

**CITY OF SAN ANTONIO
PARKS AND RECREATION DEPARTMENT
CITY COUNCIL AGENDA MEMORANDUM**

TO: Mayor and City Council

FROM: Malcolm Matthews, Director, Parks and Recreation Department

SUBJECT: San Antonio River Barge Concession Contract

DATE: May 26, 2005

SUMMARY AND RECOMMENDATIONS

This ordinance authorizes execution of a ten-year License Agreement with Rio San Antonio Cruises, Inc. to operate the San Antonio River Barge Concession.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

The current license agreement for operation of the San Antonio River barge concession will expire on August 31, 2005. The concession agreement authorizes operation of general barge tours, dining and cocktail charters, taxi service, photography management and retail sales.

During a City Council B Session on April 8, 2004, staff provided a briefing to review the preliminary scope and schedule for the issuance of a Request for Proposals (RFP) to select an operator for a new ten (10) year concession contract. A second B Session briefing was held on June 3, 2004 for the City Council to approve the final scope and schedule for the RFP. On September 20, 2004, responses to the RFP were received from five companies. Following evaluation and discussion, the City Council selected the proposal from Rio San Antonio Cruises, Inc. through Ordinance 99974, which was approved on November 18, 2004. Since that date, City staff and the contractor have negotiated an agreement that is to take effect September 1, 2005.

The contract specifies responsibilities of both Rio San Antonio Cruises, Inc. (RSAC) and the City. Highlights of the agreement are noted below:

- The license agreement is a ten-year term, with no option to renew.
- The minimum hours of operation are 9:00 a.m. until 9:00 p.m.
- RSAC will utilize the three ticket locations identified in the RFP, which are Historia, Clearwater, and Holiday Inn (when renovations are completed).
- The City Marina is used for barge storage, barge maintenance and office area for RSAC operations staff.
- Ten barges will be available for dinner and tour charters during peak hours and three during other hours.

- RSAC will continue to utilize CNG propulsion engines and move to another more efficient or environmentally friendly propulsion system if one becomes available.
- A minimum of \$200,000 will be spent annually to market the business through advertising, special events, promotions and public relations.
- A scholarship of \$300,000 will be donated over the term of the agreement (\$30,000 annually), which will be administered by the City.
- Ticket prices will remain the same, except the rate for adult matinee will increase by \$0.50.
- The price for the charter rate will increase to \$100 per hour, with \$50 for each additional one-half hour. During peak hours, the charter rate increases to \$125 per hour per barge, with \$62.50 for each additional one-half hour. A new senior citizen/school charter rate of \$50 per hour will be offered during non-peak hours.
- Photography is permitted at ticket stations and may be taken only with the approval of the public.
- The percentages to be paid to the City from each of the revenue categories is:

Barge Tours, Charters, Taxis	52%
Photography	20%
Retail	15%
Advertising	15%
- The Barge Tours, Charters and Taxis percentage will increase to 52.5% if Gross Revenue is from \$7M to \$8M and will increase to 55.0% if Gross Revenue is over \$8M.
- The minimum annual revenue to be paid to the City is \$2M and this will increase to \$2.5M in the sixth year of the contract.
- A Performance Bond, Letter of Credit or other surety in the amount of the minimum annual payment is required to be submitted to the City.

POLICY ANALYSIS

The issuance of the RFP for operation of the City's San Antonio River barge concession was part of a recommendation and review of the RFP evaluation criteria presented to City Council during a B Session on April 8, 2004 and a subsequent B Session presentation on June 3, 2004. The RFP was developed and issued by City staff, following all the standard City criteria for such actions. Rio San Antonio Cruises, Inc. was selected through Ordinance 99974 on November 18, 2004 based on those criteria.

FISCAL IMPACT

Rio San Antonio Cruises has operated a successful concession after taking over from the previous operator in 2002. Adjusted gross sales have increased from \$6,653,990 in FY02 to \$8,619,850 in FY04. The corresponding payment to the City was \$2,952,229 in FY02 and \$3,828,751 in FY04. If gross revenue is estimated to remain the same, it is anticipated that revenue to the City in FY06, the first full year under the new contract, will be \$3,994,240.

COORDINATION

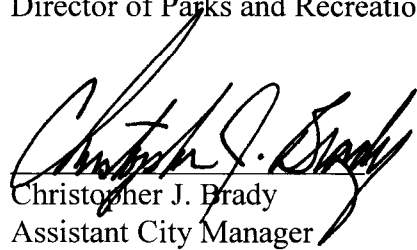
The agreement was coordinated with the City Attorney's Office and the Contract Services Department.

SUPPLEMENTARY COMMENTS

A copy of the Ethics Ordinance Disclosure Statement is attached.



Malcolm Matthews
Director of Parks and Recreation



Christopher J. Brady
Assistant City Manager



J. Rolando Bono
Interim City Manager

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City of San Antonio
Discretionary Contracts Disclosure*

*For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2
Attach additional sheets if space provided is not sufficient.
State "Not Applicable" for questions that do not apply.*

** This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.*

Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any individual who would be a party to the discretionary contract:

JoAnn E. Boone

(2) the identity of any business entity¹ that would be a party to the discretionary contract:

Rio San Antonio Cruises

and the name of:

(A) any individual or business entity that would be a **subcontractor** on the discretionary contract;

Rio San Antonio Photography
The CE Group, Inc.
San Antonio Press, Inc.

and the name of:

(B) any individual or business entity that is known to be a **partner**, or a **parent** or **subsidiary** business entity, of any individual or business entity who would be a party to the discretionary contract;

JoAnn E. Boone

¹ A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

- (3) the identity of any *lobbyist* or *public relations firm* employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

Baltazar R. Serna, Jr.
The CE Group Inc.

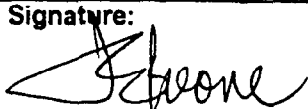
Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any *current or former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:
Art Hall	\$ 500.00	October 6, 2003
Joel Williams	\$ 500.00	November 5, 2003
Julian Castro	\$ 500.00	November 5, 2003
Edward D. Garza	\$1,000.00	November 14, 2003
Patti Radle	\$ 500.00	February 10, 2004
Ron Segovia	\$ 500.00	February 11, 2004
Chip Haas	\$ 500.00	May 24, 2004

Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

Signature: 	Title: President Company: Rio San Antonio Cruises	Date: September 20, 2004

² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

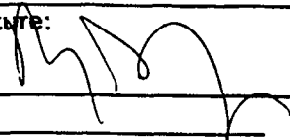
ATTACHMENT B – Discretionary Contracts Disclosure (additional page)**Law Offices of Serna & Serna****Political Contributions**

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:
Thomas Aguillon	\$ 250.00	February 5, 2003
Enrique Barrera	\$ 500.00	August 11, 2003
Julian Castro (<i>in-kind contribution</i>)	\$1,033.26	March 12, 2003
Phil Cortez	\$ 250.00	May 20, 2003
Phil Cortez	\$ 500.00	January 14, 2003
Edward Garza	\$1,000.00	November 17, 2003
Edward Garza	\$ 500.00	February 24, 2003
Edward Garza	\$ 500.00	April 2, 2003
Chip Haas	\$ 500.00	September, 2003
Art Hall	\$ 500.00	March 30, 2004
Toni Moorehouse	\$ 350.00	March 25, 2003
John Sanders	\$ 300.00	May 2, 2003
John Sanders	\$ 750.00	April 16, 2003
Carroll Schubert	\$1,000.00	July 30, 2002
Ron Segovia	\$ 250.00	June 2, 2003
Ron Segovia (<i>in-kind contribution</i>)	\$ 714.80	May 27, 2003
Joel Williams	\$ 500.00	November 5, 2003

Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

Signature: 	Title: Partner	Date: September 20, 2004
Company: Serna & Serna		

² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

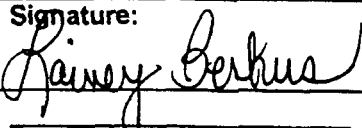
ATTACHMENT B – Discretionary Contracts Disclosure (additional page)**The CE Group Inc.****Political Contributions**

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:
None	None	None

Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

Signature: 	Title: Partner Company: The CE Group, Inc.	Date: September 20, 2004
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² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

DOWNTOWN SAN ANTONIO RIVER
BARGE CONCESSION CONTRACT

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DOWNTOWN SAN ANTONIO RIVER
BARGE CONCESSION CONTRACT

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

ARTICLE I.

TERM

1.1 The term of this CONTRACT shall be for ten (10) years, with the Effective Date being September 1, 2005, and ending on August 31, 2015.

1.2 Should CONTRACTOR holdover the Concession, or any part thereof, after the expiration or termination of the term of this CONTRACT, unless otherwise agreed in writing, such holding over shall constitute and be construed as a CONTRACT from month to month only. The inclusion of the preceding sentence shall not be construed as CITY'S consent for the CONTRACTOR to hold over.

ARTICLE II.

PAYMENT TO CITY

2.1 CONTRACTOR shall pay to CITY a CONCESSION FEE based on the percentages of ADJUSTED GROSS SALES ("AGS") indicated in paragraphs 44.1 through 44.4 herein, provided, however, that payments to CITY shall not be less than \$2,000,000.00 per Contract Year 1 through Contract Year 5 and not less than \$2,500,000.00 for Contract Year 6 through Contract Year 10. CONTRACTOR shall pay the CONCESSION FEE in twice monthly payments as follows: on the 25th of each month during the term of the contract, CONTRACTOR shall pay CITY \$125,000.00 as a partial payment of the CONCESSION FEE for such month and on the 10th day of the succeeding month CONTRACTOR shall pay CITY the balance of the percentage payment due from the preceding month's business activity. The payment on the 10th shall be accompanied by a report of monthly AGS in a form prescribed by the Director, Department of Finance. Monthly payments shall be based on the percentage of the preceding month's AGS as indicated in paragraphs 44.1 through 44.4 herein.

This payment based on the percentage of AGS indicated in paragraphs 44.1 through 44.4 hereinafter is based on AGS accumulated over a period of one (1) Contract Year. Beginning on the first (1st) day of each new Contract Year, the accumulation of AGS and the payment of specified percentage thereon shall begin anew.

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

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

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

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

2.3.2 For each day all of the reaches of the San Antonio River behind the two flood control gates (the "River Bend") is drained in excess of eleven (11) days per Contract Year, CONTRACTOR shall deduct five thousand eighty-five Dollars (\$5,085.00) from the payment due to CITY. Such deduction shall be made from the payment made for the month(s) during which the Contract Year's accumulative downtime in excess of the allowable amount occurred. In addition to the deductions allowed above, in the event that the River Bend is drained in excess of thirty 30 days CONTRACTOR shall have the right to extend this CONTRACT one day for each day in

excess of thirty (30) days per Contract Year the River Bend is drained. In the event the River Bend is drained in excess of sixty (60) days per Contract Year, CONTRACTOR shall have the right to terminate this CONTRACT upon written notice to CITY. Such termination by CONTRACTOR shall release CONTRACTOR from further liability herein, except for Concession Fees owing to CITY for operations prior to the effective date of termination.

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

2.3.4 Other than the deductions authorized hereinabove and the deductions authorized in paragraph 26.2 hereinafter, CITY accepts no liability of any kind, including, but not limited to, loss of revenue or equipment incurred by CONTRACTOR as a result of natural disasters or by river downtime because of work related to San Antonio River flood control or any other improvements project(s) including, but not limited to, any shortening of the length of the River due to construction for either the River Extension contemplated in section 4.3 or a river extension associated with the convention center hotel project, or any other similar project that does not substantially interfere with CONTRACTOR operations under this agreement, or by reason of other denial of use of the river by operation of law or the orders of a court of competent jurisdiction.

