undertake the necessary repairs to cure the condition and the City shall be responsible to reimburse the ARC within 30 days the reasonable cost of the repairs.

3.15 Scope of Work

3.15.1 Maximize Public Use of Facility. ARC shall exercise due diligence and good faith efforts in managing and operating the Facility so as to minimize operating expenses and maximize operating revenues consistent with the Intended Uses. ARC, in establishing and implementing its operating policies, may schedule not only those events that generate substantial direct revenue to the Facility but also those events that produce less direct revenue but in ARC's good faith judgment, generate either a significant cultural, or other public benefit or otherwise

serve the public interest; provided that ARC shall ensure the Facility is used for a public purpose that furthers the Facility's mission.

3.15.2 Annual Programming. ARC shall exercise diligence in using, managing and operating the Facility in a manner that maximizes public access, utilization of the Facility and is responsive to community feedback. ARC shall have an annual public and stakeholder input process that results in community input regarding service delivery. ARC shall establish annual utilization goals for each program area each year. ARC shall also periodically review and adapt programming to meet current community priorities and needs. Such goals for the coming year shall be submitted to the City 90 days before the beginning of the City's Fiscal Year.

3.15.3 Grand Opening. ARC shall conduct the Grand Opening of the Boathouse in accordance with the mutually agreed upon requirements and preferences of the City and ARC. The City will coordinate with ARC to assure appropriate City officials are invited to and attend the Grand Opening. The City and ARC will mutually agree on a budget for the Grand Opening and will cooperate in securing the approvals necessary in order to serve beer and wine at the Grand Opening.

3.15.4 Subcontracting. ARC shall negotiate, execute and perform all subcontracts, use agreements, licenses and other agreements (1) with persons who desire to schedule events at the Facility or who desire otherwise to use the Facility or any part thereof or (2) that otherwise pertain to the use, operation, and occupancy of the Facility or any part thereof.

3.15.5 Risk Management and Energy Policy. ARC shall implement and monitor a comprehensive risk management and energy efficiency program(s) for the Facility.

3.15.6 Incident Reports. ARC shall maintain for review by the City upon reasonable notice, information as reasonably required by the City to satisfy the City's responsibilities, including information regarding injuries and unusual incidents at the Facility, and regarding security measures and safety programs (including recommendations for changes for such measures/programs) at the Facility.

3.15.7 Safety Standards. ARC shall follow safety standards set by the State of Texas and consistent with industry standards, including (1) ensuring that relevant staff maintain certifications for CPR, First Aid and AED training, (2) ensuring that AED and First Aid equipment must be present on site and in good working order, (3) providing Personal Flotation Devices (PRDs) approved by the U.S. Coast Guard, in serviceable condition, readily accessible and of the appropriate size for intended user, and ensuring that all vessels other than rowing shells and rowing barges are equipped with one Type I, II, III or V wearable PFD for each person on board.

3.15.8 Emergency Operations Plan. ARC shall develop and maintain a general safety, infection control and security plan to address public safety issues and also have an Emergency Operations Plan and procedures to protect lives and property. Plan elements may include but are not limited to transportation and utility services, communications, health,

medical, fire, police, search and rescue, hazardous materials, shelter, resource management, volunteers, civil disturbances/incidents and evacuation.

3.15.9 Public Relations. Each party shall promptly notify the other of all media inquiries that are significant in nature and that could have a material effect on the Facility or its operation. ARC will provide the Director with draft copies of any significant public relations campaign material concerning the Facility (but not concerning details of vendor operations or ARC activities such as regattas) for her approval, which shall not be unreasonably withheld, five (5) business days before the release of any such material or campaign. Such material shall be deemed approved if no response is received within that time.

3.15.10 Licenses and Permits. ARC shall obtain all permits and licenses necessary to operate, manage, maintain a Boathouse and to sell on the Premises (1) food and beverages, (2) merchandise related to or consistent with the Intended Use, (3) goods and services in furtherance of the Intended Use, and (4) upon approval of the City, alcoholic beverages. All permits shall be mounted in a conspicuous location.

3.15.11 Special Events. ARC shall have a Special Event Coordination Plan and Procedures ensuring compliance with park, facility, federal, state and local requirements.

3.15.12 Balcony. ARC shall maintain balcony views of the lake without obstruction. None of the following uses of balcony space shall be deemed to be a violation: Conducting classes, temporary placement of exercise equipment, provision of outdoor seating in connection with café services or use in connection with special events.

3.15.13 Rules and Regulations. ARC shall enforce applicable current and future policies and regulations established by the City governing activities of uses of the Boathouse.

3.15.14 Underserved Youth Programming – ARC will provide \$40,000 value in programming per year beginning with the signing of the contract that can be provided by the ARC or any Boathouse Partner to underserved youth. PARD will coordinate with ARC on programs/camps for the Underserved Youth, and PARD will be responsible for identifying underserved youth and making arrangements for those underserved youth to utilize the programming. PARD will have sole authority to determine the Financial Need criteria for use of the Financial Assistance and Underserved Youth Funds. As long as there is no conflict with another scheduled event, ARC will accommodate the program(s) identified by PARD. PARD will have the sole authority and responsibility for developing criteria for Underserved Youth Programming. Any unspent Year 1 amounts for Financial Assistance and Underserved Youth can carry over to Year 2. However, no unspent funds can carry over past year 2. The value of goods and services provided may include the fair market value of equipment provision and of coaching or other supervision and teaching provided to underserved persons (including services provided by volunteers).

3.15.15 Financial Assistance For "Rowing Program" Membership. ARC will provide 10% of the value of Rowing Revenue per year to be dedicated to financial assistance for ARC memberships, ARC lessons, or ARC camps. ARC will be responsible for making the

assistance available (not dollars, just the actual membership, lessons, or camps at reduced or no cost for a total value of up to 10% of Rowing Revenue), and PARD will be responsible for identifying people who could utilize the Financial Assistance and making arrangements for people to utilize the Financial Assistance. PARD will have the sole authority and responsibility for developing criteria for use of the Financial Assistance. Any unspent Year 1 amounts for Financial Assistance and Underserved Youth can carry over to Year 2. However, no unspent funds can carry over past year 2. For purposes of this paragraph, "Rowing Revenue" revenue is that revenue derived by ARC from rowing memberships, rowing lessons, and camps.

3.15.16 Temporary and Permanent Parking. The City will provide ten temporary parking spaces at the Austin Convention Center until ten permanent parking spaces are provided within 300 feet of the Facility.

ARTICLE 4. BOND FUND REQUIREMENTS

4.01 Intended Use. During the Term of this Agreement, the ARC shall use the Facility for the operation of a water-recreation facility. Other uses shall include operation of a café offering food and beverages and event space rental.

It is the understanding of the ARC and the City that the City financed the grant for the improvement of the Facility (the Tax-Exempt Facility) with the proceeds of certain obligations the interest on which is tax-exempt under the Federal income tax laws (the Tax-Exempt Bonds). In connection with the issuance of the Tax-Exempt Bonds, the City has covenanted (the Bond Covenants) with the holders of the Tax-Exempt Bonds that the proceeds of such bonds and the Tax-Exempt Facilities will be used in a manner which assures that the Tax-Exempt Bonds will qualify as obligations within the meaning of section 103 of the Internal Revenue Code (the Code). The ARC agrees not to use nor permit the use of the proceeds of the grant or the Tax-Exempt Facility in a manner which it knows or should know would result in their use either in an unrelated trade or business or in a manner which would otherwise violate the Bond Covenants. Moreover, if the ARC is notified by City that the Tax-Exempt Bonds have been selected for audit by the Internal Revenue Service, then the ARC agrees to provide to the City any information which is in its possession regarding the use of the proceeds or the Tax-Exempt Facility as may be needed by the City to timely respond to questions posed by the Internal Revenue Service. In the event of a failure to comply with this covenant the City will have the right to specific performance, injunctive relief, or the recovery of economic damages suffered by the City.

ARTICLE 5. REVENUE SHARING, CAPITAL INVESTMENT, AND REPORTS

5.01 Revenue Sharing. ARC shall share revenues with the City from Boathouse operations in amounts and on the schedule set forth on Exhibit 2 to this Agreement. Revenue to the City shall be submitted monthly on or before fifteen (15) days after the reporting month along with the Monthly Sales and Rental Report as provided by the City. The numbers set forth on Exhibit 2 are estimates obtained by applying ARC's financial proposal to projected (estimated) results of Boathouse operations. Results of Boathouse operations are estimates only

and are dependent on numerous factors that ARC does not control, including but not limited to the availability of parking, ongoing construction of Waller Creek Tunnel project, Parks Department development of criteria and youth outreach efforts, the economy, and numerous other risks inherent in a start-up venture.

5.02 Capital and Maintenance Fund. ARC will establish a Capital Account beginning in Year 4 after the termination of the Start-Up Period for deposits of 1.5% of the annual Commercial Gross Revenues. The contribution will be deposited in a management/operator controlled account set aside for ARC's maintenance and repair obligations. The funds in this account will stay with the building in case of change of management.

5.03 Reports.

5.03.1 Quarterly Financial Reports. ARC shall within thirty (30) calendar days of the end of the fiscal quarter furnish to City a report regarding the Boathouse's financial performance during the prior quarter. The City shall reasonably determine report format and content after consultation with ARC. Format and contents will include, but are not limited, to cumulative revenues, expenditures and budget comparison to date with variance.

5.03.2 Quarterly Management Reports. ARC shall prepare and submit quarterly and year-to-date management reports regarding Boathouse operations to include: advertising, safety/environmental, maintenance and repair and tenant/concession by program segment. Reports shall be used to assist ARC in planning, budgeting, cost control performance evaluation, and revenue enhancement. The tenant/concession report shall include but not be limited to the following:

- 5.03.2.1 Patron attendance by use
- 5.03.2.2 Analyses of food and beverage concession and catering performance and income for the current period, year-to-date, and prior periods
- 5.03.2.3 Analyses of other concession/ARC performance and income
- 5.03.2.4 Analyses of event attendance and revenues
- 5.03.2.5 Other statistical reports reasonably requested by City of Austin

5.03.3 Quarterly Sales Tax Report. ARC shall submit to City a copy of quarterly sales tax report within thirty (30) calendar days of filing the report

5.03.4 Annual IRS Report. ARC shall provide to City annually, within thirty (30) calendar days of filing with the Internal Revenue Service, a copy of the IRS Form 990 pertaining specifically to Boathouse income.

ARTICLE 6. AUDITING

6.01 Audits. ARC agrees that the representatives of the Office of the City Auditor, or other authorized representatives of the City, shall have access to, and the right to audit, examine,

or reproduce, any and all records of ARC related to the performance under this Contract. ARC shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of ARC are resolved, whichever is longer. ARC agrees to refund to the City any overpayments disclosed by any such audit. ARC shall include these audit requirements in all subcontractor agreements entered into in connection with this Agreement.

6.02 Independent Audit. Independent certified audits of ARC's operations shall be submitted to the Director by April 30 of each contract year. The first audit shall be due April 30, 2014 and the final audit due on April 30, 2018. ARC shall pay for the Annual Certified Audit out of its independent funds. ARC may define the scope of the audit and recommend a firm to conduct the audit to be approved by the City. Audits will be approved by a Certified Public Accountant. The audit report/statements will be submitted to the City directly by the Auditor. A copy of the audit report/statements will be provided to ARC directly by the Auditor. The annual audit must be reviewed and approved by the ARC Board.

6.03. Performance Evaluation.

6.03.1 Eighteen (18) months after the completion of the Start-Up Period, the City Evaluation Team and ARC will review the status of the contract, programs, and revenue, considering such factors as ongoing construction on the Waller Creek Project, to identify any areas of concern, and to determine status of performance.

6.03.2 Twenty-eight (28) months after the completion of the Start-Up Period, the City Evaluation Team and ARC shall meet to determine whether ARC is performing pursuant to the financial projections provided by ARC contained in Exhibit 2 and, if not, whether the Agreement should be revised or if remedial action by either party appears to be needed. If revisions to the Agreement appear appropriate or necessary, or if remedial action by either party appears needed, for a period of no less than sixty (60) days after the 28-month meeting, the parties will diligently strive to reach agreement regarding revision or a remedial course of action if one is necessary, which may include modification or suspension of ARC's payment obligations, modification of Facility operational standards (including contractually-permissible modifications to Facility vendor agreements), and other remedial actions agreed upon by the parties. Following this 60-day period, if the City and ARC have been unable to arrive at a mutually acceptable course of action, then either party shall be entitled to terminate this Agreement upon sixty (60) days' notice. The Performance Evaluation Team will make a recommendation to the Assistant City Manager, which will be discussed with the City Manager. It is possible that the Team will determine that all reasonable efforts are being made and that the market or other uncontrollable issues are the factors for not reaching the financial projections.

6.03.3 Relocation upon termination. Upon termination of this Agreement for any reason, the City agrees to work in good faith to identify and make available alternate locations on Ladybird Lake for ARC to operate its programs, with license fees in amounts comparable to what other licensees are charged.

ARTICLE 7. INSURANCE REQUIREMENTS

7.01 Insurance Required. Prior to the time ARC is entitled to any right of access to or use of the Boathouse, ARC shall obtain and maintain the following types of insurance and minimum limits of coverage during the Term of the Agreement:

7.01.1	Workers' Compensation	Statutory limits
	Employer's liability	
	\$100,000	Each accident/occurrence
	\$100,000	Disease - each employee
	\$500,000	Disease - policy limit
7.01.2	Commercial General Liability	
	\$1,000,000	each occurrence
	\$2,000,000	aggregate limit

Coverage shall include but not be limited to the following: premises/operations, independent contractors, products/completed operations, personal injury, and contractual liability.

7.01.3	Automobile Liability	
	\$1,000,000	Each accident on a combined single limit basis

A commercial business policy shall provide coverage on "Any Auto", defined as autos owned, hired and non-owned.

7.01.4	Umbrella or Excess Liability	
	\$5,000,000	Each occurrence
	\$5,000,000	Aggregate

7.01.5 Sexual Abuse and Molestation coverage is required if care of a child is provided outside the presence of a legal guardian or parent, this coverage shall be written for a minimum limit of \$500,000 per occurrence. If this coverage is written on a stand alone basis the City shall be listed as an additional named insured.

7.02 Additional Insurance Requirements.

7.02.1 The City and its Officers, Employees and Volunteers shall be named as an Additional Insured on the Automobile and Commercial General Liability policies.

7.02.2 Thirty days (30) prior written notice of cancellation or non-renewal is required.

7.02.3 Waiver of rights of recovery (subrogation) in favor of the City.

7.02.4 The insurers for all policies must be licensed and/or approved to do business in the State of Texas. Except for workers' compensation, all insurers must have a minimum rating of A: VII in the current A. M. Best Key Rating Guide or have reasonably equivalent financial strength and solvency to the satisfaction of Risk Management. If the rating is below that required, prior written approval of the City's Risk Management Division is required.

7.02.5 If insurance policies are not written for specified coverage limits, an Umbrella or Excess Liability insurance for any differences is required. Excess Liability shall follow form of the primary coverage.

7.02.6 Unless otherwise stated, all required insurance shall be written on the "occurrence basis". Prior written approval from the City's Risk Management Division is required for any claims-made policies. If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with or prior to the date of the contractual agreement and the certificate of insurance shall state that the coverage is claims-made and the retroactive date. The insurance coverage shall be maintained for the duration of the contractual agreement and for five (5) years following completion of the contractual agreement. An annual certificate of insurance submitted to the City shall evidence such insurance coverage.

7.02.7 Any deductible in excess of \$5,000.00, for any policy that does not provide coverage on a first-dollar basis, must be approved in writing by the City's Risk Management division.

7.02.8 The City, at its sole discretion, reserves the right to review the insurance requirements and to make reasonable adjustments to insurance coverages and their limits when deemed necessary and prudent by the City based upon changes in statutory law, court decision or the claims history of the industry as well as of the contracting party to the City. The City shall be required to provide prior written notice of ninety (days).

7.02.9 The City shall be entitled, upon request and without expense, to receive copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modifications of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of party or the underwriter on any such policies.

7.02.10 Subcontractors are required to carry the same coverage and must submit to the City Certificates of Insurance prior to commencing work on the project.