ARTICLE III.

TRADEMARKS, DOMAIN NAMES AND IMAGES

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

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

ARTICLE IV.

CONCESSION AREA

4.1 With the exception of the provisions in Article VI hereinafter, CONTRACTOR shall have exclusive rights to operate dinner barges, tour barges, and taxi barges on that portion of the San Antonio River between Lexington Street and Nueva Street Marina, and including the areas known as the River Bend, the river extension beginning at the Casa Rio Restaurant and terminating at the Henry B. Gonzalez Convention Center, the river extension into Rivercenter Mall, and any other downtown river extension which may be constructed during the term of this CONTRACT subject to the terms of section 4.3. In addition to the forgoing, the CONCESSION AREA is hereby defined to include all of the area of the former bed and banks of the San Antonio River now contained between the retaining walls and encompassing all of the area, within the above defined stretches, known as the San Antonio River Walk, as well as all the approved Ticket Stations, Queuing and Loading areas and Marina spaces.

4.2 Barge traffic patterns shall be coordinated with and approved by the DIRECTOR, whose decision as to acceptable traffic patterns shall be final. CONTRACTOR understands and agrees that CITY shall continue to operate CITY boats and barges in the Concession Area to accomplish municipal purposes.

4.3 It is anticipated that in 2010, an approximate .75 mile extension of the River Walk north of Lexington Avenue is to be completed (the "Extension Area" as shown on Exhibit A). This extension might include a lock system to raise and lower watercraft from the Concession Area into the Extension Area. CITY and CONTRACTOR hereby agree to bargain in good faith towards amending this CONTRACT to add this additional area into the Concession Area on mutually agreeable terms, provided however, the following shall apply to such negotiations: 1) the term for this agreement shall not be extended and 2) if marina dock space, ticket stations and queuing and loading areas are available for CONTRACTOR use, then the current concession fee rates shall apply and if no such spaces are available, then CITY and CONTRACTOR shall negotiate the concession fee rate that will apply. Such amendment shall include terms outlining the type of services to be provided. In the event that CITY and CONTRACTOR are unable to come to agreement on such terms 6 months prior to the date CITY projects will be the date of the opening of the extension, CITY shall be free to enter into a contract with another concessionaire to provide services on the extension.

4.4 CONTRACTOR understands and agrees that access in the Concession Area may be temporarily limited to accommodate construction in the Extension Area; however, such temporary intrusion in the Concession Area must be reasonable in time and scope and as a result of construction of the Extension Area.

ARTICLE V.

ACCEPTANCE AND CONDITION OF CONCESSION AREA AND MARINAS

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

5.2 CONTRACTOR shall not construct, or allow to be constructed, any improvements or structures on the Concession Area, or any areas abutting the Concession Area where associated boarding of barges or queuing of passengers is to take place, regardless of whether owned by CITY, nor any other spaces in which it is allowed use under this CONTRACT nor shall CONTRACTOR make, or allow to be made, any alterations to the Concession Area nor any other spaces in which it is allowed use under this CONTRACT without the prior written approval of the CITY through the DIRECTOR and any and all other necessary departments, boards or commissions of the CITY OF SAN ANTONIO, including, the Historic and Design Review Commission (HDRC), if applicable.

ARTICLE VI.

SPECIAL RIVER EVENTS

6.1 During CITY sanctioned river parades and such other special events and activities and circumstances cited in paragraphs 6.2, 6.3 and 6.4 watercraft other than those operated by CONTRACTOR under this CONTRACT shall be permitted to operate in the Concession Area. Such CITY sanctioned river parades and other special events shall not be allowed to disrupt or unreasonably interfere with CONTRACTOR's day to day operations, prior to the event and immediately thereafter the event, without CONTRACTOR's and CITY'S joint approval. CONTRACTOR may make its barges available to parade sponsors and may charge the established charter rental rate set forth in Article XII, provided, however, that all regular CONTRACTOR barge traffic shall be suspended on the River at least thirty (30) minutes before the start of river parades and other special events and activities and shall remain suspended until conclusion of said parades. . In addition, CONTRACTOR covenants and agrees to cease operations thirty (30) minutes before the start of river parades and other special events and activities in the

forming and disembarking areas (other than the marinas) as designated by the DIRECTOR, in use by the parade participants. CONTRACTOR and DIRECTOR shall agree on an Operational Plan, which shall, among other things, outline the procedures for coordination between CONTRACTOR and CITY sanctioned river parades.

6.2 Other special events such as canoe races, promotions, movie filming, one-time filmed advertisement productions, and visits by nationally and internationally prominent persons may be authorized from time to time by mutual agreement of the Contractor and CITY.

6.3 CITY reserves the right to authorize or permit other river-oriented concession operations on or about the San Antonio River outside of the Concession Area during the term of this CONTRACT, provided, however, that such operations shall not compromise the safety of CONTRACTOR's operations or unduly interfere with CONTRACTOR's ability to deliver the services required by this CONTRACT.

6.4 Notwithstanding any other provision of this Contract to the contrary, no special events, parades, promotions or other activities outlined in paragraph 6.1 and paragraph 6.2 above, shall be allowed or permitted to incorporate tours, taxi service or dinner charters as part of such event within the Concession Area without the written consent of CONTRACTOR, provided however, CONTRACTOR hereby approves of the dinner barge services offered as part of the annual Pachanga event to the extent such is included as part of the License Agreement between the CITY and the Paseo Del Rio Association.

ARTICLE VII.

CONTRACTOR USE OF MARINAS, SPACE AND EQUIPMENT

7.1 During the term of this CONTRACT, CONTRACTOR shall be assigned space in the marina beneath the International Center located at 203 South St. Mary's Street and in the Nueva Street Marina or other like facilities for the purpose of mooring and for maintaining and servicing CONTRACTOR's barges. Space in each marina shall also be provided by CITY for CONTRACTOR's operational functions, subject to provisions hereinafter specified.

7.2 Except for payment of utilities as specified in Article X, no rental fees other than commission payments specified in paragraph 44.1 hereinafter shall be charged for CONTRACTOR's use of marina space and equipment described below.

7.3 CONTRACTOR shall be assigned, at no charge, a maximum of seven (7) parking spaces at the Nueva Street Marina. Location of such spaces shall be determined by the DIRECTOR, whose determination shall be final.

7.4 CONTRACTOR shall be allowed use of sufficient space to store CONTRACTOR'S approved barges and the following existing spaces and equipment in the Nueva Street Marina and the International Center:

A. MARINA SPACE

INTERNATIONAL CENTER (OLD MARINA FACILITY)

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

NEW MARINA FACILITY

- Mechanic office: 11'x7'
- Mechanic work area: 24'x23'
- Parts room: 12'x11'
- Paint booth: 32'x18'
- Paint prep booth: 32'x18'
- Head mechanic office: 12'x20'
- Boat motor storage cage: 22'x12'
- Supply cage: 12'x8'
- Dispatch office: 15'x8'
- Rio Cruises supervisors office: 22'x7'

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

B. MARINA EQUIPMENT

Marina Equipment shall mean the Paint Booth, Paint Prep Booth, Cranes and Tracks, Large and Small Air Compressors lifts, and other barge servicing equipment in aforesaid marinas, and any other Equipment installed in the Marinas.: CONTRACTOR is authorized access to and use of Marina Equipment. CONTRACTOR has had full opportunity to examine the Marina Equipment and agrees that no representations respecting the condition of the Marina Equipment and no promises to alter, repair or improve the Marina Equipment, either before or after the execution hereof, have been made by CITY or its agents to CONTRACTOR unless the same are contained herein or made a part thereof by reference herein. CONTRACTOR's execution shall be conclusive evidence of CONTRACTOR's acceptance thereof in good order and satisfactory condition, and CONTRACTOR hereby accepts the Marina Equipment in its present condition, AS IS, WHERE IS, WITH ALL FAULTS, as suitable for the purpose of conducting its operations hereunder. CONTRACTOR accepts the Marina Equipment with the full knowledge, understanding and agreement that CITY disclaims any warranty of suitability for CONTRACTOR's operations hereunder. CONTRACTOR shall, at its sole cost and expense, be responsible for all

maintenance and repair of all Marina Equipment. CONTRACTOR understands and agrees that CITY shall be allowed use of the Marina Equipment and both parties agree to work in good faith to coordinate all use of the Marina Equipment; except, however, CITY shall be responsible for repair of any Marina Equipment damaged by the CITY's use thereof or the third party use identified in Paragraph 6.1 and 6.2.

7.5 CONTRACTOR's use of fuel storage tanks, associated pumps, and the compressed natural gas-dispensing facility, all located, or to be located, in the Nueva Street Marina, shall be conducted pursuant to rules adopted by the DIRECTOR. Notwithstanding the above, the CITY shall be responsible for maintaining such tanks, pumps and facilities and shall perform scheduled maintenance in order to keep such facilities in good operational condition in keeping with the premier urban river barge operation in North America.

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

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

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

ARTICLE VIII.

EQUIPMENT AND FACILITIES FURNISHED BY CONTRACTOR

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

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

be at the sole discretion and approval of the Director, but such approval shall not unreasonably be withheld.

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

8.4 CONTRACTOR shall continue to maintain its current credit card processing system or an equivalent or better system capable of processing credit card purchases in less than 5 seconds.

ARTICLE IX.

SCHEDULING USE OF INSTALLED EQUIPMENT

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

ARTICLE X.

UTILITIES

10.1 CONTRACTOR shall pay, at CONTRACTOR's sole cost and expense, all charges for communication services required for its operations at the marinas, ticket sales stations, reservation lines, and other administrative or operational communications requirements.

10.2 CITY shall pay all water and sewer services costs at the two marinas.

10.3 All costs of utilities, at the ticket stations within the Concession Area shall be at CONTRACTOR's sole cost and expense. Garbage from the ticket stations shall be bagged and placed, by CONTRACTOR on CITY maintenance barges for disposal at CITY'S expense.

10.4 All costs of collection and/or disposal of CONTRACTOR-generated garbage and refuse at the marinas shall be borne by CONTRACTOR at CONTRACTOR's sole cost and expense. If CONTRACTOR and the DIRECTOR mutually agree that CITY

hauling of CONTRACTOR-generated garbage and refuse from the marinas is more convenient and effective, such arrangement may be made, provided, however, that CONTRACTOR shall reimburse CITY for such hauling service at a rate mutually agreed upon by CONTRACTOR and the DIRECTOR.

10.5 Costs of electrical and gas monthly services at the marinas shall be prorated as follows:

10.5.1 At the International Center Marina: CONTRACTOR shall pay fifty percent (50%) of the monthly electric and gas bill, payable to CITY not later than ten (10) days following receipt of a statement of charges from CITY, through the DIRECTOR.

10.5.2 At the Nueva Street Marina: CONTRACTOR shall pay fifty percent (50%) of the monthly electric bill and one hundred percent (100%) of the monthly gas bill, payable to CITY not later than ten (10) days following receipt of a statement of charges from CITY, through the DIRECTOR. Either party hereto reserves the right to request negotiation of prorated utilities cost by written request to the other party. Good-faith negotiation supported by operational data and gas and electricity consumption records shall determine what change may be made. In the event CONTRACTOR and the DIRECTOR cannot arrive at a mutually acceptable formula, the matter shall be referred to the City Manager, whose decision shall be final.

ARTICLE XI.

TICKET STATIONS, TAXI STOPS, AND LOADING AREAS

11.1 CONTRACTOR is authorized use of the following ticket stations and/or loading areas:

A. TICKET STATIONS AND CONCESSION FACILITIES

In the Concession Area

- Clearwater ticket office:
- Clearwater concession facility:
- Historia ticket office:
- Historia concession facility:

Abutting the Concession Area

- Holiday Inn ticket station
- Holiday Inn concession facility
- Aztec ticket station, (subject to approval by any necessary 3rd parties)
- Aztec concession facility (subject to approval by any necessary 3rd parties)
- SAWS ticket station (subject to approval by any necessary 3rd parties)
- SAWS concession facility (subject to approval by any necessary 3rd parties)

These spaces are to be used by CONTRACTOR as a ticket and merchandise sales facility. Housekeeping for these spaces, as well as for the adjacent restroom at the Historia Ticket Station shall be CONTRACTOR's sole responsibility; except, however, the CITY shall provide all supplies for the cleaning, maintenance and use of the restroom adjacent to Historia. CITY shall have the authority to set the hours for this restroom

B. QUEUING AND LOADING AREAS

- Clearwater Queuing and Loading Area
- Historia Queuing and Loading Area
- Holiday Inn Queuing and Loading Area (must be ADA compliant before use.)
- Aztec Queuing and Loading Area (subject to approval by any necessary 3rd parties)

CONTRACTOR shall be responsible for all housekeeping and maintenance of these Loading Areas, and shall promptly make any necessary repairs of damage caused by CONTRACTOR'S operations of barges or caused by CONTRACTOR'S customers.

11.2 CONTRACTOR acknowledges the existence of ticket sales stations, passenger loading and unloading areas, and existing taxi stops as described on Exhibit B (Ticket Stations and Taxi Stop Locations) and agrees to continue operations and services at Historia and Clearwater Ticket Stations; Concession Areas and Loading Stations. CONTRACTOR further agrees, at its sole cost and expense, to equip, staff and operate said ticket sales stations and loading areas and taxi stops and to maintain and repair said ticket sales stations, loading areas, and all taxi stops in a condition acceptable to the DIRECTOR and in a manner consistent with operating the premier urban river cruise tour service in North America.

11.3 CITY and CONTRACTOR hereby acknowledge and agree that a need for changes in the number and location of ticket sales stations, passenger loading areas, and taxi stops in the Concession Area may arise during the term of this CONTRACT. In that event, CONTRACTOR shall so advise the DIRECTOR, in writing, describing the need, setting out the proposed location (s) for such facility (ies), along with plans, designs and specifications therefor. The DIRECTOR shall arrange for presentation of such proposal (s) to applicable boards and commissions. Any additions in the number or location of ticket sales stations in the Concession Area or abutting the Concession Area where associated loading of barges is to occur and passenger loading areas in the Concession Area must be approved by the City Council of the City of San Antonio by the passage of an appropriate ordinance, after the review by the DIRECTOR and applicable boards and commissions. Any changes in the number or location of Taxi Stops must be approved by the DIRECTOR and applicable boards and commissions. CONTRACTOR shall not proceed with any construction without prior written approval by the DIRECTOR. All costs related to planning, engineering, construction, maintenance, utilities and operation

of such additional facility(ies) shall be at CONTRACTOR's sole cost and expense. Notwithstanding the preceding, in the event that CONTRACTOR is unable to make use of the approved ticket stations because of CITY approved construction in and around the ticket stations or because of flooding or a similar natural disaster, DIRECTOR shall have the authority to approve in writing Temporary Ticket Stations for periods of up to ninety (90) consecutive days, provided that the approval of all applicable boards and commissions has been received by DIRECTOR prior to such written authorization. DIRECTOR shall have no authority to approve any extensions past ninety (90) consecutive days and CONTRACTOR shall have no authority to operate a Temporary Ticket Station in any location for more than ninety (90) consecutive days without authorization from CITY COUNCIL by passage of an ordinance authorizing such operation.

ARTICLE XII.

RIVER TOUR, CHARTER AND TAXI TICKET PRICES AND RENTAL RATES

12.1 CONTRACTOR shall be limited to charging the following rates for its barge tour, charter and taxi services. CONTRACTOR will not request an increase in any Fare or Rate above those listed below before September 1, 2006. Thereafter, any and all ticket price changes must be approved by the City Council by passage of a City Ordinance.

River Tour	Ticket Prices	River Tour Consignment/Incentive Tickets Blocks of 25 Tickets
Adult	\$6.50 each	\$ 146.25 for 25 tickets
Adult, Local (Bexar County) Resident	\$4.50 each	\$ 101.25 for 25 tickets
Child (1-5 years old)	\$1.50 each	\$ 33.75 for 25 tickets
Military	4.50 each	\$ 101.25 for 25 tickets
Senior Citizen (60 years old)	\$4.50 each	\$101.25 for 25 tickets
Adult Matinee	\$4.50 each	\$ 101.25 for 25 tickets

Charter Rentals (Per Barge)	First hour or portion thereof	Each half hour or portion thereof following first hour
Peak Hours of Operation: Regular rate Operations exceeding scheduled charter	\$125.00 per hour	\$ 62.50 per half hour \$125.00 per additional half hour
Non-Peak Hours of Operation – general public Operations exceeding scheduled charter	\$100.00 per hour	\$50.00 per half hour \$100.00 per additional half hour
Non-Peak Hours of Operation – Senior Citizen and school sponsored groups	\$50.00 per hour	\$25.00 per half hour

River Taxi	Prices	River Taxi Consignment/Incentive Tickets Blocks of 25 Tickets
One Way	\$ 4.00 each	\$ 90.00 for 25 tickets
24 hour Pass	\$10.00 each	\$ 225.00 for 25 tickets
3 Day Pass	\$25.00 each	\$ 562.50 for 25 tickets

Peak Hours shall begin after 5:30 P.M and shall conclude at the times set forth in Paragraph 15.1 for each weekday, all day on weekend days and any City Holiday. Non-Peak Hours shall include weekdays before 5:30 P.M.

12.2 CONTRACTOR is authorized to collect the full fee within seventy two (72) hours of any reservation as an advanced deposit on barge charter reservations, provided, however, in the event a reservation is made 30 days or less prior to the scheduled rental CONTRACTOR is authorized to collect the full fee prior to making the reservation. CONTRACTOR shall refund one hundred percent (100%) of any advanced deposits in those cases where a charter reservation is cancelled sixty (60) days or more prior to the scheduled rental. CONTRACTOR is authorized to retain fifty percent (50%) of all funds paid as advanced deposits on charters if the person, firm or organization booking such charter releases unwanted or unneeded barges at least thirty-one (31) to fifty-nine (59) days prior to the charter date, and one hundred percent (100%) of all funds paid as advanced deposits on charters not so released. CONTRACTOR shall have a system for taking charter reservations a full year in advance of the date of use and shall take such reservation by phone fax or email and have regular office hours of Monday through Friday, 9:00AM to 5:00 PM. CONTRACTOR is authorized to establish deposit policies no more restrictive than those permitted under this paragraph. All monies retained by CONTRACTOR under this paragraph shall be included in computing ADJUSTED GROSS SALES hereunder ADJUSTED GROSS SALES. DIRECTOR is hereby

authorized to approve changes to these reservation policies requested by CONTRACTOR.

12.3 CONTRACTOR may provide complementary or reduced price fares or rates for promotional, marketing or special events activities. In no instance will the amount of promotional, marketing or special events approved for complementary or reduced price fares or rates exceed \$100,000.00 in total gross fare or rate value each contract year during the term of this CONTRACT. CONTRACTOR shall provide \$50,000.00 worth of barge tours and charter services for CITY's use in promotional, marketing or special events activities. All usage by the CITY under this article must be approved and scheduled through the DIRECTOR only. The DIRECTOR will make every effort to provide CONTRACTOR ten (10) working days notice when scheduling barges under Article 12.3. CONTRACTOR agrees to give priority to such requests and may refuse same only in such unusual circumstances as a prior booking of all barges. Should CONTRACTOR receive a request for booking of tour or dinner barge(s) from any CITY office or CITY agency other than the DIRECTOR, CONTRACTOR shall refer such request to the DIRECTOR or his designee. In the event that DIRECTOR makes a request for a charter ten (10) days or fewer prior to an event, CONTRACTOR shall be allowed a concession fee credit for the full amount of a regular applicable charter rate instead of charging against CITY'S \$50,000 allotment. To the extent that such bookings exceed the allotted amount of \$50,000, CONTRACTOR shall deduct from the next payment to be made to the CITY on the 10th of the month for the aforescribed service at the then established rental rate minus the percentage of ADJUSTED GROSS SALES prescribed in paragraph 44.1 hereinafter.

12.4 CONTRACTOR price for a photography packages shall be \$20.00. Any change in this price shall not take effect until after it is approved in writing by DIRECTOR. CONTRACTOR prices for merchandise, beverages and snacks shall be moderately priced and not excessive for the River Walk area market.

12.5 Throughout the term of the CONTRACT, CONTRACTOR shall attempt in good faith to enter into joint ticketing arrangements with San Antonio area tourism related businesses, including VIA Metropolitan Transit Corporation and the CITY's Parking Division of Public works. The businesses, ticket prices and revenue sharing arrangements for these joint ticketing agreements shall be approved in writing by the DIRECTOR prior to any implementation by CONTRACTOR.

12.6 CONTRACTOR shall, at its sole cost and expense, maintain an Internet site at which it will sell tickets for its concession services as well as other approved merchandise.

12.7 CONTRACTOR shall make a good faith effort, at its sole cost and expense, to establish and maintain automated ticket sales locations in the downtown area in locations which are convenient for tourists to San Antonio. CONTRACTOR shall make a good faith effort to operate portable ticket booths at major community events and shall make a good faith effort to sell tickets at convenient locations to the public, including local

shopping malls, military bases, San Antonio International Airport, grocery stores, and the San Antonio Convention Center.

12.8 CONTRACTOR shall provide sufficient sales representatives fluent in Spanish for the convenience of its customers.

ARTICLE XIII.

NUMBER OF BARGES

13.1 CONTRACTOR shall have forty (40) regular tour barges and at least one (1), but a maximum of three maintenance/operations barges available for CONTRACTOR's operations hereunder, said barges to be in good operational and appearance condition in all respects, subject to barges in repair and/or maintenance. Failure to provide the aforesated number of serviceable barges shall constitute a condition of default by CONTRACTOR.

13.2 CITY, through the DIRECTOR, will entertain a written request from CONTRACTOR to enlarge CONTRACTOR's fleet provided the need for such increase is justified to the satisfaction of the DIRECTOR and the space for the storage and docking is, in the DIRECTOR'S estimation, available. The DIRECTOR's decision as to whether or not the fleet size may be increased, and by what number of barges, shall be final.

ARTICLE XIV.