7.03 Minimum Coverage. Insurance coverage specified herein constitutes the minimum requirements and said requirement shall in no way lessen or limit the liability of the ARC under the terms of this Agreement. ARC shall procure and maintain, at its own cost and expense, any additional kinds and amounts of insurance that, in its own judgment, it deems to be necessary

7.04 ARC Coverage. During the Term of this Agreement and at its sole cost and expense, ARC shall at all times maintain in effect property and casualty insurance coverages insuring the Premises in an amount equal to at least 100% of the actual replacement cost thereof and providing protection against any peril generally included in the classification "Fire and Extended Coverage" or so called "special form" coverage. The ARC shall be the named insured under the policy and the City shall be named as Loss Payee. Such insurance must be payable to the ARC and the City, as their interests may appear, and shall include a waiver of subrogation in favor of the City. ARC shall deliver to City, upon City's request, certificates of such insurance. In no event shall the City be responsible for damage to the Facility by reason of fire or other casualty, or by reason of any other cause that could have been insured against under the terms of a standard fire and extended coverage insurance policy or policies. In the event of a casualty, if the ARC reconstructs the Boathouse under Section 10.01, ARC and City shall use all insurance proceeds to reconstruct the Boathouse. If the Boathouse is not reconstructed after a casualty, the ARC and City shall proportionally share in the insurance settlement proceeds.

Following the completion of construction, ARC shall cooperate with the City's Risk Management Division for scheduling of property insurance inspections and responding to the property carrier's recommendations as set forth in the inspection reports.

ARTICLE 8. TAXES

8.01 Payment by ARC. ARC will pay and discharge all taxes, general and special assessments, and other charges of any kind levied on or assessed against the Premises and all interests in the Premises and all improvements and other property on them during the Term and any extension, whether belonging to City or to ARC. ARC will pay all the taxes, charges, and assessments directly to the public officer charged with their collection before they become delinquent, and, to the extent permitted by law, ARC will indemnify City and hold it harmless from all such taxes, charges, and assessments. ARC may, in good faith at its own expense (and in its own name) contest any such taxes, charges, and assessments and must pay the contested amount, plus any penalties and interest imposed, if and when finally determined to be due. ARC's failure to discharge any such tax, charge or assessment when finally due within ten (10) days after the date City's written notice is received by ARC shall constitute an event of default under Section 12.01.4 below. However, ARC's financial obligation to City to liquidate and discharge such lien shall survive following termination of this Agreement and until such a time as the lien is discharged.

ARTICLE 9. UTILITIES

9.01 Payment by ARC. Upon commencement of the Start-Up Period, the ARC, at its sole cost and expense, will incur the cost to provide all gas, water, sewer, electric utilities, network and communication services for use by the ARC at the Facility.

ARTICLE 10. RESTORATION

10.01 Damage or Destruction. City shall not be responsible, under any circumstances, for any damage to property belonging to ARC, its members, employees, agents, contractors, subcontractors, invitees, licensees, or trespassers, which may be damaged, stolen, or destroyed, and ARC hereby releases City from any responsibility therefore. If the Facility or any other building or improvement constructed on the Premises is damaged or destroyed by fire or any other casualty, ARC shall within ninety (90) days from the date of the damage or destruction, begin to repair, reconstruct, or replace the damaged or destroyed Facility and pursue the repair, reconstruction, or replacement with reasonable diligence so as to restore the Facility to substantially the condition it was in before the casualty. But if beginning or completing this work is prevented or delayed by war, civil commotion, acts of God, strikes, governmental restrictions or regulations, or interferences, fire or other casualty, or any other reason beyond the ARC's control, whether similar to any of those enumerated or not, the time for beginning or completing the restoration (or both) will automatically be extended for the period of each such delay. In lieu of reconstructing the Facility, the parties can mutually agree to declare this Agreement terminated.

ARTICLE 11. INDEMNIFICATION

11.01 LIABILITY OF CITY. CITY IS NOT LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND TO ANY PERSON OR PROPERTY ARISING FROM ANY USE OF THE PREMISES (OR ANY PART OF THEM), OR CAUSED BY ANY DEFECT IN ANY BUILDING, STRUCTURE, IMPROVEMENT, EQUIPMENT, OR FACILITY ON THE PREMISES (EXCEPT AS RELATED TO THE CITY'S REPAIR AND MAINTENANCE OBLIGATIONS DESCRIBED IN SECTION 10.01 ABOVE) OR CAUSED BY OR ARISING FROM ANY ACT OR OMISSION OF ARC, OR OF ANY OF ITS AGENTS, EMPLOYEES, LICENSEES, OR INVITEES, OR BY OR FROM ANY ACCIDENT, FIRE, OR OTHER CASUALTY ON THE PREMISES, OR BROUGHT ABOUT BY ARC'S FAILURE TO MAINTAIN THE PREMISES IN SAFE CONDITION.

11.02 INDEMNIFICATION. ARC AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS SERVANTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, ACTIONS, COSTS AND EXPENSES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, THOSE FOR PROPERTY DAMAGE OR LOSS AND/OR PERSONAL INJURY, INCLUDING DEATH, THAT MAY RELATE TO, ARISE OUT OF OR BE OCCASIONED BY (i) ARC'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT OR (ii) ANY NEGLIGENT ACT OR OMISSION OR INTENTIONAL MISCONDUCT OF ARC, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES, CONTRACTORS (OTHER THAN THE CITY) OR SUBCONTRACTORS, RELATED TO CONSTRUCTION OF A FACILITY OR THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OR INTENTIONAL MISCONDUCT OF THE CITY OR ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OF BOTH ARC AND CITY,

RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

11.03 Notification. ARC agrees to notify City promptly upon the receipt of any claim or lawsuit brought in connection with any injury, death or damages on the Premises. ARC agrees to make its officers, agents, and employees available to the City, at all reasonable times for any statements and case preparation necessary for the defense of any claims or litigation for which the City may be responsible hereunder. ARC shall place language in its contract with contractors that contractors shall notify the City as required by ARC in this subsection.

11.04 Waiver of Immunity. Nothing in this Agreement shall be deemed to constitute a waiver of any immunity or affirmative defense, which may be asserted by City or ARC as to any claim of any third party.

11.05 Cause of Action. Nothing in this Agreement shall be construed in any manner, to create a cause of action for the benefit of any person not a party to this Agreement, or to create any rights for the benefit of any person not a party to this Agreement not otherwise existing at law.

ARTICLE 12. DEFAULT AND REMEDIES

12.01 Event of Default. The following shall be deemed events of default by ARC under this Agreement:

12.01.1 ARC fails to use the Premises for conducting and operating the Facility for the purpose of on-the-water recreation programming as set forth in the Uses Exhibit in accordance with Section 3.02, Permitted Use of Premises.

12.01.2 ARC makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors;

12.01.3 ARC vacates any substantial portion of the Premises for a period of longer than thirty (30) days, unless ARC can demonstrate to the reasonable satisfaction of the City that all reasonable efforts are being made by ARC to occupy said Premises or

12.01.4 ARC fails to comply with any other term, provision or covenant of this Agreement that is material.

12.01.5 ARC fails to provide services in accordance with the requirements of this Agreement.

12.02 Curing a Default.

12.02.1 If an event of default occurs, the City shall give written notice that describes the default in reasonable detail to the ARC. The ARC must commence curing such default within fourteen (14) calendar days after the time it receives the notice from the City, and then complete the cure within ninety (90) days thereafter.

12.02.2 If the ARC does not substantially complete the cure within the stated time in Paragraph 12.02.1 of this section, the City may terminate this Agreement by giving written notice of the termination; provided, however, if the default is not reasonably susceptible to cure within the stated time, the City will not exercise its right to terminate this Agreement so long as the ARC has commenced to cure the default within the required time and diligently completes the cure within a reasonable time without unreasonable cessation of the work to complete the cure.

12.03 Other Remedies. Any termination of this Agreement as provided in this article will not relieve ARC from paying any sum or sums due and payable to City under this Agreement at the time of termination, or any claim for damages then or previously accruing against ARC under this Agreement. Any such termination will not prevent City from enforcing the payment of any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from ARC for any default under the Agreement. All City's rights, options, and remedies under this Agreement will be construed to be cumulative, and not one of them is exclusive of the other. City may pursue any or all such remedies or any other remedy or relief provided by law, whether or not stated in this Agreement.

12.04 Event of Default. The following shall be deemed events of default by the City under this Agreement: the City fails to comply with any term, provision or covenant of this Agreement that is material.

12.05 Curing a Default.

12.05.1 If an event of default occurs, ARC shall give written notice that describes the default in reasonable detail to the City. The City must commence curing such default within fourteen (14) calendar days after the time it receives the notice from the ARC, and then complete the cure within ninety (90) days thereafter.

12.05.2 If the City does not substantially complete the cure within the stated time in 12.05.1 of this section, ARC may terminate this Agreement by giving written notice of the termination; provided, however, if the default is not reasonably susceptible to cure within the stated time, ARC will not exercise its right to terminate this Agreement so long as the City has commenced to cure the default within the required time and diligently completes the cure within a reasonable time without unreasonable cessation of the work to complete the cure.

12.06 Termination For Cause: In the event of a material default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, (i) cures such default, or (ii) provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist, or (iii) initiates curative efforts that are pursued with reasonable diligence. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's material default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

12.07 Other Remedies. Any termination of this Agreement as provided in this article will not relieve the City from paying any sum or sums due and payable to ARC under this Agreement at the time of termination, or any claim for damages then or previously accruing against the City under this Agreement. Any such termination will not prevent ARC from

12.08 Relocation of ARC. In the event this Agreement is terminated by either party, the City agrees to work in good faith to identify and make available alternate locations on Ladybird Lake for ARC to operate its programs, with license fees in amounts comparable to what other licensees are charged.

ARTICLE 13. RECORDS

13.01 Provision of Records. On a monthly basis, or at such intervals as may be requested, the ARC shall provide the City digital copies of current Facility membership in the form of electronic statistics, e.g. itemized by zip code, family unit or as reasonably specified by the City, as well as financial, operational, safety, environmental and maintenance information related to the Facility and all other information reasonably deemed necessary by the City and the ARC.

13.02 Open Records. ARC acknowledges that the City is required to comply with Chapter 552 of the Texas Government Code (“**Public Information Act**”). Under the Public Information Act, this Agreement, and documents related to this Agreement, which are in the City’s possession, or to which the City has access, are presumed to be public and the City may release these records to the public unless an exception to disclosure applies.

13.03 Notice of complaints, or violation reports. The ARC shall notify, within 10 days of occurrence/notice, the City of any complaints or reports of violations of the law that have occurred at the Facility and that are significant in nature and that have a material effect on the operations of the Facility.

ARTICLE 14. NOTICES

14.01 Notices. Any notice, demand, request or other communication hereunder given or made by either party to the other shall be in writing and shall be deemed to be delivered whether actually received or not, when deposited in the United States mail, postage prepaid, certified or registered mail, return receipt requested, addressed to the parties hereto at the respective addresses set out below, or at such other address as they may hereafter specify by written notice so given.

If to City:	Parks and Recreation Department
	Director, Parks Department
	City of Austin
	City Hall
	200 South Lamar
	Austin, Texas 78701

If to ARC Austin Rowing Club
President
P. O. Box 1741
Austin, Texas 78767-1741
(mailing address)

74 ½ B Trinity St.
Austin, TX 78701
(physical address)

ARTICLE 15. GENERAL PROVISIONS

15.01 Right of Entry and Inspection. ARC must permit City or its agents, representatives, or employees to enter the Premises for the purposes of inspection; determining whether ARC is complying with this Agreement; maintaining, repairing, or altering the Premises; or any other reasonable purpose. During any inspection, City may perform any obligations that City is authorized or required to perform under the terms of this Agreement or pursuant to its governmental duties under federal state or local laws, rules or regulations.

15.02 Interpretation. In the event of any dispute over the meaning or application of any provision of this Agreement, this Agreement shall be interpreted fairly and reasonably, and neither more strongly for or against any party, regardless of the actual drafter of this Agreement.

15.03 No Third Party Rights. The provisions and conditions of this Agreement are solely for the benefit of the City and ARC, and any lawful assign or successor of the ARC, and are not intended to create any rights, contractual or otherwise, to any other person or entity.

15.04 No Partnership or Joint Venture. ARC shall operate as an independent contractor and not as an officer, agent, servant, or employee of the City. ARC shall have the exclusive control of, and the exclusive right to, control the work designated to the ARC to be performed under this Agreement, and all persons performing the same, and shall be solely responsible for the acts and omissions of its officers, agents, servants, contractors, subcontractors and employees. Neither City nor ARC shall be responsible under the Doctrine of Respondeat Superior for the acts and omissions of its officers, agents, servants, contractors, subcontractors, or employees. It is understood and agreed that the City is not involved as a party to any activities that may be carried on by ARC pursuant to this Agreement. ARC acknowledges itself solely responsible for such activities and for all persons and property involved or used in connection with ARC's use of the Premises. Provided, however, that except as and to the extent the City's immunity is waived pursuant to Section 271.151 et seq., Tex. Local Gov't Code, no provision of this Agreement shall operate or be construed as a waiver by either party of any immunity from liability which it has or could be asserted under the doctrine of governmental immunity or any other immunity which it has under law.

15.05 Declared Emergency. In the event of a declared City, state or federal emergency, the ARC will immediately make the Facility available for use as deemed necessary by the City in order to respond to the declared emergency. Should the declared emergency extend beyond 72 hours, the City will seek reimbursement from federal, state and/or local funding and compensate the ARC for any lost revenue as a result of declared emergency use, to the extent funds are received from these sources.

15.06 Force Majeure. Each party to this agreement agrees to excuse the failure of another party to perform its obligations under this Agreement to the extent that failure is caused by an event of Force Majeure. ***Force Majeure means acts and events not within the control of the party, and which the party could not use due diligence to avoid or prevent.*** Events of Force Majeure include acts of God, strikes, riots, sabotage, civil disturbances, epidemics, acts of domestic or foreign terrorism, lightning, earthquakes, fires, storms, floods, and landslides. Force Majeure does not include economic or market conditions, which affect a party's cost, but not its ability to perform. The party invoking Force Majeure shall give timely and adequate notice to the other party of the event by facsimile transmission, telephone, or e-mail and then the party must promptly provide written notice of the Force Majeure in the manner required by this Agreement. The party shall use due diligence to remedy the effects of Force Majeure as soon as reasonably possible. If a party's performance is delayed by the event of Force Majeure, the parties will mutually agree to extend the time for the completion of obligations by a period of time reasonably necessary to overcome the effect of the Force Majeure event

15.07 Binding Covenants. Subject to the limitations contained in this Agreement, the covenants, conditions and agreements made and entered into by the parties are declared to be for the benefit of and binding upon their respective successors, representatives and assigns, if any.

15.08 Invalid Provision. It is agreed that, in the event any covenant, condition or provision of this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of such covenant, condition or provision shall in no way affect any other covenant, condition or provision; provided, however, that the invalidity of any such covenant, condition or provision does not materially prejudice either ARC or City in connection with the rights and obligations contained in the valid covenants, conditions or provisions of this agreement.

15.09 Assignment and Successors. ARC may not assign, transfer or otherwise convey any of its rights or obligations under this Agreement to any party without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed, conditioned on (i) the prior approval of the assignee or successor and a finding by the City Council that the proposed assignee or successor is financially capable of completing the construction and occupancy of Facility and (ii) the proposed assignee or successor has executed a written agreement with the City under which it agrees to assume all covenants and obligations of the ARC under this Agreement, in which case such assignee or successor shall thereafter be deemed "ARC" for all purposes under this Agreement. An attempt to assign this contract without the consent of the ARC shall be considered an event of default.

15.10 Applicable Laws. The laws of the State of Texas shall govern this agreement and the relationship created hereby. Venue for any action brought to interpret or enforce, or arising out of or incident to, the terms of this agreement shall be in Travis County, Texas.

15.11 Severability of Provisions. If any of the provisions contained in this Agreement shall be held, for any reason, to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability, shall be construed as if such invalid, illegal, or unenforceable provision had never been in this Agreement.

15.12 Governmental Powers. It is understood that by execution of this Agreement, the City does not waive or surrender any of its governmental powers.

15.13 Captions. Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

15.14 Agreement. This Agreement includes the attached Exhibits, the City's Standard Purchasing Terms and Conditions (Section 0300), and the Supplemental Terms and Conditions (Section 0400). . . Any inconsistency or conflict in the Agreement documents shall be resolved by giving precedence in the following order:

- a. This Agreement and its Exhibits 1 and 2;
- b. The Supplemental Purchase Terms and Conditions (Section 0400, Supplemental Purchase Provisions);
- c. The Standard Purchase Terms and Conditions (Section 0300).

EXECUTED this the 1st day of March, 2012.