SERVICES PROVIDED AND OPERATING STANDARD

14.1 CONTRACTOR shall, throughout the term of the CONTRACT, provide the following services, and no other services in the Concession Area, in a manner consistent with the premier urban river cruise tour service in North America, a world-class tourism service, and other similar tour operations of the first class:

14.1.1 CONTRACTOR shall operate River barge tours of a minimum length of 35 minutes, except under such circumstances beyond CONTRACTOR's control, including, but not limited to, barges that become inoperable during operations, the acts of third parties, or excessive demand, with an entertaining and historically accurate narration which shall include a brief history of the River Walk, important buildings along with the route, and names of prominent trees and vegetation. CONTRACTOR shall have the San Antonio Conservation Society review this narration and any changes thereto throughout the term of the CONTRACT. Except under circumstances beyond CONTRACTOR's control, including, but not limited to, barges that become inoperable during operations, accommodating the special needs of passengers, the acts of third parties, or excessive demand, CONTRACTOR agrees that the wait time for no customer for

the River Barge Tours shall have to wait longer than 15 minutes from the time a ticket is purchased to boarding of a barge. In addition, except under circumstances beyond CONTRACTOR's control, including, but not limited to, barges that become inoperable during operations, accommodating the special needs of passengers, loss of power to ticket stations the acts of third parties, or excessive demand, CONTRACTOR agrees that no customer will have to wait in the queuing line longer than 15 minutes in order to purchase a ticket to ride a tour barge. In the event CITY investigations of wait times shows any significant violations of the goals set forth herein, CONTRACTOR agrees to meet with and negotiate in good faith with the DIRECTOR regarding operational changes which will improve such wait times. Notwithstanding the above stated goals, CONTRACTOR is authorized to operate during periods of light demand on a timed departure basis.

14.1.2 River Taxi Service shall be available for rent by the general public as a bus-type pickup operation at all approved Taxi Stop locations in the Concession Area on a daily basis during regularly scheduled times. During all regular hours after noon of each day of such operation CONTRACTOR agrees to have in operation a minimum of two barges operating as taxis, and before noon of each day CONTRACTOR agrees to have in operation at least one barge operating as a taxi. CONTRACTOR agrees to post the scheduled hours of operation on the Taxi Stop signs along with a phone number that can be called for further information regarding taxi and tour barge rates and hours of operation. Taxi customers shall be allowed to purchase tickets by paying cash at all boarding locations. Shuttles may also be chartered by the general public, river businesses and conventions. The provisions contained in this paragraph may be temporarily or permanently changed by the DIRECTOR should operational conditions indicate that change is in the public interest. It is further understood that disputes pertaining to operational procedures between CONTRACTOR and those who hire or rent barges shall be arbitrated by the DIRECTOR, whose decision shall be final.

14.1.3 Dinner and Tour Charters shall be available to the general public, licensed caterers, and river restaurants having a prominent entrance on the river. CONTRACTOR shall be required to have at least ten (10) barges available for charter rentals during all Peak Hours and shall have at least three (3) barges available during all other operating hours. CONTRACTOR shall have a general policy restricting any single customer to chartering more than four barges for any date to no more than 3 times per year (except that a single customer may exceed chartering more than four barges if there is availability and such reservation may not be confirmed by CONTRACTOR more than seventy-two (72) hours prior to the time of the charter), but shall submit in writing to DIRECTOR for approval of any requested exceptions to that restriction. The DIRECTOR shall consult with the Convention and Visitors Bureau in granting exceptions to this restriction. Upon request by CONTRACTOR, the provisions contained in this paragraph may be temporarily or permanently changed by the DIRECTOR should operational

conditions indicate that change is in the public interest. It is further understood that disputes pertaining to operational procedures between CONTRACTOR and those who hire or rent barges shall be arbitrated by the DIRECTOR, whose decision shall be final.

14.1.4 Merchandise Sales in the Concession Area shall be conducted solely (1) from the approved Concession Facilities and (2) to CONTRACTORS passengers on its barges.

14.2 Minimum Response Time for Barges becoming Inoperable During Use: CONTRACTOR agrees that if it determines that a barge is inoperable, it shall respond to such barge becoming inoperable during use by having a maintenance barge and a back-up passenger barge arrive within ten (10) minutes.

14.3 CITY and CONTRACTOR agree that certain circumstances, either outside of CONTRACTOR's control or as a result of unique and unforeseen circumstances, can affect the operations outlined in this Article. CONTRACTOR can seek modifications to provisions of this Article only on the express, written approval of the DIRECTOR. Any such modifications shall be contained within an Operational Plan approved by the DIRECTOR.

ARTICLE XV.

MINIMUM HOURS OF OPERATION

15.1 Unless otherwise authorized in writing by the DIRECTOR, pursuant to a request by CONTRACTOR, or as may be dictated by weather, river conditions, or special events cited herein, the minimum hours of service for tours, charters and dinner charters shall be 9:00 a.m. to 9:00 p.m.

15.2 Minimum hours for River Taxi Services will be established in writing by the CONTRACTOR and approved in writing by the DIRECTOR, provided however, to the extent that such hours are less than the hours for tours and charters, CONTRACTOR shall have Taxi Service on call during the minimum hours of operation set forth in article 15 with the phone number for such on call service posted at each CITY approved Taxi Stop location.

ARTICLE XVI.

STYLING, APPEARANCE, SPECIFICATIONS, PROPULSION, AND DISABILITY ACCESS FOR BARGES

16.1 CONTRACTOR shall maintain a fleet of barges in the dimensions of twenty-four feet by nine feet (24'x9') as under its previous boats and barges concession contract with CITY, subject to the provisions of section 16.2. JoAnn E. Boone shall continue to

maintain clear title to the existing fleet of barges (as of the effective date of this agreement) and shall not allow the placement of any encumbrance whatsoever on her ownership without the prior written approval of DIRECTOR, such approval shall not be unreasonably withheld; except however, approval of the DIRECTOR shall not be necessary for any such encumbrance or lien that 1) subordinates its rights to the CITY for purposes of the CITY's contractual rights outlined in Paragraph 26 below and 2) prior notice of such an encumbrance or lien has been provided to CITY.

16.2 Barge Design Changes: CONTRACTOR must first obtain written approval from the DIRECTOR, as well as any necessary boards or commission, including without limitation the HDRC, to initiate any significant barge design changes. The DIRECTOR's approval shall not be unreasonably withheld.

16.3.1 Method of propulsion: CONTRACTOR shall maintain a fleet of barges with four stroke outboard engines fueled by of Compressed Natural Gas (CNG) throughout the term of the contract unless an alternative fuel or propulsion system is approved under the terms of this contract

16.3.2 Alternate Fuel or Propulsion Systems: If during the term of this CONTRACT other non-polluting fuel or propulsion systems, including but not limited to electric, become available and the overall suitability of any such alternative fuel or propulsion system for the premier urban river cruise tour service in North America equals or exceeds the suitability of CNG applications, the DIRECTOR may require the CONTRACTOR to test the use of said system in actual tour conditions. CONTRACTOR and CITY agree to select an independent consultant(s) to evaluate any such non-polluting propulsion system to be treated by CONTRACTOR. The costs and expense for such consultant shall be borne jointly by CONTRACTOR and CITY.. Such evaluation by the consultant(s) shall include, but not be limited to analysis of the proposals for conversion to such propulsion system, evaluation of the technology utilized in such propulsion system and analysis of the conditions under which such system would operate including, but not limited to, the availability of power and/or fuel to operate such system, a cost/benefit analysis which would include an examination of the costs of converting such propulsion system and the appropriateness of such costs given the remaining term of this CONTRACT. In the event, said consultant determines that such alternative propulsion system is reliable, safe and more suitable for the premier urban river cruise tour service in North America, and the cost/benefit analysis to the CONTRACTOR and CITY justifies the conversion to such alternate propulsion system CONTRACTOR, at its sole cost and expense, shall be required to convert its fleet to the new system under a reasonable timeline approved by the DIRECTOR. In the alternative, the CONTRACTOR may petition the CITY through the DIRECTOR for the use of said system. The DIRECTOR may grant approval for said use at his or her sole discretion. In the event CONTRACTOR and CITY desire to convert to such non-polluting propulsion system, each of them agree to negotiate in good faith to determine the scheduling and nature of the conversion and the allocation of associated costs.

16.4 Seating Accommodations: Barges and water taxis must be equipped at CONTRACTOR's expense with life preservers, suitable chairs, tables, tie-down locations for wheelchairs, and/or benches as applicable.

16.5 Load Capacity: Load capacity of each barge must be posted in a readily visible location. Load capacity of taxi and tour barges shall not exceed forty (40) persons as dictated by the seating configuration. Load capacity of dinner barges shall not exceed twenty (22) persons.

16.6 Barge Name: Water taxis and barges shall be named, and such names shall be painted or affixed to the barge stern in an appropriate manner. All barge names are subject to approval by the DIRECTOR.

16.7 Disability Access for ADA Compliance:

16.7.1 Barge accessibility: CONTRACTOR shall ensure accessibility to its barges through its barge ramp system for disabled persons as required under the Americans with Disabilities Act and such compliance shall be CONTRACTOR's sole responsibility. CONTRACTOR agrees to indemnify the CITY for any liability under the Americans with Disabilities Act.

16.7.2 Public information related to River Walk and barge accessibility for people with disabilities: CONTRACTOR agrees to include accessibility information in all of CONTRACTOR's brochures, printed publicity material and internet website related to its operations hereunder. CONTRACTOR shall also insure that all of CONTRACTOR's employees are well-informed regarding available accessible services provided by CONTRACTOR and that all of CONTRACTOR's employees are sensitive to the needs of people with disabilities and are trained to assist them in any reasonable way. CITY will distribute its publication entitled "Your Accessible River Walk" so as to inform the general public to the greatest extent reasonable of existing accessible facilities in the Concession Area.

16.7.3 Compliance with Americans with Disabilities Act Regulations: The CONTRACTOR will be responsible for all construction and/or modifications necessary to bring its barges into compliance with the Americans with Disabilities Act (ADA). The cost of such construction, or any changes, alterations or improvements to its barges necessary under ADA regulations shall be at CONTRACTOR's sole cost and expense.

ARTICLE XVII.

SAFETY, TRAINING AND MARINA SECURITY

17.1 CONTRACTOR covenants and agrees to fully comply with all applicable rules and regulations of the Water Safety Act contained in Chapter 31 of the Texas Parks and Wildlife Code. CONTRACTOR further covenants and agrees to fully comply with

all applicable federal, state and municipal governmental safety rules and regulations in the equipping, maintenance and operation of CONTRACTOR's barges.

17.2 CONTRACTOR shall publish an instructional safety manual for CONTRACTOR's barge drivers and all other employees directly involved with passenger service and shall issue a copy of such manual to said drivers and other employees and shall provide a copy to the DIRECTOR prior to publication. CONTRACTOR shall provide a minimum of eight (8) hours of safety instruction to each new barge driver before permitting such driver to operate a barge. In addition, CONTRACTOR shall conduct at least semi-annual refresher safety classes of no less than four (4) hours duration for each barge driver and other employees directly involved with passenger service. CONTRACTOR shall conduct weekly safety meetings with supervisory personnel.

17.3 Newly employed barge drivers shall not be permitted to operate a barge alone until he/she has had a minimum of forty (40) hours of barge operation time accompanied by an experienced barge driver. Barge drivers shall be re-evaluated every 90 days. CONTRACTOR warrants and certifies that any person designated to provide services hereunder has the requisite training to provide said services.