CITY OF AUSTIN

By: 

Marc A. Ott
City Manager

AUSTIN ROWING CLUB

By: 

Camille Jobe
President

APPROVED AS TO FORM AND LEGALITY

By: 

Jacqueline Cullom
Assistant City Attorney

Exhibits

Exhibit 1 – Boathouse Defined

Exhibit 2 – Revenue and Contribution

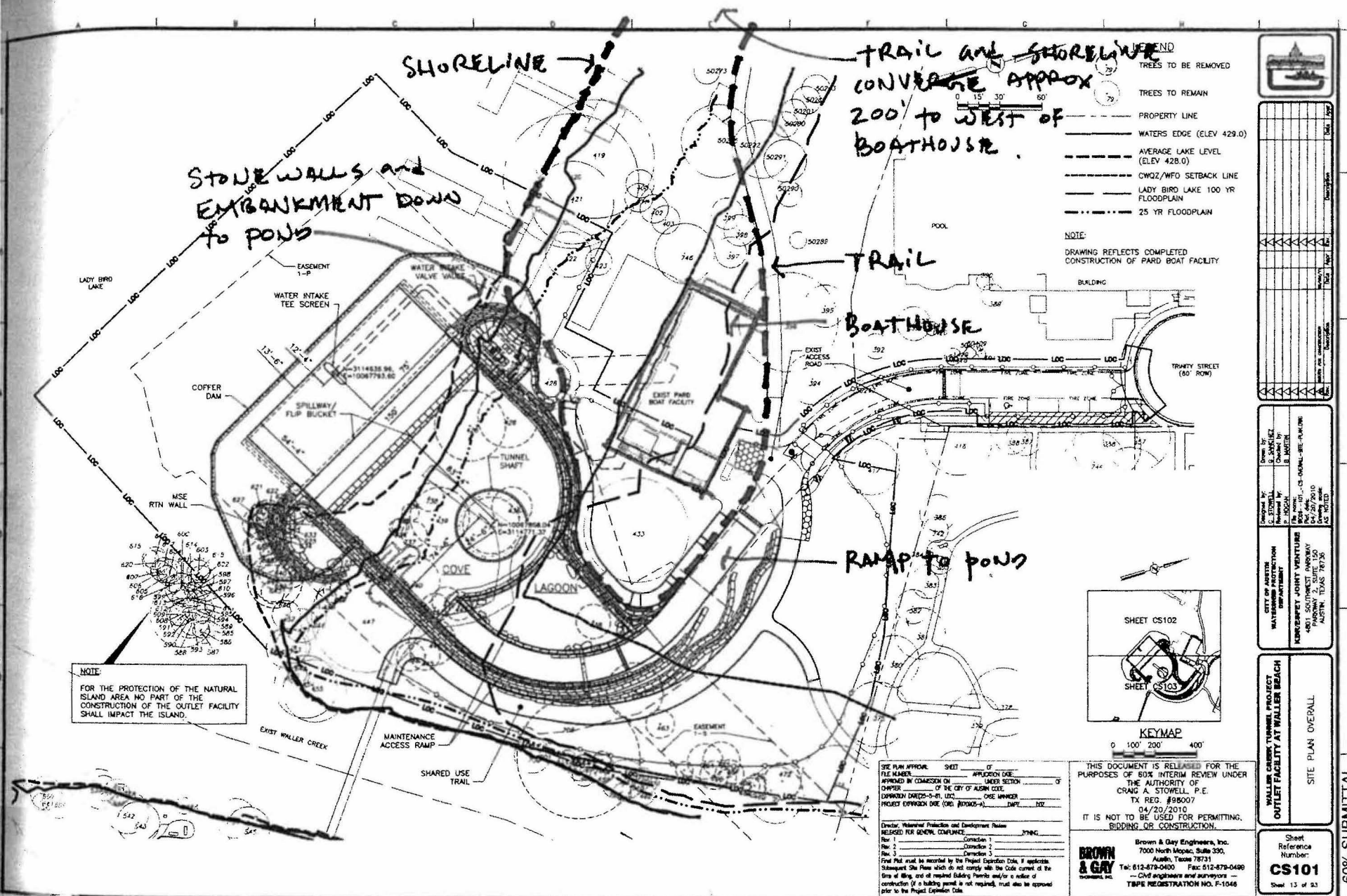


Exhibit 2

Financial Proposal

Estimated Payments To City	\$ 1,238,307
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Start-Up and Repair Costs:

Facility Finish Out Improvements	\$ 104,500
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Removable Boat Racks & Moveable Docks (owned by ARC)	\$ 90,500
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Maintenance Fund Contribution	\$ 117,572
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Total Start-Up and Repair Costs:	\$ 312,572
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Financial Assistance For "Rowing Program" Membership	\$ 325,406
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Underserved/At-Risk Programs	\$ 280,000
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Total Payments & Contributions	\$ 2,156,285
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Payments & Contributions:

Blended Percentage of Gross Revenues	13.09%
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Percentage of Net Income	60.75%
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1) Revenue Share - Guaranteed Percentage Payment – An annual amount for each calendar year (or portion thereof, in the case of a short year) beginning after the Start-Up Period during the Term equal to the following:

- 3% of the first \$300,000 of Commercial Gross Revenue generated during such year;
- 10.5% of the next \$900,000 of Commercial Gross Revenue generated during such year;
- 15% of the remainder of the Commercial Gross Revenue generated during such year.

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The following Supplemental Purchasing Provisions apply to this solicitation:

1. **INSURANCE.** Insurance is required for this solicitation.

A. **General Requirements.** See Section 0300, Standard Purchase Terms and Conditions, paragraph 32, entitled Insurance, for general insurance requirements.

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award
- ii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iii. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.
- iv. The Certificate of Insurance, and updates, shall contain the solicitation number and the Buyer's name and shall be mailed to the following address:

City of Austin Purchasing Office
Attn: Parks and Recreation Department
P. O. Box 1088
Austin, Texas 78767

B. **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

- i. **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.
 - (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Form WC 420304, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Form WC 420601, or equivalent coverage
- ii. **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries).
 - (1) The policy shall contain the following provisions:
 - (a) Blanket contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

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- (b) Independent Contractor's Coverage.
 - (c) Products/Completed Operations Liability for the duration of the warranty period.
 - (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and Underground Coverage (X,C,U).
 - (2) The policy shall also include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage
- iii. Business Automobile Liability Insurance. The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
 - (1) The policy shall include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement TE 2046A, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement TE 0202A, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement TE 9901B, or equivalent coverage.
- C. Endorsements. The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.
- D. Certificate: **The following statement must be shown on the Certificate of Insurance.**

The City of Austin is an Additional Insured on the general liability and the auto liability policies. A Waiver of Subrogation is issued in favor of the City of Austin for general liability, auto liability and workers compensation policies.

2. TERM OF CONTRACT

- A. The Contract shall be in effect for an initial term of Five (5) Years and may be extended thereafter for up to One (1) additional Two (2) year period, subject to the approval of the Contractor and the City Purchasing Officer or his designee.
- B. Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 days unless mutually agreed on in writing).
- C. Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in paragraph A above. A price increase,

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subject to the provisions of this Contract, may be requested by the Contractor (for each period of extension) for approval by the City's Purchasing Officer or his designee.

THIS IS A FIVE (5) YEAR CONTRACT.

3. INVOICES and PAYMENT (reference paragraphs 12 and 13 in Section 0300)

- A. Invoices shall contain a non-duplicated invoice number and the information required in Section 0300, paragraph 12, entitled "Invoices." Invoices received without all required information cannot be processed and will be returned to the vendor.

Invoices shall be mailed to the below address:

	City of Austin
Department	Parks and Recreation Department
Attn:	Accounts Payable
Address	200 S. Lamar Blvd
City, State Zip Code	Austin, Texas 78701

- B. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer (EFT) for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.

4. LIVING WAGES AND BENEFITS (applicable to procurements involving the use of labor)

- A. In order to help assure low employee turnover, quality services, and to reduce costs for health care provided to uninsured citizens, the Austin City Council is committed to ensuring fair compensation for City employees and those persons employed elsewhere in Austin. This commitment has been supported by actions to establish a "living wage" and affordable health care protection. Currently, the minimum wage for City employees is \$11.00 per hour. This minimum wage is required for any Contractor employee directly assigned to this City Contract, unless Published Wage Rates are included in this solicitation. In addition, the City may stipulate higher wage rates in certain solicitations in order to assure quality and continuity of service.
- B. Additionally, the City provides health insurance for its employees, and for a nominal rate, employees may obtain coverage for their family members. Contractors must offer health insurance with optional family coverage for all Contractor employees directly assigned to this contract. Proof of the health care plan shall be provided prior to award of a Contract. In addition, an insurance certificate for Workers' Compensation Insurance Coverage must be provided if required by the solicitation.
- C. The City requires Contractors submitting Offers on this Contract to provide a signed certification (**see the Living Wages and Benefits Contractor Certification included in the Solicitation**) with their Offer certifying that all employees directly assigned to this City Contract will be paid a minimum living wage equal to or greater than \$11.00 per hour and are offered a health care plan. The certification shall include a list of all employees directly assigned to providing services under the resultant contract including their name and job title. The list shall be updated and provided to the City as necessary throughout the term of the Contract.

**CITY OF AUSTIN
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SUPPLEMENTAL PURCHASE PROVISIONS
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- D. The Contractor shall maintain throughout the term of the resultant contract basic employment and wage information for each employee as required by the Fair Labor Standards Act (FLSA). Basic employment records shall at a minimum include:
- i. employee's full name, as used for social security purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records;
 - ii. time and date of week when employee's workweek begins;
 - iii. hours worked each day and total hours worked each workweek;
 - iv. basis on which employee's wages are paid;
 - v. regular hourly pay rate;
 - vi. total daily or weekly straight-time earnings;
 - vii. total overtime earnings for the workweek;
 - viii. all additions to or deductions from the employee's wages;
 - ix. total wages paid each pay period; and
 - x. date of payment and the pay period covered by the payment.
- E. The Contractor shall provide with the first invoice and as requested by the Department's Contract Manager, individual Employee Certifications (**see the Living Wages and Benefits Employee Certification included in the Solicitation**) for all employees directly assigned to the contract containing:
- i. the employee's name and job title;
 - ii. a statement certifying that the employee is paid at a rate equal to or greater than the Living Wage of \$11.00 per hour;
 - iii. a statement certifying that the employee is offered a health care plan with optional family coverage.
- Employee Certifications shall be signed by each employee directly assigned to the contract.
- A. Contractor shall submit employee certifications quarterly with the respective invoice to verify that employees are paid the Living Wage throughout the term of the contract.
- G. The Department's Contract Manager will periodically review the employee data submitted by the Contractor to verify compliance with this Living Wage provision. The City retains the right to review employee records identified in paragraph D above to verify compliance with this provision.

5. NON-SOLICITATION

- A. During the term of the Contract, and for a period of six (6) months following termination of the Contract, the Contractor, its affiliate, or its agent shall not hire, employ, or solicit for employment or consulting services, a City employee employed in a technical job classification in a City department that engages or uses the services of a Contractor employee.
- B. In the event that a breach of Paragraph A occurs the Contractor shall pay liquidated damages to the City in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation; or (ii) _____ percent of the employee's annual compensation while employed by the City. The Contractor shall reimburse the City for any fees and expenses incurred in the enforcement of this provision.
- C. During the term of the Contract, and for a period of six (6) months following termination of the Contract, a department that engages the services of the Contractor or uses the services of a

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Contractor employee will not hire a Contractor employee while the employee is performing work under a Contract with the City unless the City first obtains the Contractor's approval.

- D. In the event that a breach of Paragraph C occurs, the City shall pay liquidated damages to the Contractor in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation or (ii) _____ percent of the employee's annual compensation while employed by the Contractor.

6. WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID)

- A. Contractors are required to obtain a certified criminal background report with fingerprinting (referred to as the "report") for all persons performing on the contract, including all Contractor, Subcontractor, and Supplier personnel (for convenience referred to as "Contractor's personnel").
- B. The report may be obtained by reporting to one of the below governmental entities, submitting to fingerprinting and requesting the report [requestors may anticipate a two-week delay for State reports and up to a four to six week delay for receipt of a Federal report.].
- i. Texas Department of Public Safety for any person currently residing in the State of Texas and having a valid Texas driver's license or photo ID card;
 - ii. The appropriate governmental agency from either the U.S. state or foreign nation in which the person resides and holds either a valid U.S. state-issued or foreign national driver's license or photo ID card; or
 - iii. A Federal Agency. A current Federal security clearance obtained from and certified by a Federal agency may be substituted.
- C. Contractor shall obtain the reports at least 30 days prior to any onsite work commencement. Contractor also shall attach to each report the project name, Contractor's personnel name(s), current address(es), and a copy of the U.S. state-issued or foreign national driver's license or photo ID card.
- D. Contractor shall provide the City Certified Criminal Background Report affirming that Contractor has conducted required security screening of Contractor's personnel to determine those appropriate for execution of the work and for presence on the City's property. A list of all Contractor Personnel requiring access to the City's site shall be attached to the affidavit.
- E. Upon receipt by the City of Contractor's affidavit described in (D) above and the list of the Contractor's personnel, the City will provide each of Contractor's personnel a contractor ID badge that is required for access to City property that shall be worn at all times by Contractor's personnel during the execution of the work.
- F. The City reserves the right to deny an ID badge to any Contractor personnel for reasonable cause, including failure of a Criminal History background check. The City will notify the Contractor of any such denial no more than twenty (20) days after receipt of the Contractor's reports. Where denial of access by a particular person may cause the Contractor to be unable to perform any portion of the work of the contract, the Contractor shall so notify the City's Contract Manager, in writing, within ten (10) calendar days of the receipt of notification of denial.
- G. Contractor's personnel will be required to wear the ID badge at all times while on the work site. Failure to wear or produce the ID badge may be cause for removal of an individual from the work site, without regard to Contractor's schedule. Lost ID badges shall be reported to

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the City's Contract Manager. Contractor shall reimburse the City for all costs incurred in providing additional ID badges to Contractor Personnel.

- H. ID badges to enter and/or work on the City property may be revoked by the City at any time. ID badges must be returned to the City at the time of project completion and acceptance or upon removal of an individual from the work site.
- I. Contractor is not required to obtain reports for delivery personnel, including but not limited to FedEx, UPS, Roadway, or other materials delivery persons, however all delivery personnel must present company/employer-issued photo ID and be accompanied by at least one of Contractor's personnel at all times while at the work site.
- J. The Contractor shall retain the reports and make them available for audit by the City during regular business hours (reference paragraph 17 in Section 0300, entitled Right to Audit).

7. CONTRACT MANAGER

The following person is designated as Contract Manager, and will act as the contact point between the City and the Contractor during the term of the Contract:

Beverly Mendez, Contract Compliance Manager, Parks and Recreation Department

200 S. Lamar Blvd.

Austin, Texas 78701

512-974-6784

beverly.mendez@ci.austin.tx.us

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

By submitting an Offer in response to the Solicitation, the Contractor agrees that the Contract shall be governed by the following terms and conditions. Unless otherwise specified in the Contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a Solicitation to purchase Goods, and Sections 9, 10, 11 and 22 shall apply only to a Solicitation to purchase Services to be performed principally at the City's premises or on public rights-of-way.

1. **CONTRACTOR'S OBLIGATIONS.** The Contractor shall fully and timely provide all deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.
2. **EFFECTIVE DATE/TERM.** Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.
3. **CONTRACTOR TO PACKAGE DELIVERABLES:** The Contractor will package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price. Unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
4. **SHIPMENT UNDER RESERVATION PROHIBITED:** The Contractor is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.
5. **TITLE & RISK OF LOSS:** Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables.
6. **DELIVERY TERMS AND TRANSPORTATION CHARGES:** Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the deliverables. The place of delivery shall be that set forth in the block of the purchase order or purchase release entitled "Receiving Agency".
7. **RIGHT OF INSPECTION AND REJECTION:** The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.
8. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.
9. **PLACE AND CONDITION OF WORK:** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby

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releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

10. WORKFORCE

- A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property .
 - i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
 - ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

11. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS: The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

12. INVOICES:

- A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
- B. **Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.
- C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.
- D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
- E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

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13. PAYMENT:

- A. All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.
- B. **If payment is not timely made, (per paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
 - i. delivery of defective or non-conforming deliverables by the Contractor;
 - ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
 - iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
 - iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
 - v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
 - vii. failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.
- G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

- 14. TRAVEL EXPENSES:** All travel, lodging and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the City's Travel Policy as published and maintained by the City's Controller's Office and the Current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

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No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of detailed itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.

15. FINAL PAYMENT AND CLOSE-OUT:

- A. If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project manager or Contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.
- B. The making and acceptance of final payment will constitute:
 - i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
 - ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

16. SPECIAL TOOLS & TEST EQUIPMENT: If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

17. RIGHT TO AUDIT:

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
- B. The Contractor shall include section a. above in all subcontractor agreements entered into in connection with this Contract.

18. SUBCONTRACTORS:

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

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- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
- i. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
 - ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
 - iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

19. **WARRANTY-PRICE:**

- A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.
- B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
- C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

20. **WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.