17.4 CONTRACTOR shall provide a minimum of sixteen (16) hours of orientation for all newly employed barge drivers and other employees directly involved with customer service. Subjects to be included in said orientation shall include, but not necessarily be limited to, a brief history of the River Walk, important buildings along with the route, names of prominent trees and vegetation, personal appearance requirements, decorum, courtesy, reasonable accommodation for disabled people, CONTRACTOR operational rules and regulations, and such other subjects as may be pertinent to good public service.

17.5 Failure by CONTRACTOR to carry out any provision of the foregoing safety and training provisions and failure to document such training in employee personnel records shall constitute a default of this CONTRACT and may result in termination of this CONTRACT if such default is not cured within thirty (30) calendar days of receipt of written notification by CITY of such breach.

17.6 CONTRACTOR acknowledges and understands that CITY provides no extraordinary security measures at the International Center and Nueva Street marinas beyond the normal public safety and police protection provided by CITY's Park Police Division and CITY's Police and Fire Departments. CONTRACTOR further acknowledges and understands that CITY accepts no responsibility or liability for any damage or losses to CONTRACTOR's barges, machinery, equipment, tools, fixtures or personal property due to theft, vandalism, fire or any other cause(s). Therefore, CONTRACTOR may, at CONTRACTOR's discretion and at CONTRACTOR's sole cost and expense, contract for private security to safeguard CONTRACTOR's property at aforesaid marinas.

ARTICLE XVIII.

MARKETING AND PASSENGER INFORMATION

18.1 CONTRACTOR covenants and agrees that it shall develop and implement a marketing plan which shall include a variety of creative and innovative methods of marketing the River Walk such as airline advertising, Internet advertising, movie theaters, billboards, and VIA buses and trolleys. CONTRACTOR shall submit annually to DIRECTOR for his approval a marketing plan along with a report, in form and content satisfactory to DIRECTOR, of all expenditures on marketing for the previous year. CONTRACTOR further covenants and agrees it shall spend at least \$200,000 per year on marketing to include advertising, special events, promotions, marketing partnerships and public relations and shall include, but not be limited to, the cost of promotional fares authorized by section 12.3, staffing, and complimentary fares as are set forth in paragraph 12.3.

18.2 CONTRACTOR shall make available and offer, at CONTRACTOR's sole cost and expense, a well-prepared and factually correct information brochure of the River Walk and Concession Area for distribution to all customers. Said brochure shall include, but not necessarily be limited to, a brief narrative of the development of the River Walk and a map of the Concession Area, with prominent buildings, facilities and other sights highlighted thereon, and with accessible walkways and boarding locations clearly identified therein. CONTRACTOR shall submit the brochure to DIRECTOR for his written approval of the form and content of the brochure prior to its publication or distribution.

18.3 CONTRACTOR shall further insure that all barge drivers are properly trained and oriented as required in paragraph 17.4 hereinbefore so as to answer routine questions by barge passengers. Drivers shall not be expected to answer complex questions related to economics or other questions of a non-typical tourist inquiry. However, drivers shall be trained and instructed to respond to routine questions courteously and as helpfully as possible.

18.4 With the prior written approval of the DIRECTOR, CONTRACTOR may establish optional guided boat tour service. Such service may include but not necessarily be limited to, specially designated boats on specially designated time schedules, a tour guide to provide verbal information to boat passengers, and other tour amenities. The ticket price(s) for such service must be approved in advance by City Council in the form of an ordinance, in the event such activity is not already addressed herein.

ARTICLE XIX.

CONTRACTOR'S EMPLOYEES

19.1 CONTRACTOR shall provide a sufficient number of employees to adequately service this operation and its patrons. CONTRACTOR shall institute a plan for determining staffing levels for ticket stations and barge driver's to ensure that adequate staffing shall be on hand at all times to meet the operating standards and the minimum wait times provided for in section 14.1. Such plan shall take into account daily and seasonal trends, conventions and other such events. CONTRACTOR shall solicit information from downtown hotels regarding occupancy levels and convention schedules to determine when conventioners will be out of their meetings. CONTRACTOR'S employees shall be neatly attired and shall conduct themselves with courtesy toward all patrons of the concession. CONTRACTOR's employees whose conduct is discourteous or objectionable on any reasonable ground shall be disciplined, counseled, trained or removed by CONTRACTOR. CONTRACTOR'S employees shall not hawk or solicit business from barges other than by a pre-approved script for photography or by a pre-approved script for taxi services. They shall be allowed to accept tips, but not solicit them other than with CONTRACTOR'S pre-approved one or two line script for such tip solicitation.

19.2 CITY reserves the right to monitor CONTRACTOR's employees' attitudes, appearance, courtesy, job knowledge and performance and CONTRACTOR agrees to ensure that nothing related to the employees' appearance, courtesy, job knowledge and performance shall bring discredit to CITY. Should infraction be observed, the DIRECTOR shall so notify CONTRACTOR in writing. CONTRACTOR agrees to promptly take appropriate corrective action. CONTRACTOR agrees to continue its "secret shopper" investigations of employee performance and, at CITY'S request, to share such reports with CITY.

19.3 Each barge driver and other CONTRACTOR employees directly involved with passenger service shall wear at all times while on duty, on his/her outer clothing, a tag bearing his/her first name and the name of CONTRACTOR. Any proposed employee uniform must first be approved by the DIRECTOR. Such approval shall not be unreasonably withheld.

19.4 Employee benefits. All full time employees scheduled working in excess of 30 hours per week, shall qualify for dental, medical, life and supplemental insurance, as well as educational assistance, to the extent such insurance policy coverages are available for CONTRACTOR's business and to the extent such coverages are offered at commercially reasonable rates.

ARTICLE XX.

SIGNS AND ADVERTISING

20.1 All signs to be erected by CONTRACTOR within or abutting the Concession Area must be approved by in writing by the DIRECTOR and any applicable boards and commissions, including but not limited to the HDRC, prior to installation. DIRECTOR'S review of any proposed signs shall be substantive and DIRECTOR shall have authority to mandate the particular placement of items on the signs at DIRECTOR'S sole discretion.

20.2 All sales signs of CONTRACTOR shall include a notice that any patron not receiving a sales receipt should call a designated phone number which shall be included with the notice. No advertising, signs, posters or display advertising by renters of barges is permitted. Subject to DIRECTOR'S approval, a small, non-commercial informational sign may be placed on chartered barges to identify such barges as chartered for a specific group and the name of the firm, organization or entity sponsoring the charter. The method of placement of such signs shall be determined by CONTRACTOR.

ARTICLE XXI.

MAINTENANCE OF BARGES AND CONTRACTOR ASSIGNED AREAS AND HOUSEKEEPING RESPONSIBILITY

21.1 CONTRACTOR shall be responsible, at CONTRACTOR's sole expense, for all maintenance and upkeep of ticket stations and loading areas and for the gathering of all trash, litter and refuse in these areas and the disposal of same in accordance with established CITY policy. CONTRACTOR shall at a minimum maintain a program of recycling scrap aluminum, scrap silver and used plastic beverage bottles.

21.2 CONTRACTOR shall further be responsible, at CONTRACTOR's sole expense, to maintain all watercraft related to this CONTRACT, as well as CONTRACTOR's assigned space in the marinas, in a safe, clean, attractive and orderly manner. CONTRACTOR covenants and agrees that all of its passenger barges shall be kept in a condition consistent with the premier urban river barge tour operation in North America. CONTRACTOR shall continue maintenance plans for the fleet and endeavor to ensure that such plans are followed. CONTRACTOR shall provide a copy of said plans to DIRECTOR for his information and shall notify DIRECTOR of any material changes to said plans. All such maintenance shall be consistent with the operation of the premier urban river cruise tour service in North America and shall include at a minimum the use of "bio-friendly" water based paints and the use of cleaning solutions which are environmentally safe and made of 100% biodegradable enzymes. No changes to the paint or cleaning solutions utilized shall be implemented without the prior written approval of the DIRECTOR.

21.3 Should CONTRACTOR fail to maintain CONTRACTOR's barges and Concession Area facilities at an acceptable standard consistent with operating the premier urban river cruise tour service in North America, the DIRECTOR shall so notify CONTRACTOR in writing, and CONTRACTOR shall correct such deficiencies expeditiously but no later than thirty (30) calendar days following receipt of notification of deficiencies.

ARTICLE XXII.

INSURANCE

Prior to the commencement of any work under the CONTRACT, CONTRACTOR shall furnish an original completed Certificate(s) of Insurance to the Parks & Recreation Dept., Attention: Contract Services Division, which shall be clearly labeled "River Barge Concession" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original Certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the CITY. The CITY shall have no duty to pay or perform under said Agreement until such Certificate shall have been delivered to the Parks & Recreation Dept., Attention: Contract Services Division, and no officer or employee, other than the CITY's Risk Manager, shall have authority to waive this requirement.

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

CONTRACTOR's financial integrity is of interest to the CITY, and, therefore, subject to CONTRACTOR's right to maintain reasonable deductibles in such amounts as are approved by the CITY, CONTRACTOR shall obtain and maintain in full force and effect, for the duration of the Agreement, and any extension thereof, at CONTRACTOR's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated B+ or better by A.M. Best Company and/or otherwise acceptable to the CITY in the following types and amounts:

1.	Workers' Compensation*** and Employers Liability***	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2.	Commercial General (Public) Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Broad Form Contractual Liability d. Products/completed operations e.* Broad form property damage, to include fire legal liability f. Personal Injury g.* Explosion, collapse, underground	For Bodily Injury and Property Damage of \$5,000,000 per occurrence \$5,000,000 general aggregate or its equivalent in umbrella or excess liability coverage \$100,000/Occurrence
3.	Comprehensive Automobile Liability* a. Owned/Leased Vehicles b. Non-owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.
4.	Marine Protection & Indemnity**	\$5,000,000/occurrence, or its equivalent in umbrella or excess liability coverage
5.	Marine Hull Physical Damage	Actual Cash Value

*If CONTRACTOR owns or uses any automobiles in operation of this CONTRACT.

**Coverage may also be provided by deleting the Watercraft Exclusion from the CGL

*** Alternate Workers Comp/Employers Liability products must be approved by City's Risk Manager

The CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the CITY,

CONTRACTOR agrees that, with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- Name the CITY and its officials, employees, volunteers and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY, with the exception of the workers' compensation and professional liability policies;
- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the CITY.

When there is a cancellation, or non-renewal, which is not made pursuant to a request by CITY, CONTRACTOR shall notify the CITY of such and shall give such notices not less than thirty (30) calendar days prior to the change, if CONTRACTOR knows of said change in advance, or ten (10) calendar days notice after the change, if the CONTRACTOR did not know of the change in advance. Such notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the CITY at the following addresses:

City of San Antonio
Risk Management
River Barge Concession
P. O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
Parks & Recreation Dept.
River Barge Concession
P.O. Box 839966
San Antonio, Texas 78283-3966

If CONTRACTOR fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the CITY may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; however, procuring of said insurance by the CITY is an alternative to other remedies the CITY may have and is not the exclusive remedy for failure of CONTRACTOR to maintain said insurance or secure such endorsement. In addition to any other remedies the CITY may have upon CONTRACTOR's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the CITY shall have the right to order CONTRACTOR to stop work under the Agreement, and/or withhold any payment(s) which become due to CONTRACTOR thereunder until CONTRACTOR demonstrates compliance with the requirements hereof.

Nothing herein contained shall be construed as limiting in any way the extent to which CONTRACTOR may be held responsible for payments of damages to persons or property resulting from CONTRACTOR's or its subcontractors' performance of the work covered under the Agreement. It is agreed that CONTRACTOR's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the CITY for liability arising out of operations under this contract.

ARTICLE XXIII.

INDEMNITY

CONTRACTOR covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR's activities under this CONTRACT, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this CONTRACT, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS CONTRACT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR's activities under this CONTRACT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONSULTANT of any of its obligations under this paragraph.

IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS CONTRACT. CONTRACTOR further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection

with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

ARTICLE XXIV.

FIRE AND OTHER CASUALTY

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

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

ARTICLE XXV.

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

25.1 No later than Ten (10) days prior to September 1, 2005, and throughout the term of this CONTRACT, CONTRACTOR will cause to be made, executed and furnished to CITY a Performance Bond, letter of credit or other instrument acceptable to CITY in the amount of the minimum annual payment specified in section 2.1 of this CONTRACT, conditioned on the faithful performance of all conditions and covenants of

this CONTRACT. If a Performance Bond is the chosen security instrument, it must be executed by a corporate surety acceptable to CITY, who is licensed pursuant to the Texas Insurance Code. Said bond must have attached thereto a Power of Attorney as evidence of the authority of the person executing the bond to bind the surety. This bond must be furnished in compliance with the statutory requirements of the Texas Government Code, Chapter 2253. Failure to deliver such Performance Bond or other instrument(s) acceptable to CITY within the time specified herein will automatically render CONTRACTOR in default of this CONTRACT with no right to cure. Following the initial bond, continuation of said bond must be evidenced by an authenticated continuation certificate or substantiated bond acceptable to CITY.

25.2 It is of primary importance to the CITY, both for revenue continuity and for general downtown tourism and convention appeal, that there not be any interruption in the barge services provided under this contract. The damage to the CITY in the event of such an interruption are not capable of being reasonably calculated. "Interruption" shall mean a substantial and material reduction in services provided to the public herein. CONTRACTOR shall pay to CITY, in addition to the minimum payments as required in section 2.1 of this CONTRACT, five thousand Dollars (\$5,000.00) per day, as liquidated damages and not as a penalty, for every day beginning September 1, 2005, in which CONTRACTOR fails to provide operational barge services as required by this CONTRACT, unless the failure is caused by one of the following causes:

- (1) Inclement weather
- (2) Drainage of the river or its extensions by CITY or any reason
- (3) Orders from the DIRECTOR, or other lawful authority, to cease operations for reasons of safety or security
- (4) Fire of other casualty
- (5) Acts of God
- (6) Disruption by Employees

OR

- (7) Third Party Acts and/or Omissions

ARTICLE XXVI.

CITY'S EMERGENCY RIGHTS IN THE EVENT OF SERVICE INTERRUPTION

26.1 CONTRACTOR understands the imperative of providing uninterrupted service required by this CONTRACT throughout the term of this CONTRACT. Therefore,

should CONTRACTOR cease operations for a period of five (5) consecutive days for any reason other than those enumerated in paragraph 25.2., 1 through 7, or in the event of CONTRACTOR default followed by CITY terminating CONTRACTOR's rights under the contract to continue operations on the river, CITY shall deem such interruption an emergency and shall, in addition to its recourses provided in Article XXV and Article XXVIII, have, at CITY's sole discretion, the option to implement the following actions:

- A. Immediate and temporary managerial and operational control of CONTRACTOR's barges and associated equipment, supplies and materials and the operation thereof in order to provide barges services. During such temporary operations by CITY, CITY shall retain all revenue generated by such operations and shall pay to CONTRACTOR for the use of CONTRACTOR's barges and associated equipment, supplies and materials based on fair market value lease rates as determined by a competent appraiser mutually agreed upon by CONTRACTOR and CITY. Such appraisal shall be obtained as soon as reasonably possible, but the absence thereof shall not prevent CITY from exercising its rights under this paragraph.
- B. CITY'S temporary management and operational control of CONTRACTOR's barges shall cease immediately upon presentation of proof by CONTRACTOR that CONTRACTOR is capable of resuming uninterrupted service as required by this CONTRACT or, in the event that the CONTRACT has been terminated, for a period of time as long as necessary for the CITY to select another regular operator and to allow that new operator time to either 1) have new barges and associate equipment manufactured or 2) negotiate a lease or a purchase of the barges and associated equipment from the owner, provided however, such temporary use shall in no event exceed 9 months without the approval of CONTRACTOR.
- C. The provisions of this section shall be enforceable by a court order of specific performance. CONTRACTOR waives its right to object to an injunction to specifically enforce this use of the barges or for the necessity on the part of CITY to prove irreparable harm or to post a bond in any such action. CONTRACTOR will pay to the CITY, as liquidated damages and not as a penalty, the amount of Five Thousand Dollars (\$5,000.00) per day for every day in which CITY is unable to provide full passenger tour, charter and taxi services to the public as a result of CONTRACTOR interference with CITY'S use of the barges authorized under this section..
- D. CONTRACTOR hereby waives any objection to CITY seeking out and employing CONTRACTOR'S employees in an effort to continue uninterrupted service. CONTRACTOR shall make no claim against CITY for contractual interference caused by this action.

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

26.3 In any case, CONTRACTOR agrees, in the event of CONTRACT termination due to default by CONTRACTOR, to make CONTRACTOR's barges equipment, supplies and materials available for CITY's operation as outlined in paragraph 27.1 herein until such time as CITY awards a contract to another Contractor or until CITY determines if purchase in accordance with paragraph 27.2 is in CITY's best interest.

26.4 CONTRACTOR shall execute a UCC 1 financing statement suitable for recording with the Secretary of State recording the contractual rights of CITY as contained in this Article.

ARTICLE XXVII.

DEFAULT AND REMEDIES

27.1 In addition to the conditions of default cited above, the following events shall be deemed to be events of default by CONTRACTOR under this CONTRACT:

- A. CONTRACTOR shall fail to pay any installment of the required concession fees as provided herein and such failure shall continue for a period of ten (10) calendar days;
- B. CONTRACTOR fails to comply with any material term, provision or covenant of this CONTRACT and, after CITY having provided written notice of such failure, CONTRACTOR does not come into compliance within thirty (30) calendar days; and/or
- C. The taking by a court of competent jurisdiction of CONTRACTOR and CONTRACTOR's assets pursuant to proceedings under the provisions of any federal or state reorganization or bankruptcy code or act, insofar as the following enumerated remedies for default are provided for or permitted or not otherwise prohibited in such code or act;
 - (1) Upon the occurrence of an event of default as heretofore provided and after compliance with the procedures set forth herein, CITY may, at its option, declare this CONTRACT and all rights and interests created by it to be terminated. Upon CITY electing to terminate, this CONTRACT

shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof. CITY, its agents or attorney may resume possession of the Concession Area and space in the marinas assigned to CONTRACTOR hereunder and may, if not earlier implemented, implement its emergency rights as provided in paragraph 27.1.

- (2) Any termination of this CONTRACT shall not relieve CONTRACTOR from the payment of any sum or sums that shall then be due and payable to CITY hereunder, or any claim for damages theretofore accruing against CONTRACTOR hereunder, and any such sum or sums or claim for damages from CONTRACTOR for any default, and any such termination shall not prevent CITY from enforcing the payment of any such sum or sums or claim for damages from CONTRACTOR for any default. All rights, options and remedies of CITY contained in this CONTRACT shall be construed and held to be cumulative of the other, and not one of them shall be exclusive of the other. CITY shall have the right to pursue any one or all of such remedies or any other remedy or relief available at law or in equity, whether or not stated in this CONTRACT. No waiver by CITY of a breach of any of the covenants, conditions or restrictions of this CONTRACT shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition or restriction herein contained.
- (3) Except in the event CITY exercises its emergency rights as provided in paragraph 27.1, CONTRACTOR shall have the right, within thirty (30) calendar days after the termination of this CONTRACT, whether such termination be by the expiration of the term or an earlier termination under any provision of this CONTRACT, to remove from the marinas and ticket sales stations all of its furniture, fixtures, equipment and furnishings and other property which are not the property of CITY and have not become the property of CITY as herein provided or by attachment to the Concession Area, marinas, ticket sales stations, and passenger loading locations, with respect to any damage caused thereby, CONTRACTOR shall have the obligation to restore the Concession Area, marinas, and ticket sales stations, and passenger loading locations to their condition prior to such removal, and, provided that if any of CONTRACTOR's property remains in or on the Contracted Premises after thirty (30) calendar days following termination of this CONTRACT and no renewal agreement has been executed, such property so remaining shall be deemed to have become the property of CITY and may be disposed of as CITY sees fit, without liability to account to CONTRACTOR for the proceeds for any sale thereof. No prior notice to sell property at public private sale need be given to CONTRACTOR, unless required by law.

- (4) Upon any such expiration or termination of this CONTRACT, CONTRACTOR agrees to quit and peacefully surrender this Contracted Premises; and, CITY, upon or at any time after such expiration or termination, may, without further notice, enter and re-enter the Contracted Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess CONTRACTOR and remove CONTRACTOR and all other persons and property from the Contracted Premises.
- (5) If CITY elects not to terminate this CONTRACT or elects not to exercise its emergency rights under paragraph 27.1, CITY, its agent or attorney may take possession of the Contracted Premises assigned to CONTRACTOR and relet the same for the remainder of the term at the best commission CITY, its agent or attorney may obtain for the account of CONTRACTOR, who shall make good any deficiency.

ARTICLE XXVIII.

RECORDS AND AUDITS

28.1 During the term of this CONTRACT, CONTRACTOR AND ANY AUTHORIZED SUBCONTRACTOR shall maintain, in accordance with generally accepted accounting principles, full, complete and accurate permanent reports and accounts of all sums of money paid or payable to CONTRACTOR AND ANY AUTHORIZED SUBCONTRACTOR for or on account or arising out of the business transaction authorized hereunder for each day of the term of this CONTRACT.

28.2 CONTRACTOR AND ANY AUTHORIZED SUBCONTRACTOR shall furnish such financial reports, relating to Adjusted Gross Revenue, as may be reasonably requested by the DIRECTOR.

29.3 CONTRACTOR AND ANY AUTHORIZED SUBCONTRACTOR shall furnish to the City Treasurer and the DIRECTOR a monthly report of ADJUSTED GROSS SALES generated during each month of each Contract Year. Said report shall be due not later than the tenth (10) day of each month of this CONTRACT.

28.3.1 CONTRACTOR further agrees to furnish to the DIRECTOR a monthly inventory reconciliation report that outlines all ticket stock purchases (ticket stock shall be pre-numbered), ticket stock sold, collected, consigned, voided, returned, wasted, tickets used for training, credit card stubs and tickets used for any other purpose. All supporting documentation for each such report shall be maintained by CONTRACTOR in accordance with section 29.5 hereof. CONTRACTOR agrees that its procedures for collecting and accounting for the above required information are subject to review by DIRECTOR, and CONTRACTOR further agrees to make any reasonable changes to such procedures as DIRECTOR deems necessary for an adequate reconciliation. Said

inventory reconciliation report shall be due not later than the tenth (10th) day of each calendar month of this CONTRACT.