21. **WARRANTY – DELIVERABLES:** The Contractor warrants and represents that all deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the deliverables shall be new or recycled merchandise, and not used or reconditioned.

- A. Recycled deliverables shall be clearly identified as such.

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- B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
 - C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the deliverables or from the date of acceptance of any replacement deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming deliverables, or replace the non-conforming deliverables with fully conforming deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such deliverables from another source.
 - E. If the Contractor is not the manufacturer, and the deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.
22. **WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
 - B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.
23. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.
24. **RIGHT TO ASSURANCE:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event

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that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

25. **STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.
26. **DEFAULT:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.
27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
28. **TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
29. **FRAUD:** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.
30. **DELAYS:**
- A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 49. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
- B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In

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the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. INDEMNITY:

A. Definitions:

- i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
 - (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or
 - (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),
- ii. "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

B. THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

32. INSURANCE: (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (Revised 6/01/98).

A. General Requirements.

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

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- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.
- xii. The Contractor shall endeavor to provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiii. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

B. Specific Coverage Requirements: Specific insurance requirements are contained in Section 0400, Supplemental Purchase Provisions

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.
34. **NOTICES:** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first

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class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.

35. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL:** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS:** The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the deliverables and (ii) the deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such deliverables will not impact such warranties of Contractor.
37. **CONFIDENTIALITY:** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
38. **OWNERSHIP AND USE OF DELIVERABLES:** The City shall own all rights, titles, and interests throughout the world in and to the deliverables.
- A. **Patents.** As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.
- B. **Copyrights.** As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and

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the City shall own all copyrights in and to such deliverables, provided however, that nothing in this Paragraph 38 shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

- C. **Additional Assignments.** The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 38 a., b., and c. shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph 37 above.
39. **PUBLICATIONS:** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.
40. **ADVERTISING:** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
41. **NO CONTINGENT FEES:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
42. **GRATUITIES:** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
43. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
44. **INDEPENDENT CONTRACTOR:** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor.

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The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

45. **ASSIGNMENT-DELEGATION:** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
46. **WAIVER:** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
47. **MODIFICATIONS:** The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
48. **INTERPRETATION:** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.
49. **DISPUTE RESOLUTION:**
- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.
50. **JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code,

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Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

51. **INVALIDITY:** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.
52. **HOLIDAYS:** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

53. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.
54. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

55. **EQUAL OPPORTUNITY**

- A. **Equal Employment Opportunity:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-

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compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

- B. **Americans with Disabilities Act (ADA) Compliance:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

56. BUY AMERICAN ACT-SUPPLIES (Applicable to certain Federally funded requirements)

- A. Definitions. As used in this paragraph –

- i. "Component" means an article, material, or supply incorporated directly into an end product.
- ii. "Cost of components" means -
 - (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
 - (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.
- iii. "Domestic end product" means-
 - (1) An unmanufactured end product mined or produced in the United States; or
 - (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
- iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
- v. "Foreign end product" means an end product other than a domestic end product.
- vi. "United States" means the 50 States, the District of Columbia, and outlying areas.

- B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
- C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.
- D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

CITY OF AUSTIN, TEXAS

Purchasing Office REQUEST FOR PROPOSAL (RFP) Offer Sheet

SOLICITATION NO: CB30017

DATE ISSUED: MARCH 15, 2010

REQUISITION NO.: RQM860010030300263

COMMODITY CODE: 96115

**FOR CONTRACTUAL AND TECHNICAL
ISSUES CONTACT:**

CRUZ BANDA

COMMODITY/SERVICE DESCRIPTION: MANAGEMENT AND
OPERATION OF BOATHOUSE AT WALLER CREEK ON LADY BIRD
LAKE

PRE-PROPOSAL CONFERENCE TIME AND DATE: MARCH 24, 2010
AT 1:00 PM, CST.

LOCATION: 200 S. LAMAR BLVD., AUSTIN, TEXAS 78701, PARKS
AND RECREATION MAIN OFFICE, BOARD ROOM.

PROPOSAL DUE PRIOR TO: APRIL 14, 2010 AT 10:00 AM, CST

COMPLIANCE PLAN DUE PRIOR TO: N/A

PROPOSAL CLOSING TIME AND DATE: APRIL 14, 2010 AT 10:00 AM

Buyer II

Phone: (512) 974-2133

LOCATION: MUNICIPAL BUILDING, 124 W 8th STREET
RM 310, AUSTIN, TEXAS 78701

It is the policy of the City of Austin to involve certified Minority Owned Business Enterprises (MBEs) and Woman Owned Business Enterprises (WBEs) in City contracting. MBE and WBE goals for this Solicitation are contained in Section 0900.

All Contractors and Subcontractors must be registered to do business with the City prior to submitting a response to a City Solicitation. In the case of Joint Ventures, each individual business in the joint venture must be registered with the City prior to submitting a response to a City solicitation. If the Joint Venture is awarded a contract, the Joint Venture must register to do business with the City. Prime Contractors are responsible for ensuring that their Subcontractors are registered. Registration can be done through the City's on-line vendor registration system.

Log onto <https://www.cityofaustin.org/purchase> and follow the directions.

SUBMIT 1 ORIGINAL AND 7 SIGNED COPIES OF RESPONSE

SOLICITATION TO:

Insert Vendor Name & Address

Signature of Person Authorized to Sign Offer

Signer's Name and Title: (please print or type)

FEDERAL TAX ID NO. _____

Date: _____

Company Name: _____

Address: _____

City, State, Zip Code _____

Phone No. ()

Fax No. ()

BELOW INFO MUST MATCH THE NAME AND ADDRESS ON INVOICE AND IN COMPANY PROFILE WITH CITY

Company "Remit To" Name: _____

Remit to Address: _____

City, State, Zip Code _____

Email Address _____

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All other Sections may be viewed at: <https://www.cityofaustin.org/purchase> by clicking the link to "Vendor Self Service (VSS)", sign in if registered, register, or use public access to follow the links to "Business Opportunities" and "Search for Solicitation."

RETURN FOLLOWING DOCUMENTS WITH BID/PROPOSAL/QUOTE/RESPONSE/SUBMITTAL**

- | | |
|------------------------|---|
| • Cover Page | Offer Sheet |
| • Section 0600 | Proposal |
| • Section 0700 | Reference Sheet (if required) |
| • Sections 0800 - 0835 | Certifications and Affidavits (return all applicable Sections) |
| • Section 0900 | MBE/WBE Procurement Program Package or No Goals Utilization Plan, if applicable |
| • Bid Guaranty | (if required) |

**** See also Section 0200, Solicitation Instructions, Section 0400, Supplemental Purchase Provisions, and Section 0500, Scope of Work/Specification, for additional documents that must be submitted with the Offer.**

NOTES:

The Vendor agrees, if this Offer is accepted within ____ calendar days (120)days unless a different period is inserted) after the Due Date, to fully comply in strict accordance with the Solicitation, specifications and provisions attached thereto for the amounts shown on the accompanying Offer.

*** INCORPORATION OF DOCUMENTS.** Section 0100, Standard Purchase Definitions; Section 0200, Standard Solicitation Instructions; and Section 0300, Standard Purchase Terms and Conditions are hereby incorporated into this Solicitation by reference, with the same force and effect as if they were incorporated in full text. The full text versions of these Sections are available, on the Internet at the following online address: <http://www.ci.austin.tx.us/purchase/standard.htm>.

If you do not have access to the Internet, you may obtain a copy of these Sections from the City of Austin Purchasing Office at the below address. Please have the Solicitation number available so that the staff can select the proper documents. These documents can be mailed, expressed mailed, or faxed to you.

When sending a sealed Offer and/or Compliance Plan, use the proper address for the type of service desired, as shown below.

P.O. Address for US Mail	Street Address for Hand Delivery or Courier Service
City of Austin	City of Austin, Purchasing Office
Purchasing Office	Municipal Building
P.O. Box 1088	124 W 8 th Street, Rm 310
Austin, Texas 78767-8845	Austin, Texas 78701
	Reception Phone: (512) 974-2500

Notes: Offers (including Compliance Plans) that are not submitted in a sealed envelope or container will not be considered. Unless authorized in the Solicitation, telegraphic or facsimile Offers will not be accepted.

**CITY OF AUSTIN
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SUPPLEMENTAL PURCHASE PROVISIONS**

The following Supplemental Purchasing Provisions apply to this solicitation:

1. **EXPLANATIONS OR CLARIFICATIONS** (reference paragraph 5 in Section 0200)

All requests for explanations or clarifications must be submitted in writing to the Purchasing Office by March 30, 2010 via email at cruz.banda@ci.austin.tx.us or fax to 512-974-2388. **A Pre-Proposal conference will be held on March 24, 2010 at 1:00 PM at 200 S. Lamar Blvd., Austin, Texas, 78701 in the Parks and Recreation Department main office, Board Room.**

2. **INSURANCE.** Insurance is required for this solicitation.

A. **General Requirements.** See Section 0300, Standard Purchase Terms and Conditions, paragraph 32, entitled Insurance, for general insurance requirements.

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award
- ii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iii. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.
- iv. The Certificate of Insurance, and updates, shall contain the solicitation number and the Buyer's name and shall be mailed to the following address:

City of Austin Purchasing Office
Attn: Cruz Banda, Buyer II Solicitation No. CB30017
P. O. Box 1088
Austin, Texas 78767

B. **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

- i. **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.

- (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Form WC 420304, or equivalent coverage

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- (b) Thirty (30) days Notice of Cancellation, Form WC 420601, or equivalent coverage
 - ii. Commercial General Liability Insurance. The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries).
 - (1) The policy shall contain the following provisions:
 - (a) Blanket contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
 - (b) Independent Contractor's Coverage.
 - (c) Products/Completed Operations Liability for the duration of the warranty period.
 - (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and Underground Coverage (X,C,U).
 - (2) The policy shall also include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage
 - iii. Business Automobile Liability Insurance. The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
 - (1) The policy shall include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement TE 2046A, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement TE 0202A, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement TE 9901B, or equivalent coverage.
- C. Endorsements. The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.
- D. Certificate: **The following statement must be shown on the Certificate of Insurance.**

The City of Austin is an Additional Insured on the general liability and the auto liability policies. A Waiver of Subrogation is issued in favor of the City of Austin for general liability, auto liability and workers compensation policies.

3. TERM OF CONTRACT

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SUPPLEMENTAL PURCHASE PROVISIONS**

- A. The Contract shall be in effect for an initial term of Five (5) Years and may be extended thereafter for up to One (1) additional Two (2) year period, subject to the approval of the Contractor and the City Purchasing Officer or his designee.
- B. Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 days unless mutually agreed on in writing).
- C. Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in paragraph A above. A price increase, subject to the provisions of this Contract, may be requested by the Contractor (for each period of extension) for approval by the City's Purchasing Officer or his designee.

THIS IS A FIVE (5) YEAR CONTRACT.

4. INVOICES and PAYMENT (reference paragraphs 12 and 13 in Section 0300)

- A. Invoices shall contain a non-duplicated invoice number and the information required in Section 0300, paragraph 12, entitled "Invoices." Invoices received without all required information cannot be processed and will be returned to the vendor.

Invoices shall be mailed to the below address:

	City of Austin
Department	Parks and Recreation Department
Attn:	Accounts Payable
Address	200 S. Lamar Blvd
City, State Zip Code	Austin, Texas 78701

- B. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer (EFT) for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.

5. LIVING WAGES AND BENEFITS (applicable to procurements involving the use of labor)

- A. In order to help assure low employee turnover, quality services, and to reduce costs for health care provided to uninsured citizens, the Austin City Council is committed to ensuring fair compensation for City employees and those persons employed elsewhere in Austin. This commitment has been supported by actions to establish a "living wage" and affordable health care protection. Currently, the minimum wage for City employees is \$11.00 per hour. This minimum wage is required for any Contractor employee directly assigned to this City Contract, unless Published Wage Rates are included in this solicitation. In addition, the City may stipulate higher wage rates in certain solicitations in order to assure quality and continuity of service.
- B. Additionally, the City provides health insurance for its employees, and for a nominal rate, employees may obtain coverage for their family members. Contractors must offer health

**CITY OF AUSTIN
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SUPPLEMENTAL PURCHASE PROVISIONS**

insurance with optional family coverage for all Contractor employees directly assigned to this contract. Proof of the health care plan shall be provided prior to award of a Contract. In addition, an insurance certificate for Workers' Compensation Insurance Coverage must be provided if required by the solicitation.

- C. The City requires Contractors submitting Offers on this Contract to provide a signed certification (**see the Living Wages and Benefits Contractor Certification included in the Solicitation**) with their Offer certifying that all employees directly assigned to this City Contract will be paid a minimum living wage equal to or greater than \$11.00 per hour and are offered a health care plan. The certification shall include a list of all employees directly assigned to providing services under the resultant contract including their name and job title. The list shall be updated and provided to the City as necessary throughout the term of the Contract.
- D. The Contractor shall maintain throughout the term of the resultant contract basic employment and wage information for each employee as required by the Fair Labor Standards Act (FLSA). Basic employment records shall at a minimum include:
 - i. employee's full name, as used for social security purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records;
 - ii. time and date of week when employee's workweek begins;
 - iii. hours worked each day and total hours worked each workweek;
 - iv. basis on which employee's wages are paid;
 - v. regular hourly pay rate;
 - vi. total daily or weekly straight-time earnings;
 - vii. total overtime earnings for the workweek;
 - viii. all additions to or deductions from the employee's wages;
 - ix. total wages paid each pay period; and
 - x. date of payment and the pay period covered by the payment.
- E. The Contractor shall provide with the first invoice and as requested by the Department's Contract Manager, individual Employee Certifications (**see the Living Wages and Benefits Employee Certification included in the Solicitation**) for all employees directly assigned to the contract containing:
 - i. the employee's name and job title;
 - ii. a statement certifying that the employee is paid at a rate equal to or greater than the Living Wage of \$11.00 per hour;
 - iii. a statement certifying that the employee is offered a health care plan with optional family coverage.

Employee Certifications shall be signed by each employee directly assigned to the contract.

- A. Contractor shall submit employee certifications quarterly with the respective invoice to verify that employees are paid the Living Wage throughout the term of the contract.
- G. The Department's Contract Manager will periodically review the employee data submitted by the Contractor to verify compliance with this Living Wage provision. The City retains the right to review employee records identified in paragraph D above to verify compliance with this provision.

6. NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING

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- A. The Austin City Council adopted Ordinance No. 20071206-045 on December 6, 2007, adding a new Article 6 to Chapter 2-7 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services exceeding \$5,000. During the No-Contact Period, Offerors or potential Offerors are prohibited from making a representation to anyone other than the person designated in the Solicitation as the contact for questions and comments regarding the Solicitation.
- B. If during the No-Contact Period an Offeror makes a representation to anyone other than the Authorized Contact Person for the Solicitation, the Offeror's Offer is disqualified from further consideration except as permitted in the Ordinance.
- C. The City requires Offerors submitting Offers on this Solicitation to provide a signed affidavit certifying that the Offeror has not in any way directly or indirectly made representations to anyone other than the Authorized Contact Person during the No-Contact Period as defined in the Ordinance (**see the Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying Affidavit included in the Solicitation**).

7. NON-SOLICITATION

- A. During the term of the Contract, and for a period of six (6) months following termination of the Contract, the Contractor, its affiliate, or its agent shall not hire, employ, or solicit for employment or consulting services, a City employee employed in a technical job classification in a City department that engages or uses the services of a Contractor employee.
- B. In the event that a breach of Paragraph A occurs the Contractor shall pay liquidated damages to the City in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation; or (ii) _____ percent of the employee's annual compensation while employed by the City. The Contractor shall reimburse the City for any fees and expenses incurred in the enforcement of this provision.
- C. During the term of the Contract, and for a period of six (6) months following termination of the Contract, a department that engages the services of the Contractor or uses the services of a Contractor employee will not hire a Contractor employee while the employee is performing work under a Contract with the City unless the City first obtains the Contractor's approval.
- D. In the event that a breach of Paragraph C occurs, the City shall pay liquidated damages to the Contractor in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation or (ii) _____ percent of the employee's annual compensation while employed by the Contractor.

8. WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID)

- A. Contractors are required to obtain a certified criminal background report with fingerprinting (referred to as the "report") for all persons performing on the contract, including all Contractor, Subcontractor, and Supplier personnel (for convenience referred to as "Contractor's personnel").
- B. The report may be obtained by reporting to one of the below governmental entities, submitting to fingerprinting and requesting the report [requestors may anticipate a two-week delay for State reports and up to a four to six week delay for receipt of a Federal report].
 - i. Texas Department of Public Safety for any person currently residing in the State of Texas and having a valid Texas driver's license or photo ID card;

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- ii. The appropriate governmental agency from either the U.S. state or foreign nation in which the person resides and holds either a valid U.S. state-issued or foreign national driver's license or photo ID card; or
 - iii. A Federal Agency. A current Federal security clearance obtained from and certified by a Federal agency may be substituted.
- C. Contractor shall obtain the reports at least 30 days prior to any onsite work commencement. Contractor also shall attach to each report the project name, Contractor's personnel name(s), current address(es), and a copy of the U.S. state-issued or foreign national driver's license or photo ID card.
- D. Contractor shall provide the City Certified Criminal Background Report affirming that Contractor has conducted required security screening of Contractor's personnel to determine those appropriate for execution of the work and for presence on the City's property. A list of all Contractor Personnel requiring access to the City's site shall be attached to the affidavit.
- E. Upon receipt by the City of Contractor's affidavit described in (D) above and the list of the Contractor's personnel, the City will provide each of Contractor's personnel a contractor ID badge that is required for access to City property that shall be worn at all times by Contractor's personnel during the execution of the work.
- F. The City reserves the right to deny an ID badge to any Contractor personnel for reasonable cause, including failure of a Criminal History background check. The City will notify the Contractor of any such denial no more than twenty (20) days after receipt of the Contractor's reports. Where denial of access by a particular person may cause the Contractor to be unable to perform any portion of the work of the contract, the Contractor shall so notify the City's Contract Manager, in writing, within ten (10) calendar days of the receipt of notification of denial.
- G. Contractor's personnel will be required to wear the ID badge at all times while on the work site. Failure to wear or produce the ID badge may be cause for removal of an individual from the work site, without regard to Contractor's schedule. Lost ID badges shall be reported to the City's Contract Manager. Contractor shall reimburse the City for all costs incurred in providing additional ID badges to Contractor Personnel.
- H. ID badges to enter and/or work on the City property may be revoked by the City at any time. ID badges must be returned to the City at the time of project completion and acceptance or upon removal of an individual from the work site.
- I. Contractor is not required to obtain reports for delivery personnel, including but not limited to FedEx, UPS, Roadway, or other materials delivery persons, however all delivery personnel must present company/employer-issued photo ID and be accompanied by at least one of Contractor's personnel at all times while at the work site.
- J. The Contractor shall retain the reports and make them available for audit by the City during regular business hours (reference paragraph 17 in Section 0300, entitled Right to Audit).

9. CONTRACT MANAGER

The following person is designated as Contract Manager, and will act as the contact point between the City and the Contractor during the term of the Contract:

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Joe Washington, Parks and Recreation Department

200 S. Lamar Blvd.

Austin, Texas 78701

512-974-6759

Joe.washington@ci.austin.tx.us

*Note: The above listed Contract Manager is not the authorized Contact Person for purposes of the **NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING Provision** of this Section; and therefore, contact with the Contract Manager is prohibited during the no contact period.

CITY OF AUSTIN
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SCOPE OF WORK
REQUEST FOR PROPOSAL(RFP)

MANAGEMENT AND OPERATION OF BOATHOUSE AT WALLER CREEK ON LADY BIRD LAKE

SCOPE OF WORK

1. **PURPOSE**

The City of Austin, hereinafter referred to as the City, seeks proposals, for a Public Private Partnership for a qualified contractor to provide management and operational services for a Boathouse on Lady Bird Lake. The operator shall provide water craft services and other possible joint ventures compatible with current and future recreational activities on Lady Bird Lake.

In response to this Request for Proposal (RFP) the City is seeking an individual or a company experienced in providing professional waterfront activity services to the community. The successful Bidder will manage the Boathouse and facilitate the needs and demands of the general public services, programs and opportunities for space usages consistent with the intended design of the site.

2. **BACKGROUND**

Lady Bird Lake is located in downtown Austin. It flows between the Tom Miller Dam and the Longhorn Dam. It currently supports two rowing concessions, a paddle wheel excursion boat, and a hike and bike trail. The traveling distance from one end of the lake to the other is approximately 6-miles. Motor boat traffic is limited to vehicles training rowing teams.

The new PARD Boathouse is part of the City of Austin's Waller Creek Tunnel Project. The new Boathouse will be located on Lady Bird Lake close to where Waller Creek empties into the lake.

The projected completion date for the Boathouse located at 74 Trinity is **March 2012**. The new construction of a commercial driveway; 330 linear feet of access road; 400 square feet of parking area and sidewalks; construction of one two-story building with an approximate gross floor area of 10,800sf and a building foot print of 6,900sf (including electrical, structural, utility, and mechanical systems) and associated site improvements and landscaping; and construction and installation of two pier supported docks and three floating docks and appurtenances will be the anchor for this project.

3. **SCOPE OF WORK**

a. **Title of Program**

Boathouse Management and Operations at the Austin Parks and Recreation Department's Boathouse facility located at Waller Creek on Lady Bird Lake.

b. **Objective**

1. The City's objective is to enter into a Public Private Partnership contract with a qualified and experienced company or individual to provide professional management and operational services for the Boathouse as described in this Proposal. The Operator shall provide details of their experience and qualifications that demonstrate an ability to effectively provide quality operational services, programs and all required facility maintenance. It is anticipated that a contract will be awarded in the Spring of 2010. However, there will be no revenue performance expected until March 2012.
2. Operator shall have been in business for a minimum of five (5) consecutive years similar to this referenced scope of work and provide evidence of satisfactory past performance through reference and/or other data.

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3. Operator shall demonstrate expertise and competence in operation and maintenance of a Boathouse facility offering services such as canoe and kayak rentals, rowing programs, and concession services, as well as being knowledgeable of the accepted standards of the industry.
4. Operator will be required to partner with the City in offering upgrades to the interior or other spaces in the facility.
5. City is open to the idea of Public Private Partnerships and possible joint ventures as a response to this solicitation.
6. Operator may also be creative responding with ideas, alternative space usage and programs that will assure that the Boathouse on Lady Bird Lake is a success. The Operator will offer their plans or visions for services such as programs that benefit disabled citizens, youth, seniors, and economically disadvantaged.
7. Operator may be required to offer input in the plans, layout, and aesthetics of the interior and exterior of the facility.
8. Operator shall provide all equipment, materials, labor, tools, and personnel necessary for proper operation of a quality watercraft rental concession operation. All materials and services provided by the operator shall comply with all current Federal, State and Local Laws, City ordinances, rules and regulations.
9. Operator will demonstrate that a general safety security plan will be developed to address public safety issues.

c. **Implementation**

1. An office within the facility will be designated for use by the Austin Parks and Recreation Department.
2. Funding may be provided by the Contractor to enhance the facility.
3. The Boathouse Manager shall operate and manage the business in a manner consistent with the use of the facilities as a Boathouse. Boathouse management shall not provide services or merchandise that does not directly promote the use of the facilities as a 'Boathouse' nor install any amusement devices in the Facilities without the prior written approval of the Contract Manager.

The Boathouse Management shall:

- a. Conduct the Grand Opening of the Boathouse in accordance with City of Austin requirements and preferences. The City will coordinate with Boathouse management to assure that appropriate City officials are invited.
- b. Hire and staff the Boathouse. The training, supervision and expense of this staff shall be the responsibility of the Boathouse management.
- c. Provide a plan for educating the public and promoting public rowing and other waterfront recreational activities related to the Boathouse by organizing activities that attract the general public.
- d. Provide complete janitorial services and supplies for the Boathouse building. Also the yard and deck area of the facility shall be kept free and clear of rubbish, filth, and refuse. The Boathouse management will have access to a dumpster to be provided by the City. Boathouse management will be responsible for the grounds extending outward of 150-feet from the facility.

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REQUEST FOR PROPOSAL(RFP)

- e. To assure that the Boathouse and facilities are in good repair; Boathouse Manager shall promptly notify the Contract Manager of major damages to equipment or the facility prior to any major repair.
 - f. Minimize environmental impact of facility. This includes but not limited to, air and water quality, noise, pollution, trash, all forms of motorized traffic, use of fuels and site aesthetics.
 - g. Boathouse manager will not allow any defacing of the Boathouse or connected structures.
 - h. Enforce applicable policies and regulations established by the City governing activities or the use of the boathouse.
 - i. Boathouse Manager shall maintain certifications for CPR, First Aid and AED training. AED training for all staff may be required. Copy of certifications will need to be provided to the Contract Manager.
 - j. Additional Safety Requirements:
 - a) Concessionaire shall provide for customer safety at all times and follow standards set by the State of Texas and/or the industry standard.
 - b) Concessionaire shall provide all Personal Flotation Devices (PFDs) approved by the U.S. Coast Guard, in serviceable condition, readily accessible and of the appropriate size for intended user.
 - c) All vessels shall be equipped with one Type I, II, III, or V wearable PFD for each person on board. A Type V PFD is acceptable only if used in accordance with the specific instructions on the label of the device.
 - d) Concessionaire shall assure all watercraft are in proper repair and operating order at all times.
 - k. Assure that there is accessibility (ADA) to the facilities.
 - l. Provide affordable options to the community to partake in water craft activities.
 - m. The Contractor shall be responsible for all building maintenance and utility cost.
 - n. The Boathouse Manager shall establish and maintain during the term of this agreement separate records and accounts, including a separate bank account, relating to the operation of the Boathouse. Records and accounts shall be subject to the examination and audit by the City, at any time.
 - o. Rental prices, including price changes, the rental rules, and all other business relations between the concessionaire and the public, shall be subject to approval by the City.
 - p. The City will not be responsible for any debts incurred by the Boathouse operations or management.
4. The Boathouse Manager shall provide all equipment necessary for the operation of the facility. Boathouse Management will use a cash register or equivalent with the capabilities of providing the City with accurate information on sales and “z” tapes.
5. The Boathouse Manager shall have the exclusive right to operate and manage the boathouse, in conformance to the terms of this contract. The exclusive right to sell food/beverages is granted to the Boathouse Manager. The City reserves the right to allow patrons to supply their own food/beverages for their own consumption.

The Boathouse Manager shall have the right to provide or sell for reasonable fees:

- A. Food such as candy, chips, soft drinks and non-alcoholic beverages
- B. Boathouse related merchandise
- C. Customary Boathouse Facilities services
- D. Private or group lessons
- E. Tournament scheduling or planning services shall be approved by the Contract Manager

[*** Requests to serve alcoholic beverages shall be approved by the City and will follow standard City protocols]

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REQUEST FOR PROPOSAL(RFP)

6. **The Boathouse Manager shall provide and keep in full force and effect insurance outlined in Section 0300, the Standard Purchase Terms and Conditions, Paragraph 32 INSURANCE and Section 0400. The Boathouse Manager will need to provide a Certificate of Insurance prior to beginning work.**
7. The Boathouse Manager shall not make any structural alterations, repairs, or improvements to the premises, without prior written permission from the Contract Manager. Any such alterations made shall be done at the expense of the Boathouse Manager and shall become the property of the City at the termination of this contract. The City shall have the right to require the Boathouse Manager to restore the property to its original condition at the Boathouse Manager's expense. Boathouse Manager shall allow no liens to be filed against City property.
8. The following conditions shall remain in effect during the term of this contract.
 - a. Boathouse Manager shall conduct business in a manner that will reflect good professional credit upon their organization and the City.
 - b. The Boathouse Manager shall comply with all City, County, State and Federal regulations and laws pertaining to the operation of a Boathouse. All permits shall be mounted in a conspicuous location.
 - c. Custodial Duties will be performed (minimally) daily and as needed. All areas of the facility will be kept clean and orderly.
 - d. Public rest rooms will remain open and accessible to the public during Boathouse hours of operations.

C. **Acceptance of Work**

1. The City reserves the right to conduct random inspections of the facility to insure all provisions of the contract are being met and will submit a report to the Boathouse Manager.
2. City will be consulted in matters that affect the overall design or aesthetics of the interior or exterior of the facility.
3. The City reserves the right to ask contractor to remove employees if warranted by customer service complaints.
4. The Operator and staff assigned to this contract will be subject to and must pass a "Criminal Background Investigation Report" for a period of the last seven (7) years to be conducted by PARD Human Resources Department before contract will be awarded.
5. The City reserves the right to re-negotiate contract if there are any significant changes in the operations or management of the Boathouse.

4. **TERMS**

a. **Length of Contract**

The City is seeking to enter into a contract with a qualified and experienced contractor for a five (5) year period with the option for one (1) extension period of two (2) years.

b. **Reporting**

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1. The Boathouse Manager shall provide to Contract Manager a copy of Internal Revenue Service Form 1040, Schedule C (Statement of Operations) pertaining specifically to Boathouse income. This form shall be submitted to Contract Manager annually within seven (7) calendar days of filing with the IRS.
2. The Boathouse Manager shall submit to Contract Manager a copy of their quarterly sales tax report within fifteen (15) calendar days of filing the report.

**CITY OF AUSTIN
PURCHASING OFFICE
PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS
SOLICITATION NUMBER: CB30017**

1. PROPOSAL FORMAT

Prefacing the proposal, the Proposer shall provide an Executive Summary of three (3) pages or less, which gives in brief, concise terms, a summation of the proposal. The proposal itself shall be organized in the following format and informational sequence:

- A. **Part I - Business Organization:** State full name and address of your organization and identify parent company if you are a subsidiary. Specify the branch office or other subordinate element which will perform, or assist in performing, work herein. Indicate whether you operate as a partnership, corporation, or individual. Include the State in which incorporated or licensed to operate.
- B. **Part II - Project Concept and Solution:** Define in detail your understanding of the requirement presented in the Scope of Work of this request for proposal and your system solution. Provide all details as required in the Scope of Work and any additional information you deem necessary to evaluate your proposal.
- C. **Part III - Program:** Describe your technical plan for accomplishing required work. Include such time-related displays, graphs, and charts as necessary to show tasks, sub-tasks, milestones, and decision points related to the Scope of Work and your plan for accomplishment. Specifically indicate:
 - i. A description of your work program by tasks. Detail the steps you will take in proceeding from Task 1 to the final tasks.
 - ii. The technical factors that will be considered in section above, and the depth to which each will be treated.
 - iii. The degree of definition provided in each technical element of your plan.
 - iv. The points at which written, deliverable reports will be provided.
 - v. A statement of your compliance with all applicable rules and regulations of Federal, State and Local governing entities. The Proposer must state his compliance with terms of this Request for Proposal (RFP).
- D. **Part IV - Project Management Structure:** Provide a general explanation and chart which specifies project leadership and reporting responsibilities; and interface the team with City project management and team personnel. If use of subcontractors is proposed, identify their placement in the primary management structure, and provide internal management description for each subcontractor.
- E. **Part V - Prior Experience:** Describe only relevant corporate experience and individual experience for personnel who will be actively engaged in the project. Do not include corporate experience unless personnel assigned to this project actively participated. Do not include experience prior to 1998. Supply the project title, year, and reference name, title, present address, and phone number of principal person for whom prior projects were accomplished.

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F. **Part VI - Personnel:** Include names and qualifications of all professional personnel who will be assigned to this project. State the primary work assigned to each person and the percentage of time each person will devote to this work. Identify key persons by name and title. Provide all resumes.

G. **Part VII - Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying:**

- i. The Austin City Council adopted Ordinance No. 20071206-045 on December 6, 2007, adding a new Article 6 to Chapter 2-7 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services exceeding \$5,000. During the No-Contact Period, Offerors or potential Offerors are prohibited from making a representation to anyone other than the person designated in the Solicitation as the contact for questions and comments regarding the Solicitation.
- ii. If during the No-Contact Period an Offeror makes a representation to anyone other than the Authorized Contact Person for the Solicitation, the Offeror's Offer is disqualified from further consideration except as permitted in the Ordinance.
- iii. The City requires Offerors submitting Offers on this Solicitation to provide a signed affidavit certifying that the Offeror has not in any way directly or indirectly made representations to anyone other than the Authorized Contact Person during the No-Contact Period as defined in the Ordinance (**see the Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying Affidavit included in the Solicitation**).

H. **Part VIII - Proposal Acceptance Period:** All proposals are valid for a period of one hundred and twenty (120) calendar days subsequent to the RFP closing date unless a longer acceptance period is offered in the proposal

I. **Part IX - Proprietary Information:** All material submitted to the City becomes public property and is subject to the Texas Open Records Act upon receipt. If a Proposer does not desire proprietary information in the proposal to be disclosed, each page must be identified and marked proprietary at time of submittal. The City will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request.

J. **Part X - Authorized Negotiator:** Include name, address, and telephone number of person in your organization authorized to negotiate Contract terms and render binding decisions on Contract matters.