Notwithstanding anything contained herein to the contrary, the parties agree to use their best efforts to agree upon systems to achieve necessary record keeping and reasonable reconciliations while recognizing that, despite such efforts, thefts or other unintended disappearances may occur and, due to the nature of the operations of the Concession Contract, exact reconciliation of ticket stubs and AGS may not occur

28.4 CONTRACTOR shall annually engage an independent Certified Public Accountant (CPA) to perform procedures, agreed-upon with DIRECTOR, to analyze and assess the accuracy of CONTRACTOR'S ADJUSTED GROSS SALES related to the CONTRACT, for the preceding year, as of the anniversary date of the CONTRACT, in accordance with the *Statements on Standards for Attestation Engagements*, as well as any other standards as they may apply. The independent CPA shall furnish, within ninety (90) calendar days of the end of the year, the written report on agreed-upon procedures to the Director, Parks & Recreation Dept., P.O. Box 839966, San Antonio, TX 78283-3966 and a duplicate original to the City Clerk P.O. Box 839966, San Antonio, TX 78283-3966. The independent CPA must state in his report an opinion whether the ADJUSTED GROSS SALES as defined within the CONTRACT and the amounts paid to the CITY during the preceding year of the agreement, were made in accordance with the applicable terms of the agreement and are accurately stated. In the event the report shows that there has been a deficiency in the ADJUSTED GROSS SALES reported to the CITY or the payments due to CITY, then such deficiency shall become immediately due and payable with interest at the maximum legal rate under applicable law from the date when said payments should have been made. In the event that the report shows an overpayment to the CITY, CONTRACTOR shall be entitled to a credit against future CONCESSION FEE payments. CONTRACTOR shall retain records for this CONTRACT for seven (7) years after the end of each operating year in question, but in no event longer than two (2) years after the expiration date of this CONTRACT.

28.5 Right to Audit. CITY reserves the right to audit CONTRACTOR's and its subcontractors' books and records which the CITY determines relevant to this agreement for the purpose of determining the accuracy of the reported ADJUSTED GROSS SALES and CONTRACTOR's and its subcontractors' compliance with this agreement. CONTRACTOR shall maintain its books and records in sufficient detail to allow determination of sales revenue and taxes related to each category of revenue and the applicable percent pertaining to each category. Any refunds, allowances, or adjustments shall be documented and maintained for review. CITY, if it elects, has the right to require that any or all such books and records be submitted for audit to the CITY or to a Certified Public Accountant selected by CITY, or any other CITY designee. If it shall be determined, as a result of such audit, that there has been a deficiency in the ADJUSTED GROSS SALES reported to the CITY or the payments due to CITY, then such deficiency shall become immediately due and payable with interest at the maximum legal rate under applicable law from the date when said payments should have been made. In addition, if gross revenues or payment have been understated by more than two percent (2%) of the

gross revenues reported to the CITY during the previous reporting period, then the entire expense of the audit shall be borne by the CONTRACTOR; otherwise, the cost of such audit shall be borne by the CITY.

CONTRACTOR may dispute the findings of audits performed under 29.5 within thirty (30) days of receiving results of said audit. By submitting such additional information as may be required to correct the auditors report. If upon examination of additional information by the DIRECTOR the DIRECTOR determines that;

a) such report reflects that a refund is owed to CONTRACTOR, the CONTRACTOR shall be entitled to a credit against future concession fee payments; or

b) such report reflects that monies are owed to CITY by CONTRACTOR from unreported Gross Receipts, then CONTRACTOR shall pay such monies to CITY, together with interest to not exceed the maximum legal rate under applicable law from date when such payment should have been made until the date payment is received by CITY, within thirty (30) days thereafter.

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

ARTICLE XXIX.

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

29.1 CONTRACTOR agrees to fully and promptly comply with all laws, rules and orders of the federal, state and municipal governments applicable to the operation of concession rights herein granted to CONTRACTOR, including, but not limited to, the Water Safety Act contained in Chapter 31 of the Parks and Wildlife Code, the Americans with Disabilities Act including in the operation of all facilities (barges, ticket stations, loading and unloading points), programs, services, and employment opportunities which are considered part of the river barge concession operation.

29.2 Small Business Economic Development Advocacy Policy Compliance. CONTRACTOR is hereby advised that pursuant to Ordinance 100182, approved on December 16, 2004 (the "SBEDA Policy"), it is the policy of the CITY that small,

minority and woman-owned business enterprises shall have the maximum practical opportunity in the performance of public contracts. CONTRACTOR hereby agrees that, throughout the term of the CONTRACT, it shall abide by all applicable terms and conditions of the SBEDA Policy as is set forth in Contractor's Good Faith Effort Plan.

29.3 CONTRACTOR is hereby advised that it is the policy of the CITY OF SAN ANTONIO that Small, Minority or Woman-owned Business Enterprises shall have the maximum practical opportunity to participate in the performance of public contracts. CONTRACTOR agrees that CONTRACTOR will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability in the use of or admission to the Concession Area or barges and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability. CONTRACTOR further agrees that CONTRACTOR will abide by all applicable terms and provisions of CITY's Non-Discrimination Policy, CITY's Small, Minority or Woman-owned Business Advocacy Policy and CITY's Equal Opportunity Affirmative Action policy, these policies being available in CITY's Department of Economic Development, Division of Internal Review and the City Clerk's Office.

ARTICLE XXXX.

ASSIGNMENT AND SUBCONTRACTING

30.1 CONTRACTOR shall not assign this CONTRACT, or allow same to be assigned by operation of law or otherwise, or sublet the Contract or any part thereof without the prior written consent of the CITY, which may be given only by an ordinance passed by CITY COUNCIL giving such specific consent. CONTRACTOR shall not subcontract the photography services portion of the CONTRACT or any part thereof without the prior \written consent of the CITY, which may be given only by an ordinance passed by CITY COUNCIL giving such specific consent; provided, however, that such prior written consent of the CITY may be given by the DIRECTOR in those instances that do not involve photography services. Any unauthorized assignment, subcontracting, or subletting by CONTRACTOR shall constitute grounds for termination of this CONTRACT by CITY. CONTRACTOR shall continue to be liable under this CONTRACT upon and throughout the duration of any and all such assignments, subcontracts, or subleases regardless of whether CITY's consent was obtained. CONTRACTOR shall not allow its photography subcontracts to be assigned, nor make any amendments to its photography subcontracts, nor renew any photography subcontracts, if any, without approval of the CITY COUNCIL by passage of an ordinance authorizing such assignments, amendments or renewals. For purposes of this CONTRACT, the term "subcontract" shall include all agreements between CONTRACTOR and any third party whereby CONTRACTOR authorizes such third party to conduct a portion of the concession business activity related to this CONTRACT, including all sales of services, such as tours, charters or any form of barge rides on the San Antonio River, photography, or any other services offered to the public or sales of merchandise of any kind or nature, but shall not include merely selling of consignment or incentive tickets resold to the public, nor shall it include any subcontract

for the provision of advertising, except as set forth in paragraph 44.4. In addition, JoAnn E. Boone shall not sell, or allow the loss of her controlling ownership interest in CONTRACTOR without the prior written consent of the CITY, which may be given only by an ordinance passed by CITY COUNCIL giving such specific consent. Any unauthorized loss of majority ownership control of CONTRACTOR by JoAnn E. Boone shall constitute grounds for termination of this CONTRACT by CITY. Provided, however the death of JoAnn E. Boone shall not constitute grounds for termination and any transfer of interests directly resulting from her death shall not require the approval of the CITY COUNCIL.

30.2 CONTRACTOR shall provide to the DIRECTOR an OWNERSHIP REPORT along with the written annual statement required in the "Records and Audits" section. The OWNERSHIP REPORT will provide names, addresses and percentages of ownership for each person with an interest in this CONTRACT or any subcontract. In the event the OWNERSHIP REPORT reflects any changes in ownership, the CITY shall have the right, for good cause and in good faith, to revoke its previous approval of any subcontract. In order to exercise this revocation right, CONTRACTOR must be notified by the DIRECTOR within thirty (30) days of the submittal of the OWNERSHIP REPORT that the DIRECTOR is recommending revocation and outlining the reasons why.

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

ARTICLE XXXI.

ATTORNEY'S FEES

31.1 In case it should be necessary or proper for CITY to bring any action under this CONTRACT or consult or place said CONTRACT, or any amount payable by CONTRACTOR thereunder, with an attorney concerning or for the enforcement of any of CITY's rights hereunder, then CONTRACTOR agrees in each and any such case to pay to CITY reasonable attorney's fees.

ARTICLE XXXII.

SEPARABILITY

32.1 If any clause or provision of this CONTRACT is found to be illegal, invalid or unenforceable under present or future laws effective during the term of this CONTRACT, then and in that event, it is the intention of the parties that the remainder of this CONTRACT shall not be affected thereby, and it is also the intention of the parties to this CONTRACT that in lieu of each clause or provision of this CONTRACT that is found to

be illegal, invalid or unenforceable, there be added as a part of this CONTRACT a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

ARTICLE XXXIII.

ENTIRE AGREEMENT

33.1 It is understood and agreed that this CONTRACT, together with the authorizing ordinance, any attached exhibits which have not otherwise been modified by this contract, constitutes the entire CONTRACT between the parties hereto and shall not be modified or amended in any manner except by instrument in writing executed by the parties hereto. It is further understood and agreed by CONTRACTOR that CITY and CITY's agents have made no representations or promises with respect to the Contracted Premises or the making or entry into this CONTRACT, except as in this CONTRACT expressly set forth, and that no claim or liability or cause for termination shall be asserted by CONTRACTOR against CITY, and CITY shall not be liable by reason of, the breach of any representations or promises not expressly stated in this CONTRACT, any other written or oral agreement with CITY being expressly waived by CONTRACTOR, it being understood that the Charter of the CITY requires all agreements with the CITY, including any subsequent amendments or other modifications hereto, to be in writing and adopted by ordinance.

33.2 The parties hereto acknowledge that they have thoroughly read this CONTRACT, including any exhibits or attachments, and have sought and received whatsoever competent advice and counsel as was necessary for them to form a full and complete understanding of their rights and obligations herein.

ARTICLE XXXIV.

TAXES AND LICENSES

34.1 CONTRACTOR shall pay, on or before their respective due dates, to the appropriate collecting authority, all federal, state and local taxes and fees which are not or may hereafter be levied upon CONTRACTOR, or upon CONTRACTOR's business, or upon any of CONTRACTOR's property used in connection with this CONTRACT, and shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by CONTRACTOR. Failure to comply with the foregoing provisions shall constitute grounds for termination of this CONTRACT by CITY.

ARTICLE XXXV.

CONDEMNATION

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

ARTICLE XXXVI.

WAGES

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

ARTICLE XXXVII.

NO SUBSTANTIAL INTEREST

37.1. Conflicts of Interest. Respondent acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a CITY officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with CITY or any CITY agency such as CITY-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with CITY or in the sale to CITY of land materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: the CITY officer or employee; his parent; child or spouse; a business entity in which he or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; or a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity. Respondent is required to warrant and certify that it, its officers, employees and agents are neither officials nor employees of the CITY, as defined in Part B, Section 10 of the City's Ethics Code, available at <http://www.sanantonio.gov/atty/Ethics/codetext.htm>.

ARTICLE XXXVIII.

NOTICES

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

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

and

Director, Department of Parks and Recreation
P.O. Box 839966
San Antonio, Texas 78283-3966

or

to such other address as may be designated in writing by the City Manager of the CITY OF SAN ANTONIO from time to time. Notices to CONTRACT shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to CONTRACTOR at the address on file with the City Clerk.

ARTICLE XXXIX.