K. **Part XI - Revenue Proposal:**

Provide detailed five year funding plan. Provide Pro Forma financial statements for the five year contract term, to include balance sheet (financing plan) and income statement (detailing proposed revenue sharing plan). Your plan may provide for minimums, fixed or variable revenues, and scaled revenues as appropriate.

2. **EXCEPTIONS:**

Be advised that exceptions to any portion of the Solicitation may jeopardize acceptance of the Proposal.

**CITY OF AUSTIN
PURCHASING OFFICE
PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS
SOLICITATION NUMBER: CB30017**

3. PROPOSAL PREPARATION COSTS:

All costs directly or indirectly related to preparation of a response to the RFP or any oral presentation required to supplement and/or clarify a proposal which may be required by the City shall be the sole responsibility of the Proposer.

4. EVALUATION FACTORS AND AWARD

A. **Competitive Selection:** This procurement will comply with applicable City Policy. The successful Proposer will be selected by the City on a rational basis. Evaluation factors outlined in Paragraph B below shall be applied to all eligible, responsive Proposers in comparing proposals and selecting the Best Offeror. Award of a Contract may be made without discussion with Proposers after proposals are received. Proposals should, therefore, be submitted on the most favorable terms.

B. **Evaluation Factors:**

i. 100 points.

(1) Project Concept and Solutions Proposed (Grasp of the requirement and its solution(s), responsiveness to terms and conditions, completeness and thoroughness of the technical data and documentation.) **35 Points**

(2) Demonstrate Public Private Partnerships Experience **25 points**

(3) Total Revenue to the City **20 points**

(4) Financial viability/stability **20 points**

ii. Interviews, Optional. Interviews may be conducted at the discretion of the City. Maximum 25 points

**CITY OF AUSTIN
PURCHASING OFFICE
REFERENCE SHEET**
Please Complete and Return This Form with the Offer

SOLICITATION NUMBER: CB30017

OFFEROR'S NAME: _____ **DATE:** _____

The Offeror shall furnish, with the Offer, the following information, for at least insert # recent customers to whom products and/or services have been provided that are similar to those required by this Solicitation.

1. Company's Name _____
Name and Title of Contact _____
Present Address _____
City, State, Zip Code _____
Telephone Number () Fax Number ()
Email Address _____
2. Company's Name _____
Name and Title of Contact _____
Present Address _____
City, State, Zip Code _____
Telephone Number () Fax Number ()
Email Address _____
3. Company's Name _____
Name and Title of Contact _____
Present Address _____
City, State, Zip Code _____
Telephone Number () Fax Number ()
Email Address _____
4. Company's Name _____
Name and Title of Contact _____
Present Address _____
City, State, Zip Code _____
Telephone Number () Fax Number ()
Email Address _____
5. Company's Name _____
Name and Title of Contact _____
Present Address _____
City, State, Zip Code _____
Telephone Number () Fax Number ()
Email Address _____

City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NONDISCRIMINATION CERTIFICATION
SOLICITATION NO. CB30017

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4 of the Code of the City of Austin (Discrimination in Employment by City Contractors) requires that at all times while acting as a Contractor (as defined under Chapter 5-4) a Contractor must agree:

- (1) Not to engage in any discriminatory employment practice defined in this chapter (including any later amendments or modifications).
- (2) To take affirmative action to ensure that applicants are employed and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising; layoff or termination, rate of pay or other form of compensation and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to the employees and applicants for employment, notices to be provided by the City setting forth the provisions of this chapter.
- (4) To state in all Solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with the City's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to insure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter.

Please check one of the following:

- ☐ Our firm's nondiscrimination policy conforms to the requirements of City Code, Chapter 5-4-2-B, items (1) through (7) and will be sent to the City upon request.
- ☐ Our firm does not have an established nondiscrimination policy and will adopt the City's minimum standard shown below. Our firm will send the adopted policy on company letterhead to the City upon request.

Minimum Standard Nondiscrimination in Employment Policy:

As an Equal Employment Opportunity (EEO) employer, the _____ (company name) will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The _____ (company name) will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting violation of this policy. Furthermore, any employee, supervisor or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with this chapter.

Contractor's Name: _____

Signature of Officer or
Authorized
Representative: _____

Date: _____

Printed Name: _____

Title _____

City of Austin, Texas
NON-SUSPENSION OR DEBARMENT CERTIFICATION
SOLICITATION NO. CB30017

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

The Offeror hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

Contractor's Name:

Signature of Officer
or Authorized
Representative:

Date:

Printed Name:

Title

**CITY OF AUSTIN
NON-COLLUSION,
NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING AFFIDAVIT
SOLICITATION NO. CB30017**

**FOR
MANAGEMENT AND OPERATION OF BOATHOUSE AT WALLER CREEK ON LADY BIRD LAKE**

State of Texas

County of Travis

The undersigned “Affiant” is a duly authorized representative of the Offeror for the purpose of making this Affidavit, and, after being first duly sworn, has deposed and stated and hereby deposes and states, to the best of his or her personal knowledge and belief as follows:

The term “**Offeror**”, as used herein, includes the individual or business entity submitting the Offer and for the purpose of this Affidavit includes the directors, officers, partners, managers, members, principals, owners, agents, representatives, employees, other parties in interest of the Offeror, and anyone or any entity acting for or on behalf of the Offeror, including a subcontractor in connection with this Offer.

1. **Anti-Collusion Statement.** The Offeror has not in any way directly or indirectly:
 - a. colluded, conspired, or agreed with any other person, firm, corporation, Offeror or potential Offeror to the amount of this Offer or the terms or conditions of this Offer.
 - b. paid or agreed to pay any other person, firm, corporation Offeror or potential Offeror any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for establishing the prices in the attached Offer or the Offer of any other Offeror.
2. **Preparation of Solicitation and Contract Documents.** The Offeror has not received any compensation or a promise of compensation for participating in the preparation or development of the underlying Solicitation or Contract documents. In addition, the Offeror has not otherwise participated in the preparation or development of the underlying Solicitation or Contract documents, except to the extent of any comments or questions and responses in the solicitation process, which are available to all Offerors, so as to have an unfair advantage over other Offerors, provided that the Offeror may have provided relevant product or process information to a consultant in the normal course of its business.
3. **Participation in Decision Making Process.** The Offeror has not participated in the evaluation of Offers or other decision making process for this Solicitation, and, if Offeror is awarded a Contract hereunder, no individual, agent, representative, consultant, subcontractor, or subconsultant associated with Offeror, who may have been involved in the evaluation or other decision making process for this Solicitation, will have any direct or indirect financial interest in the Contract, provided that the Offeror may have provided relevant product or process information to a consultant in the normal course of its business.
4. **Present Knowledge.** Offeror is not presently aware of any potential or actual conflicts of interest regarding this Solicitation, which either enabled Offeror to obtain an advantage over other Offerors or would prevent Offeror from advancing the best interests of the City in the course of the performance of the Contract.
5. **City Code.** As provided in Sections 2-7-61 through 2-7-65 of the City Code, no individual with a substantial interest in Offeror is a City official or employee or is related to any City official or employee within the first or second degree of consanguinity or affinity.
6. **Chapter 176 Conflict of Interest Disclosure.** In accordance with Chapter 176 of the Texas Local Government Code, the Offeror:
 - a. does not have an employment or other business relationship with any local government officer of the City or a family member of that officer that results in the officer or family member receiving taxable income;

**CITY OF AUSTIN
NON-COLLUSION,
NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING AFFIDAVIT**

- b. has not given a local government officer of the City one or more gifts, other than gifts of food, lodging, transportation, or entertainment accepted as a guest, that have an aggregate value of more than \$250 in the twelve month period preceding the date the officer becomes aware of the execution of the Contract or that OWNER is considering doing business with the Offeror.
- c. as required by Chapter 176 of the Texas Local Government Code, Offeror must file a Conflict of Interest Questionnaire with the Office of the City Clerk no later than 5:00 P.M. on the seventh (7th) business day after the commencement of contract discussions or negotiations with the City or the submission of an Offer, or other writing related to a potential Contract with the City. The questionnaire is available on line at the following website for the City Clerk:
<http://www.ci.austin.tx.us/cityclerk/coi.htm>

There are statutory penalties for failure to comply with Chapter 176.

If the Offeror cannot affirmatively swear and subscribe to the forgoing statements, the Offeror shall provide a detailed written explanation in the space provided below or, as necessary, on separate pages to be annexed hereto.

7. **Anti-Lobbying Ordinance.** As set forth in the Solicitation Instructions, Section 0200, paragraph 7N, between the date that the Solicitation was issued and the date of full execution of the Contract, Offeror has not made and will not make a representation to a member of the City Council, a member of a City Board, or any other official, employee or agent of the City, other than the Authorized Contact Person for the Solicitation, except as permitted by the Ordinance.

OFFEROR'S EXPLANATION:

Contractor's Name: _____

Printed
Name: _____

Title _____

Signature of Officer or Authorized Representative: _____

Subscribed and sworn to before me this ____ day of _____, 20____.

Notary Public

My Commission Expires _____

CITY OF AUSTIN, TEXAS
LIVING WAGES AND BENEFITS CONTRACTOR CERTIFICATION
(Please duplicate as needed)

SOLICITATION NO. CB30017

Pursuant to the Living Wages and Benefits provision (reference Section 0400, Supplemental Purchase Provisions) the Contractor is required to pay to all employees directly assigned to this City contract a minimum Living Wage equal to or greater than \$11.00 per hour.

I hereby certify under penalty of perjury that all of the below listed employees of the Contractor who are directly assigned to this contract:

- (1) are compensated at wage rates equal to or greater than \$11.00 per hour; and
- (2) are offered a health care plan with optional family coverage.

Employee Name	Employee Job Title

- (3) all future employees assigned to this Contract will be paid a minimum Living Wage equal to or greater than \$11.00 per hour and offered a health care plan with optional family coverage.

- (4) Our firm will not retaliate against any employee claiming non-compliance with the Living Wage provision.

A Contractor who violates this Living Wage provision shall pay each employee affected the amount of the deficiency for each day the violation continues. Willful or repeated violations of the provision may result in termination of this Contract for Cause and subject the firm to possible suspension or debarment.

Contractor's Name: _____

Signature of Officer
or Authorized
Representative: _____

Date: _____

Printed Name: _____

Title _____

**CITY OF AUSTIN, TEXAS
LIVING WAGES AND BENEFITS EMPLOYEE CERTIFICATION**

Contract Number:	Description of Services: MANAGEMENT AND OPERATION OF BOATHOUSE AT WALLER CREEK ON LADY BIRD LAKE
Contractor Name:	

Pursuant to the Living Wages and Benefits provision of the contract (reference Section 0400, Supplemental Purchase Provisions), the Contractor is required to pay to all employees directly assigned to this City contract a minimum Living Wage equal to or greater than \$11.00 per hour. In addition, employees are required to certify that they are compensated in accordance with the Living Wage provision. Contractors are prohibited from retaliating against any employee claiming non-compliance with the Living Wage provision.

I hereby certify under penalty of perjury that I am directly assigned to this contract and that I am:

- (1) compensated at wage rates equal to or greater than \$11.00 per hour; and
- (2) offered a health care plan with optional family coverage.

Employee's Title: Insert Employee's Title	
Signature of Employee	Date
Type or Print Name Insert Employee's Name	

(Witness Signature)

(Printed Name)

City of Austin, Texas
NONRESIDENT BIDDER PROVISIONS
SOLICITATION NO. CB30017

- A. Bidder must answer the following questions in accordance with Vernon's Texas Statutes and Codes Annotated Government Code 2252.002, as amended:

Is the Bidder that is making and submitting this Bid a "Resident Bidder" or a "Non-resident Bidder"?

Answer: _____

(1) Texas Resident Bidder – A Bidder whose principal place of business is in Texas and includes a Contractor whose ultimate parent company or majority owner has its principal place of business in Texas.

(2) Nonresident Bidder – A Bidder who is not a Texas Resident Bidder.

- B. If the Bidder is a "Nonresident Bidder" does the state, in which the Nonresident Bidder's principal place of business is located, have a law requiring a Nonresident Bidder of that state to bid a certain amount or percentage under the Bid of a Resident Bidder of that state in order for the nonresident Bidder of that state to be awarded a Contract on such bid in said state.

Answer: _____ Which State: _____

- C. If the answer to Question B is "yes", then what amount or percentage must a Texas Resident Bidder bid under the bid price of a Resident Bidder of that state in order to be awarded a Contract on such bid in said state?

Answer: _____

Bidder's Name: _____

Signature of Officer or
Authorized
Representative: _____ Date: _____

Printed Name: _____

Title _____

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
NO GOALS FORM**

SOLICITATION NUMBER: CB30017

PROJECT NAME: MANAGEMENT AND OPERATION OF BOATHOUSE AT WALLER CREEK ON LADY BIRD LAKE

The City of Austin has determined that no goals are appropriate for this project. Even though no goals have been established for this solicitation, the Bidder/Proposer is required to comply with the City's MBE/WBE Procurement Program, if areas of subcontracting are identified.

If any service is needed to perform the Contract and the Bidder/Proposer does not perform the service with its own workforce or if supplies or materials are required and the Bidder/Proposer does not have the supplies or materials in its inventory, the Bidder/Proposer shall contact the Small and Minority Business Resources Department (SMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Bidder/Proposer must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

Will subcontractors or sub-consultants or suppliers be used to perform portions of this Contract?

No _____ If no, please sign the No Goals Form and submit it with your Bid/Proposal in a sealed envelope.

Yes _____ If yes, please contact SMBR to obtain further instructions and an availability list and perform Good Faith Efforts. Complete and submit the No Goals Form and the No Goals Utilization Plan with your Bid/Proposal in a sealed envelope.

After Contract award, if your firm subcontracts any portion of the Contract, it is a requirement to complete Good Faith Efforts and the No Goals Utilization Plan, listing any subcontractor, subconsultant, or supplier. Return the completed Plan to the Project Manager or the Contract Manager.

I understand that even though no goals have been established, I must comply with the City's MBE/WBE Procurement Program if subcontracting areas are identified. I agree that this No Goals Form and No Goals Utilization Plan shall become a part of my Contract with the City of Austin.

Company Name

Name and Title of Authorized Representative (Print or Type)

Signature

Date

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
NO GOALS UTILIZATION PLAN**
(Please duplicate as needed)

SOLICITATION NUMBER: CB30017

PROJECT NAME: MANAGEMENT AND OPERATION OF BOATHOUSE AT WALLER CREEK ON LADY BIRD LAKE

PRIME CONTRACTOR/CONSULTANT COMPANY INFORMATION

Name of Contractor/Consultant			
Address			
City, State Zip			
Phone		Fax Number	
Name of Contact Person			
Is company City certified?	Yes <input type="checkbox"/> No <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE/WBE Joint Venture <input type="checkbox"/>		

I certify that the information included in this No Goals Utilization Plan is true and complete to the best of my knowledge and belief. I further understand and agree that the information in this document shall become part of my Contract with the City of Austin.

Name and Title of Authorized Representative (Print or Type)

Signature

Date

Provide a list of all proposed subcontractors/subconsultants/suppliers that will be used in the performance of this Contract. **Attach Good Faith Efforts documentation if non MBE/WBE firms will be used.**

Sub-Contractor/Consultant			
City of Austin Certified	MBE <input type="checkbox"/> WBE <input type="checkbox"/>	Ethnic/Gender Code:	<input type="checkbox"/> NON-CERTIFIED
Vendor ID Code			
Contact Person	Phone Number:		
Amount of Subcontract	\$		
List commodity codes & description of services			

Sub-Contractor/Consultant			
City of Austin Certified	MBE <input type="checkbox"/> WBE <input type="checkbox"/>	Ethnic/Gender Code:	<input type="checkbox"/> NON-CERTIFIED
Vendor ID Code			
Contact Person	Phone Number:		
Amount of Subcontract	\$		
List commodity codes & description of services			

FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:

Having reviewed this plan, I acknowledge that the proposer (HAS) or (HAS NOT) complied with City Code Chapter 2-9A/B/C/D, as amended.

Reviewing Counselor _____ **Date** _____ **Director/Deputy Director** _____ **Date** _____

**CITY OF AUSTIN
PURCHASING OFFICE
"NO OFFER" REPLY FORM**

SOLICITATION NUMBER: **CB30017**

Please Complete and Return This Form to the following address to Indicate a "No Offer" Reply

City of Austin
Purchasing Office
P.O. Box 1088
Austin, Texas 78767-8845

(DO NOT RETURN ALONG WITH OFFER)

Please check the appropriate box to indicate why your firm is submitting a "no offer" response. Failure to respond to three (3) consecutive solicitations may result in your company being removed from the source list for this commodity or service. Completion of this form will assist us in maintaining an accurate, up-to-date source list.

COMMODITY CODE: 96115

DESCRIPTION:Concessions, Catering, Vending:Mobile and Station

- ☐ Unable to supply item(s) specified. Remove my company from the source list for the Commodity / Service Group
- ☐ Unable to supply item(s) specified. Retain my company on the vendor list for this commodity / service.
- ☐ Cannot meet the Scope of Work / Specifications.
- ☐ Cannot provide required Insurance.
- ☐ Cannot provide required Bonding.
- ☐ Job too small.
- ☐ Job too large.
- ☐ Do not wish to do business with the City. Remove my company from the City's Vendor list.
- ☐ Other reason (please state why you will not submit a bid):

Contractor's Name:

Street Address

City, State, Zip Code

Signature of Officer or
Authorized

Representative:

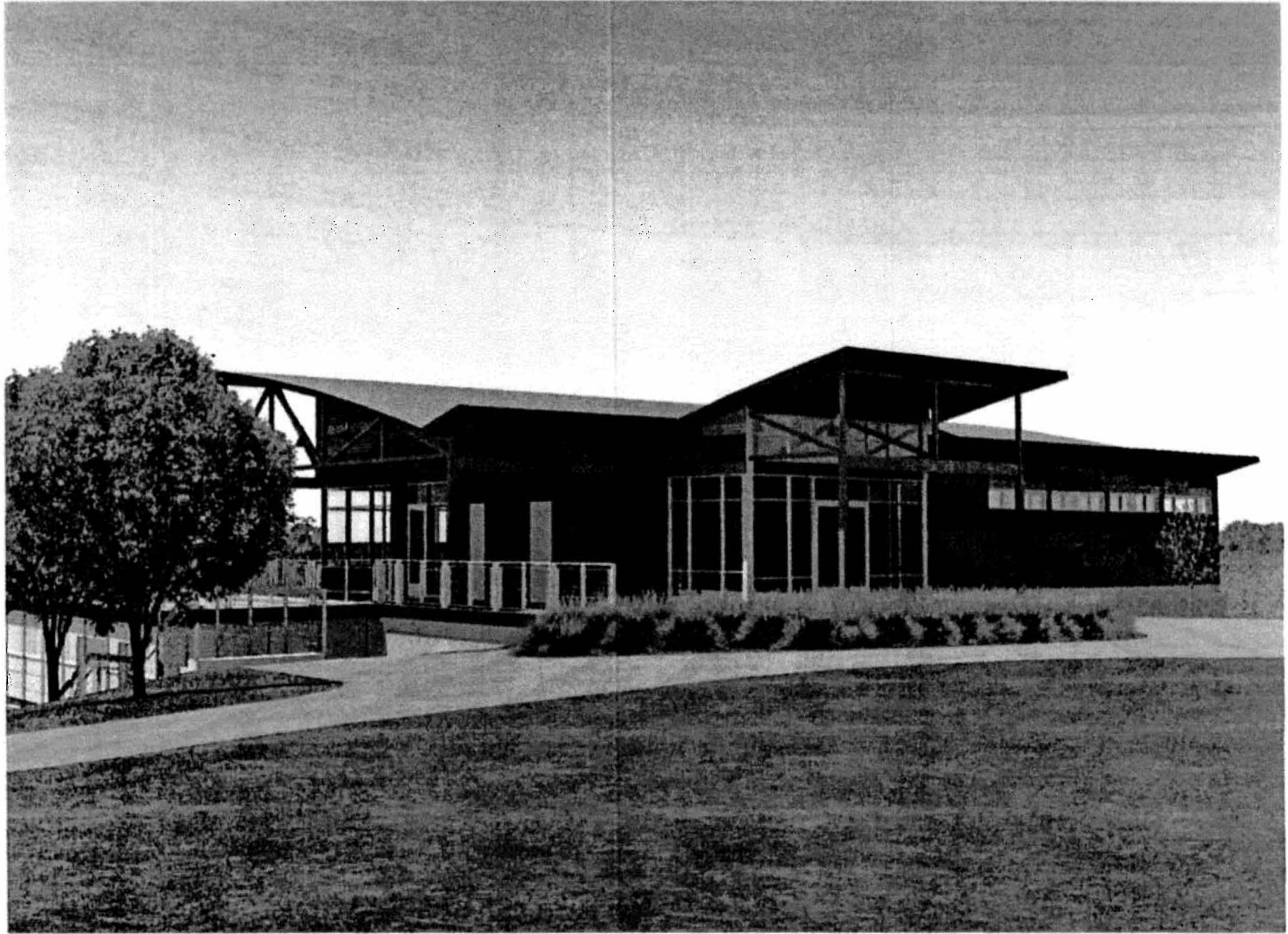
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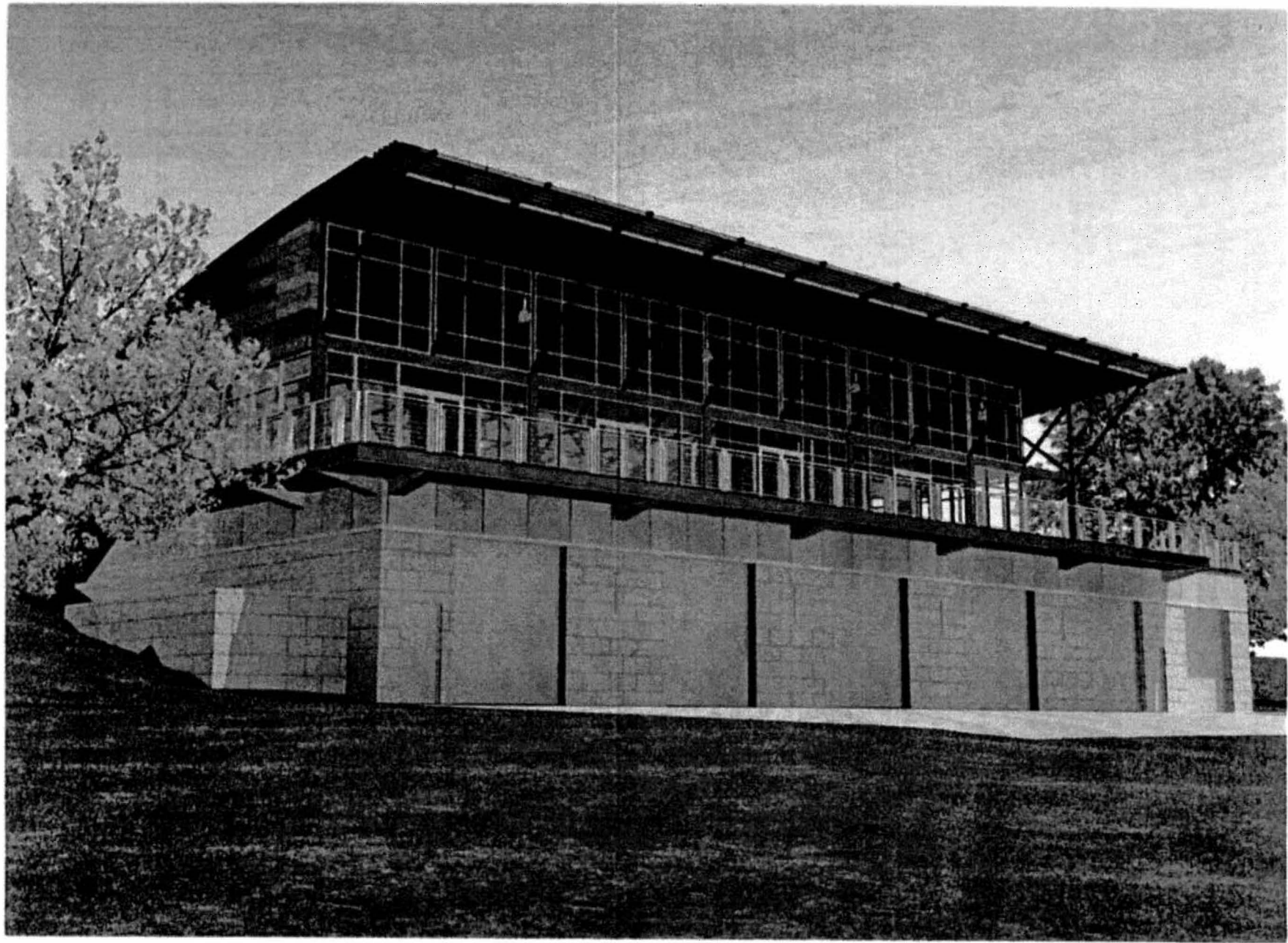
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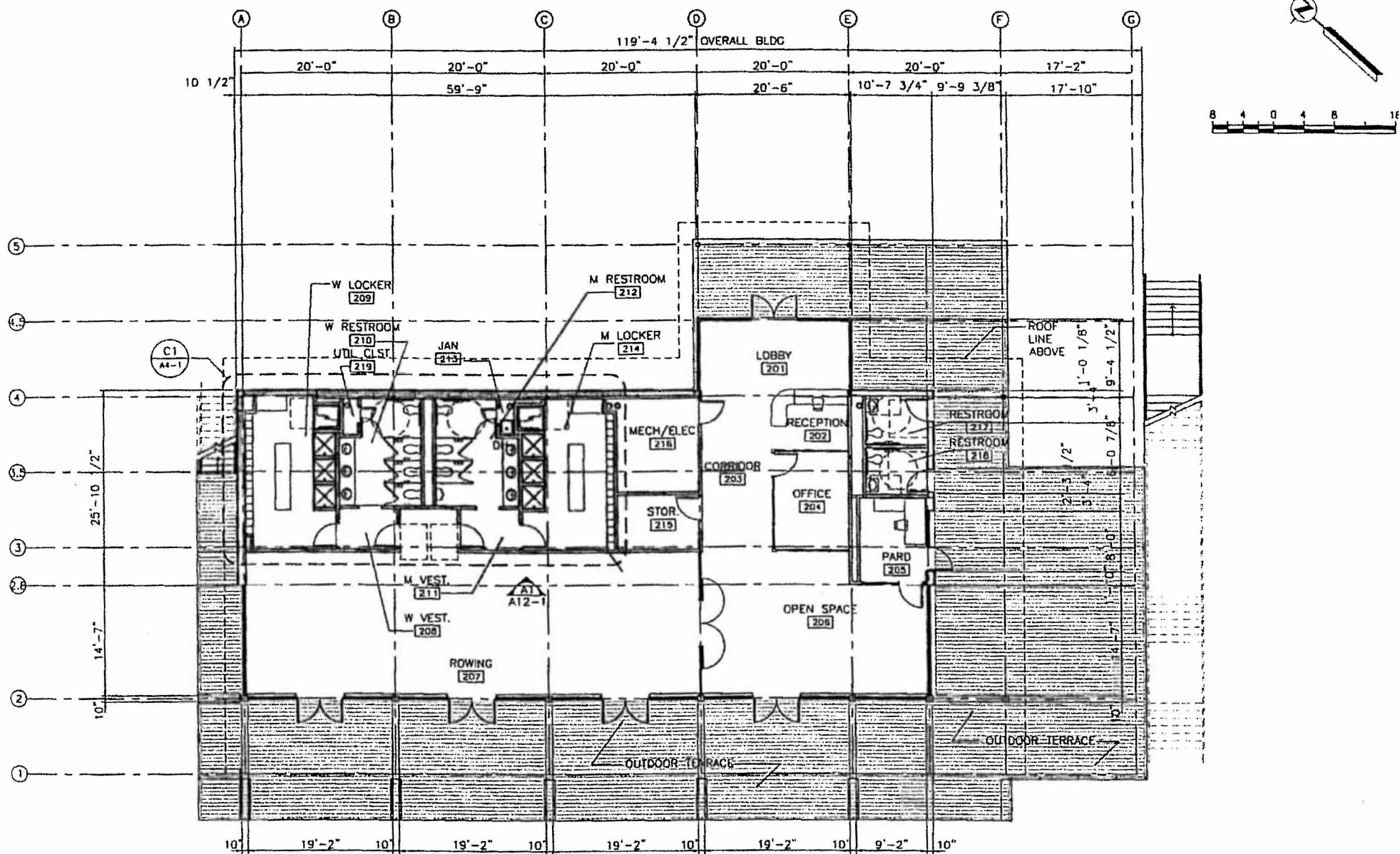
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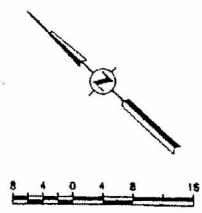
ATTACHMENT

“A”









1. ARCHITECTURAL FINISHES: FINISH ELEVATION OF 0'-0" IS EQUAL TO THE CIVIL FINISH FLOOR ELEVATION OF 4.35'-8". REF: CIVIL DRAWINGS.
2. ALL METAL STUDS ARE CONTINUOUS FROM FLOOR TRUCK TO STRUCTURE ABOVE. U.N.O.
3. ALL PURPOSES AND ACCESS DRAWINGS, ROOM NAMES AND NUMBERS HAVE BEEN ASSIGNED TO AID IN THE COORDINATION OF THESE DOCUMENTS. THIS NUMBERING SYSTEM IS NECESSARY INTENDED TO REPRESENT OR COORDINATE WITH THE ACCESS RELOCATION. REFER TO DOOR INFORMATION SHEET FOR FRAMING AND ANCHORAGE AT DOORS.
4. REFER TO CIVIL AND LANDSCAPE DRAWINGS FOR SITE WORKING.
5. FINISH FLOOR ELEVATIONS OR DIMENSIONS ARE TO THE TOP OF CONCRETE SLAB, U.N.O.
6. DO NOT CUT-AND-PATCH STRUCTURAL WORK IN ANY MANNER RESULTING IN REDUCTION OF LOAD CARRYING CAPACITY. IF ANY REDUCTION RATIO, SUBJECT PROPOSED CUTTING AND PATCHING TO ARCHITECT/ENGINEER FOR STRL APPROVAL BEFORE PROCEEDING. DO NOT CUT-AND-PATCH OPERATIONAL ELEMENTS AND SAFETY-RELATED ELEMENTS IN ANY MANNER RESULTING IN REDUCTION OF CAPACITIES TO PERFORM IN A MANNER INTENDED OR RESULTING IN DECREASED OPERATIONAL LIFE. INCREASED MAINTENANCE, OR DECREASED SAFETY. DO NOT CUT-AND-PATCH WORK WHICH IS EXPOSED ON EXT OR EXPOSED IN OCCUPIED SPACES OF THE BUILDING, IN A MANNER RESULTING IN REDUCTION OF VISUAL QUALITY OR REDUCING THE VISUAL EVIDENCE OF CUT-AND-PATCH WORK, BOTH AS JUDGED BY THE ARCHITECT.
7. ALL CONCEALED BLOCKING TO BE FIRE TREATED.
8. EJECT PANELS, FIRE EXTINGUISHER AND OTHER ITEMS INSTALLED IN WALLS SHALL BE BACKED W/ DRYWALL TO MAINTAIN RATED RATINGS.
9. SEE ENLARGED FLOOR PLANS AND DETAILS FOR SPECIFIC LOCATIONS OF TOILET ROOM PLUMBING FIXTURES.
10. REFERENCE STRUCTURAL, MECHANICAL, PLUMBING, AND ELECTRICAL FOR ITEMS NOT SHOWN. COORDINATE AS REQUIRED INCLUDING NECESSARY FRAMING AND ANCHORAGE.
11. FIELD VERIFY ALL DIMENSIONS PRIOR TO FABRICATION OF ANY CADMIETY, FRAMES, STRUCTURAL, ITEMS, ETC.
12. REMOVE PAINTED ACCESS PANELS, WALLS AND CEILING AT ALL PANEL TYPES, SUCH AS VALVES, SHOCK ABSORBERS, CONTROLS, SWITCHES, ETC. AND ANY OTHER ITEMS WHICH MAY REQUIRE ACCESS NOT OTHERWISE PROVIDED. ACCESS PANELS, SWITCHES MAY NOT ALWAYS BE SHOWN ON THE PLANS. IT IS THE SUBCONTRACTORS RESPONSIBILITY TO DETERMINE ACCESS PANEL LOCATIONS. REVIEW CEILING BOARD DETERMINE LOCATION OF GYPSUM BOARD CEILING. REMOVE ACCESS PANELS TYPICALLY REQUIRED.
13. ALL DOORS SHALL BE HELD 4" OFF OF THE PERPENDICULAR WALL ON THE HINGE SIDE, U.N.O.
14. ALL DOORS IN FIRE RATED WALLS SHALL BE RATED. SEE DOOR SCHEDULE FOR SPECIFIC RATING REQUIREMENTS.
15. SLOPE FLOORS TO FLOOR DRAINS 1/4" PER FOOT.
16. ALIGN DIFFERENT WALL TYPES SO THAT CONTINUOUS FACES OF WALLS ARE FLUSH.