PARTIES BOUND AND INDEPENDENT CONTRACTOR

39.1 The covenants and agreements herein contained shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors and assigns, and if there shall be more than one party designated as CONTRACTOR in this CONTRACT, they shall each be bound jointly and severally hereunder.

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

ARTICLE XL.

TEXAS LAW TO APPLY

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

ARTICLE XLI.

GENDER

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

ARTICLE XLII.

CAPTIONS

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

ARTICLE XLIII.

PERCENTAGE OF ADJUSTED GROSS SALES TO BE PAID TO CITY

43.1 CONCESSION FEE FOR TOURS, CHARTERS AND TAXI SERVICE. CONTRACTOR agrees to pay to CITY a CONCESSION FEE of fifty-two percent (52%) of its ADJUSTED GROSS SALES up to the amount of seven million dollars (\$7,000,000.00) per year ADJUSTED GROSS SALES of or on all Tours, Charters and Taxi services provided under the CONTRACT, fifty-two and a half percent (52.5%) of its ADJUSTED GROSS SALES of or on such services from seven million one dollars (\$7,000,001.00) to eight million dollars (\$8,000,000.00) per year and fifty-five percent 55% of its ADJUSTED GROSS SALES of or on such services in excess of eight million dollars (\$8,000,000.00) per year.

43.2 Notwithstanding anything contained in Section 2.2 or Section 44.1 to the contrary, for all PHOTOGRAPHY SERVICES related to this CONTRACT CONTRACTOR agrees to pay to CITY a CONCESSION FEE of twenty percent (20%) of ADJUSTED GROSS SALES.

43.3 Notwithstanding anything contained in Section 2.2 or Section 44.1 to the contrary, for all business activities related to the sale of MERCHANDISE, CONTRACTOR agrees to pay to CITY a CONCESSION FEE of 15% of its ADJUSTED GROSS SALES. MERCHANDISE includes all goods, commodities, souvenirs, and consumables sold in, upon or from the Concession Area or any approved ticket location within the Concession Area or in the Downtown Business District, or through telephone or internet sales associated with the concession business, or of merchandise branded with the San Antonio River Walk or CONTRACTOR'S concession business on the River Walk. CONTRACTOR agrees that the only merchandise it is currently authorized to sell the following Merchandise in ticket stations in the Concession Area or in areas abutting the Concession Area at the River Level, such as the Holiday Inn Ticket Station: 1) a variety of hats, 2) a variety of sunglasses, 3) disposal cameras, 4) shirts, 5) batteries 6) non-alcoholic beverages, 7) coffee products, 8) snacks, including, but not limited to, such as popcorn, nachos and chips, and (9) water provided, however, that should CONTRACTOR desire to sell other merchandise, goods, commodities, souvenirs, and consumables of any kind or nature it shall present a written request to DIRECTOR, and shall not be authorized to sell any such merchandise until such time as CONTRACTOR receives written permission from DIRECTOR. Failure of the DIRECTOR to respond to CONTRACTOR's written request for permission to sell other Merchandise within thirty (30) days of such request, shall be deemed as approved by the DIRECTOR. CONTRACTOR is authorized, without DIRECTOR approval, to sell any and all non-offensive Merchandise at ticket stations not located in 1) the Concession Area or 2) areas abutting the Concession Area at the River Level.

43.4 Notwithstanding anything in Section 2.2 or Section 44.1 to the contrary, for all business activities related to advertising, agrees to pay to CITY a CONCESSION FEE of 15% of its ADJUSTED GROSS SALES. Advertising shall include the placement of any informational material on CONTRACTOR controlled spaces in the CONCESSION AREA, including any CONTRACTOR printed materials which shall include without limitation, any printed tickets, maps, handouts of any kind, any material appearing on any internet site associated with this concession business, as well as the placement of any identifiable material on merchandise or photography products sold by CONTRACT as part of the concession business. .

43.5 The CONCESSION FEE shall be based on revenues generated from sales of products or services related to this CONTRACT to customers of CONTRACTOR or any subcontractor. CONTRACTOR agrees to pay fifteen per cent (15%) of ADJUSTED GROSS SALES on any sales of goods or services associated with the CONTRACT not defined above. Items excluded are interest on bank accounts, warranty work on CONTRACTOR'S barges, engines or motors, and state, federal or local public assistance received in the form of grants.

ARTICLE XLIV
PHOTOGRAPHY SERVICES

44.1 CONTRACTOR shall be allowed to offer photography services to its customers. PHOTOGRAPHY SERVICES consists of photographs of CONTRACTOR's passengers in the process of boarding, riding or immediately departing its tour barges, dining charters and charter tours and sell PAPER PRINTS of those photographs. CONTRACTOR agrees to pay CITY a percentage of the ADJUSTED GROSS SALES (" AGS") for such transactions in accordance with Section 44.2, regardless of whether the PHOTOGRAPHY SERVICES are provided directly by CONTRACTOR, or through subcontract with a third-party individual or entity. Photographs may be taken only with each passenger's acquiescence and CONTRACTOR'S employees shall only use an initial query in obtaining that acquiescence which shall be approved in writing by DIRECTOR. All PHOTOGRAPHY SERVICES employees shall attend guest services & sales training PHOTOGRAPHY SERVICES may occur only within the Hilton, River Center and Holiday Inn ticket stations and the Hilton, River Center and Holiday Inn boarding locations and such other locations as may be approved pursuant to section 11.2. Such activity shall not be allowed in any way to slow down the boarding process.

44.2 The PHOTOGRAPHY SERVICES described herein may be offered by CONTRACTOR either directly or through subcontract with a third-party individual or entity. Any subcontract arrangement shall be governed by ARTICLE 31.

44.3 PAPER PRINTS shall mean standard, digital or other photographic prints, in standard photographic print sizes, on standard photographic paper or other similar standard media for creating photographic prints or images, along with any framing material of nominal value, such as paper or cardboard frames, or plastic key chain frames or other items approved by the DIRECTOR. CONTRACTOR shall submit any such framing material of nominal value to the DIRECTOR for written approval prior to offering it as part of the photography services allowed under this CONTRACT. The DIRECTOR's review and written approval shall be limited to a determination that such framing material does not exceed a nominal value. Any other sales of such photographs reproduced on media other than paper, including without limitation, mugs and t-shirts, shall be deemed sales of merchandise and payment to CITY on such sales shall be governed by Section 44.3.

44.4 CONTRACTOR agrees to provide to CITY the following report related to PHOTOGRAPHY SERVICES, in addition to all other reports required by the CONTRACT: a report, delivered within ten days of the first day of each calendar month which includes 1) the previous month's ADJUSTED GROSS SALES generated from all PHOTOGRAPHY SERVICES; and, 2) a detail showing all adjustments applied to ADJUSTED GROSS SALES from PHOTOGRAPHY SERVICES.

44.5 CONTRACTOR agrees to offer photography services but shall be entitled to exercise good faith discretion in whether to continue such photography services within the Concession Area, whether through an approved subcontractor or otherwise, provided, however, that CONTRACTOR shall provide no less than thirty (30) days written notice to CITY of CONTRACTOR's intention to terminate photography

services. In the event CONTRACTOR terminates photography services, then the CITY shall not allow any other person or company to operate photography services within the Concession Area without CONTRACTOR's prior written consent. During the term of this Agreement and as long as CONTRACTOR is providing photography services, CONTRACTOR shall continue to investigate state of the art technologies and procedures for the provision of photography services, including digital photography, and shall be required to adopt any such state of art technologies and procedures to the extent that they are required for the operation of the premier urban river cruise tour service in North America.

ARTICLE XLV


45.1 CONTRACTOR agrees to fund \$300,000.00 in scholarships over the term of this CONTRACT. Said scholarships shall be administered by CITY at its cost. CONTRACTOR shall make an annual payment of \$30,000.00 to CITY for said scholarship fund on September 1 of each year of the CONTRACT (beginning in 2006).

ACCEPTED and AGREED TO in all things this 20 day of May, 2005.

CITY OF SAN ANTONIO

RIO SAN ANTONIO CRUISES, LTD.

By: _____
J. Roland Bono
Interim City Manager

BY: 
JoAnn E. Boone
President

ATTEST:

ATTEST:

APPROVED AS TO FORM:

City Attorney

**THE LEASE CONTRACT
AMENDMENT NO. 1**

The City of San Antonio, hereinafter called "City", entered into a Lease with the Young Men's Christian Association of San Antonio, hereinafter called "YMCA", pursuant to Ordinance No. 75887, passed and approved by the City Council of the City of San Antonio on June 4, 1992, for the use of a 42.318 acre tract of City property known as Salado Dam Site 5, also known as Panther Springs Park. Both the City and YMCA wish to amend said contract and hereby agree to the following amendments to said contract to be effective May 1, 2005:

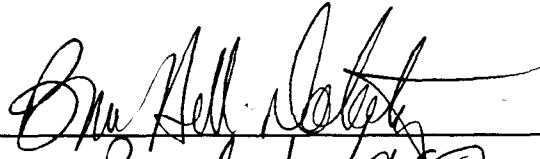
- 1) Section 3.1 is amended to read as follows:

"The initial term of this lease shall commence on June 10, 1992 and expire on April 30, 2032."

All other terms and conditions of the current agreement remain in full force and effect.

Executed this _____ day of _____, 2005.

Young Men's Christian Association of Greater
San Antonio & the Hill Country (formerly Young
Men's Christian Association of San Antonio)


Title: President / CEO

CITY OF SAN ANTONIO

J. Rolando Bono
Interim City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

City of San Antonio
Discretionary Contracts Disclosure

*For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)
Attach additional sheets if space provided is not sufficient.*

(1) Identify any individual or business entity¹ that is a party to the discretionary contract:

YMCA OF GREATER SAN ANTONIO

(2) Identify any individual or business entity which is a *partner, parent* or *subsidiary* business entity, of any individual or business entity identified above in Box (1):

☒ No partner, parent or subsidiary; or

List partner, parent or subsidiary of each party to the contract and identify the corresponding party:

(3) Identify any individual or business entity that would be a *subcontractor* on the discretionary contract.

☒ No subcontractor(s); or

List subcontractors:

(4) Identify any *lobbyist* or *public relations firm* employed by any party to the discretionary contract for purposes related to seeking the discretionary contract.

☒ No lobbyist or public relations firm employed; or

List lobbyists or public relations firms:

¹ A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law. A sole proprietor should list the name of the individual and the d/b/a, if any.

(5) Political Contributions

List all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under Box (1), (2), (3) or (4) above, or by the officers, owners of any business entity listed in Box (1), (2) or (3):

☒ No contributions made; If contributions made, list below:

By Whom Made:	To Whom Made:	Amount:	Date of Contribution:

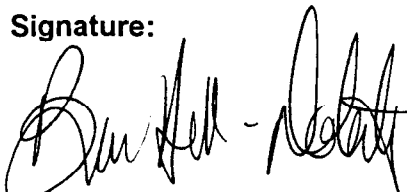

(6) Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city must disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code), ("conflicts of interest") by participating in official action relating to the discretionary contract.

☒ Party not aware of facts which would raise a "conflicts-of-interest" issue under Section 2-43 of the City Code; or

Party aware of the following facts:

This form is required to be supplemented in the event there is any change in the information before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed, whichever occurs first.

Signature: 	Title: PRESIDENT/CEO Company or D/B/A: YMCA OF GREATER SAN ANTONIO	Date: 
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² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.