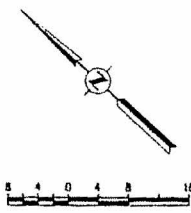
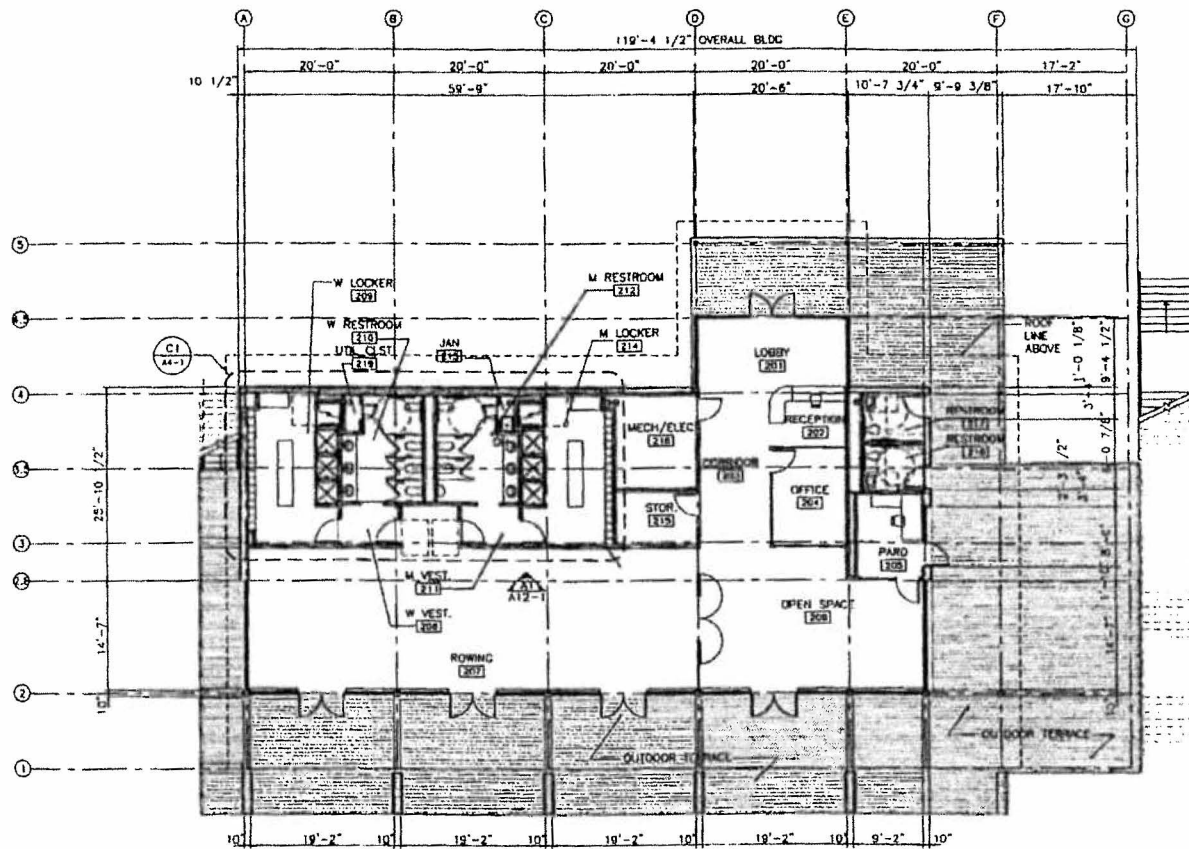
400 Bowdo Street, Austin, Texas 78703
512 477 9417 www.mccormick.com

WALLER CREEK TUNNEL PROJECT PAID BOAT FACILITY	FLOOR PLAN - LEVEL 1
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Sheet
Reference
Number:
A3-1

78 of 145

90% SUBMITTAL



GENERAL NOTES:

1. ARCHITECTURAL FINISHED FLOOR ELEVATION OF 0'-0" IS EQUAL TO THE CIVIL FINISH FLOOR ELEVATION OF 4.35'-0". RE: CIVIL DRAWINGS.
2. ALL METAL STUDS ARE CONTINUOUS FROM FLOOR TRACK TO STRUCTURE ABOVE, U.L.O.
3. FOR THE PURPOSES OF THESE DRAWINGS, ROOM NAMES AND NUMBERS HAVE BEEN ASSIGNED TO AID IN THE COORDINATION OF THESE DOCUMENTS. THIS NUMBERING SYSTEM IS NOT NECESSARILY INTENDED TO REPRESENT OR COORDINATE WITH FINAL ROOM DESIGNATION. REFER TO DOOR INFORMATION SHEET FOR FRAMING AND ANCHORAGE AT DOORS.
4. REFER TO CIVIL AND LANDSCAPE DRAWINGS FOR SITE WORK.
5. FINISH FLOOR ELEVATIONS OR DIMENSIONS ARE TO THE TOP OF CONCRETE SLAB, U.L.O.
6. DO NOT CUT-AND-PATCH STRUCTURAL WORK IN A MANNER RESULTING IN REDUCTION OF LOAD CARRYING CAPACITY OF LOAD/DEFLECTION RATIO; SUBMIT PROPOSED CUTTING AND PATCHING TO ARCHITECT/ENGINEER FOR STRL APPROVAL BEFORE PROCEEDING. DO NOT CUT-AND-PATCH OPERATIONAL ELEMENTS AND SAFETY-RELATED COMPONENTS IN A MANNER RESULTING IN REDUCTION OF CAPACITIES TO PERFORM IN A MANNER INTENDED OR RESULTING IN DECREASED OPERATIONAL LIFE, INCREASED MAINTENANCE, OR DECREASED SAFETY. DO NOT CUT-AND-PATCH WORK WHICH IS EXPOSED ON EXT OR EXPOSED IN OCCUPIED SPACES OF THE BUILDING, IN A MANNER RESULTING IN REDUCTION OF VISUAL QUALITIES OR RESULTING IN SUBSTANTIAL EVIDENCE OF CUT-AND-PATCH WORK, BOTH AS JUDGED BY THE ARCHITECT.
7. ALL CONCEALED BLOODING TO BE FIRE TREATED. EJECT PANELS, FIRE EXTINGUISHER AND OTHER ITEMS INSTALLED IN WALLS SHALL BE BACKED W/ DRYWALL TO MAINTAIN REQ'D RATINGS.
8. SEE ENLARGED FLOOR PLANS AND DETAILS FOR SPECIFIC LOCATIONS OF TOILET ROOM PLUMBING FIXTURES.
9. REFERENCE STRUCTURAL, MECHANICAL, PLUMBING, AND ELECTRICAL FOR ITEMS NOT SHOWN. COORDINATE AS REQUIRED INCLUDING NECESSARY FRAMING, BLOODING, ETC.
10. FIELD VERIFY ALL DIMENSIONS PRIOR TO FABRICATION OF ANY CABINETRY, FRAMES, STRUCTURAL ITEMS, ETC.
11. PROVIDE PAINTED ACCESS PANELS IN WALLS AND CEILINGS AT CONCEALED ITEMS, SUCH AS VALVES, SHOCK ABSORBERS, CONTROLS, SWITCHES, ETC., AND ANY OTHER ITEMS WHICH MAY REQUIRE ACCESS NOT OTHERWISE PROVIDED. ACCESS PANEL LOCATIONS MAY NOT ALWAYS BE SHOWN ON THE PLANS. IT IS THE SUBCONTRACTORS RESPONSIBILITY TO DETERMINE ACCESS PANEL LOCATIONS. REVIEW CEILING PLAN TO DETERMINE LOCATION OF GYPSUM BOARD CEILINGS WHERE ACCESS PANELS TYPICALLY REQUIRED.
12. ALL DOORS SHALL BE HELD 4" OFF OF THE PERPENDICULAR WALL ON THE HINGE SIDE, U.L.O.
13. ALL DOORS IN FIRE RATED WALLS SHALL BE RATED. SEE DOOR SCHEDULE FOR SPECIFIC RATING REQUIREMENTS.
14. SLOPE FLOORS TO FLOOR DRAINS 1/4" PER FOOT, MIN.
15. ALIGN DIFFERENT WALL TYPES SO THAT CONTIGUOUS FACES OF WALLS ARE FLUSH.

F1 FLOOR PLAN- LEVEL TWO

THIS DOCUMENT IS RELEASED FOR THE PURPOSES OF 90% INTERIM REVIEW UNDER THE AUTHORITY OF JOSEPH M. LAROCCA 15307 DATE: NOVEMBER 10, 2009 IT IS NOT TO BE USED FOR PERMITTING, BIDDING OR CONSTRUCTION.



Project No.	2009
Revision No.	0
Revision Description	
Drawn By	
Checked By	
Approved By	
Date	

CITY OF AUSTIN WATERWAYS DIVISION DEPARTMENT	AMBERLEY JOINT VENTURE 1000 SOUTHMOOR AVENUE AUSTIN, TEXAS 78735
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WALLER CREEK TUNNEL PROJECT PARK BOAT FACILITY	FLOOR PLAN - LEVEL 2
---	----------------------

Sheet Reference Number: **A3-2**

0% SUBMITTAL



**REQUEST FOR PROPOSAL (RFP) ADDENDUM
PURCHASING OFFICE
CITY OF AUSTIN**

MANAGEMENT AND OPERATION OF BOATHOUSE AT WALLER CREEK ON LADY BIRD LAKE

RFP No. CB30017

Addendum No. 1

Date: 04/9/10

This addendum is to incorporate the following changes into the above specified solicitation.

1.0 The Offer Sheet, page 1 of 2, PROPOSAL DUE DATE is Extended to the following:

PROPOSAL DUE PRIOR TO: APRIL 28, 2010, 10:00 AM, CST.

PROPOSAL CLOSING TIME AND DATE: APRIL 28, 2010, AT 10:00 AM.

2.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURES affixed below, Addendum No. 1 is hereby incorporated into and made a part of the above referenced Invitation for Bid.

Approved By: _____

Cruz Banda
Cruz Banda, Buyer II
Purchasing Office

Acknowledged By: _____

Bidder's Name of Company

Authorized Signature

Return one (1) copy to the Purchasing Office, City of Austin, prior to opening or with your sealed bid. FAILURE TO DO SO MAY CONSTITUTE GROUNDS FOR REJECTION OF YOUR OFFER.

Exhibit
CITY OF AUSTIN, TEXAS
LIVING WAGES AND BENEFITS CONTRACTOR CERTIFICATION
(Please duplicate as needed)

Pursuant to the Living Wages and Benefits provision (reference Section 0400, Supplemental Purchase Provisions) the Contractor is required to pay to all employees directly assigned to this City contract a minimum Living Wage equal to or greater than \$11.00 per hour.

I hereby certify under penalty of perjury that all of the below listed employees of the Contractor who are directly assigned to this contract:

- (1) are compensated at wage rates equal to or greater than \$11.00 per hour; and
- (2) are offered a health care plan with optional family coverage.

Employee Name	Employee Job Title
No current full-time employees	

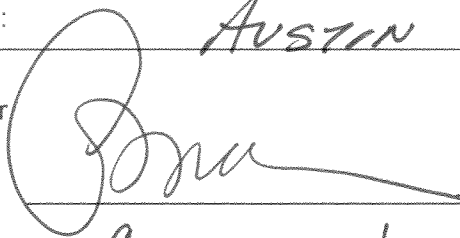
- (3) all future employees assigned to this Contract will be paid a minimum Living Wage equal to or greater than \$11.00 per hour and offered a health care plan with optional family coverage.
- (4) Our firm will not retaliate against any employee claiming non-compliance with the Living Wage provision.

A Contractor who violates this Living Wage provision shall pay each employee affected the amount of the deficiency for each day the violation continues. Willful or repeated violations of the provision may result in termination of this Contract for Cause and subject the firm to possible suspension or debarment.

Contractor's Name:

Austin Rowing Club

Signature of Officer
or Authorized
Representative:



Date:

4.30.12

Printed Name:

CAMILLE JOBE

Title

PRESIDENT OF THE BOARD OF DIRECTORS
AUSTIN ROWING CLUB

**CITY OF AUSTIN
NON-COLLUSION,
NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING AFFIDAVIT
SOLICITATION NO. CB30017**

**FOR
MANAGEMENT AND OPERATION OF BOATHOUSE AT WALLER CREEK ON LADY BIRD LAKE**

State of Texas

County of Travis

The undersigned "Affiant" is a duly authorized representative of the Offeror for the purpose of making this Affidavit, and, after being first duly sworn, has deposed and stated and hereby deposes and states, to the best of his or her personal knowledge and belief as follows:

The term "**Offeror**", as used herein, includes the individual or business entity submitting the Offer and for the purpose of this Affidavit includes the directors, officers, partners, managers, members, principals, owners, agents, representatives, employees, other parties in interest of the Offeror, and anyone or any entity acting for or on behalf of the Offeror, including a subcontractor in connection with this Offer.

1. **Anti-Collusion Statement.** The Offeror has not in any way directly or indirectly:
 - a. colluded, conspired, or agreed with any other person, firm, corporation, Offeror or potential Offeror to the amount of this Offer or the terms or conditions of this Offer.
 - b. paid or agreed to pay any other person, firm, corporation Offeror or potential Offeror any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for establishing the prices in the attached Offer or the Offer of any other Offeror.
2. **Preparation of Solicitation and Contract Documents.** The Offeror has not received any compensation or a promise of compensation for participating in the preparation or development of the underlying Solicitation or Contract documents. In addition, the Offeror has not otherwise participated in the preparation or development of the underlying Solicitation or Contract documents, except to the extent of any comments or questions and responses in the solicitation process, which are available to all Offerors, so as to have an unfair advantage over other Offerors, provided that the Offeror may have provided relevant product or process information to a consultant in the normal course of its business.
3. **Participation in Decision Making Process.** The Offeror has not participated in the evaluation of Offers or other decision making process for this Solicitation, and, if Offeror is awarded a Contract hereunder, no individual, agent, representative, consultant, subcontractor, or subconsultant associated with Offeror, who may have been involved in the evaluation or other decision making process for this Solicitation, will have any direct or indirect financial interest in the Contract, provided that the Offeror may have provided relevant product or process information to a consultant in the normal course of its business.
4. **Present Knowledge.** Offeror is not presently aware of any potential or actual conflicts of interest regarding this Solicitation, which either enabled Offeror to obtain an advantage over other Offerors or would prevent Offeror from advancing the best interests of the City in the course of the performance of the Contract.
5. **City Code.** As provided in Sections 2-7-61 through 2-7-65 of the City Code, no individual with a substantial interest in Offeror is a City official or employee or is related to any City official or employee within the first or second degree of consanguinity or affinity.
6. **Chapter 176 Conflict of Interest Disclosure.** In accordance with Chapter 176 of the Texas Local Government Code, the Offeror:
 - a. does not have an employment or other business relationship with any local government officer of the City or a family member of that officer that results in the officer or family member receiving taxable income;

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- b. has not given a local government officer of the City one or more gifts, other than gifts of food, lodging, transportation, or entertainment accepted as a guest, that have an aggregate value of more than \$250 in the twelve month period preceding the date the officer becomes aware of the execution of the Contract or that OWNER is considering doing business with the Offeror.
- c. as required by Chapter 176 of the Texas Local Government Code, Offeror must file a Conflict of Interest Questionnaire with the Office of the City Clerk no later than 5:00 P.M. on the seventh (7th) business day after the commencement of contract discussions or negotiations with the City or the submission of an Offer, or other writing related to a potential Contract with the City. The questionnaire is available on line at the following website for the City Clerk:
<http://www.ci.austin.tx.us/cityclerk/coi.htm>

There are statutory penalties for failure to comply with Chapter 176.

If the Offeror cannot affirmatively swear and subscribe to the forgoing statements, the Offeror shall provide a detailed written explanation in the space provided below or, as necessary, on separate pages to be annexed hereto.

7. **Anti-Lobbying Ordinance.** As set forth in the Solicitation Instructions, Section 0200, paragraph 7N, between the date that the Solicitation was issued and the date of full execution of the Contract, Offeror has not made and will not make a representation to a member of the City Council, a member of a City Board, or any other official, employee or agent of the City, other than the Authorized Contact Person for the Solicitation, except as permitted by the Ordinance.

OFFEROR'S EXPLANATION:

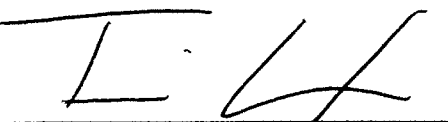
Contractor's Name: Austin Rowing Club

Printed
Name: Elisabeth Gardner

Title President

Signature of Officer or Authorized Representative: 

Subscribed and sworn to before me this 26th day of April, 2010.


Notary Public

My Commission Expires

12/29/13

