PROFESSIONAL SERVICES AGREEMENT
FOR
RIVER BARGE DESIGN

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation ("City") acting by and through its City Manager, pursuant to Ordinance No. _____ passed and approved on the _____ day of _____, 2016 and METALAB by and through its _____ ("Consultant"), both of which may be referred to herein collectively as the "Parties".

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"Consultant" is defined in the preamble of this Agreement and includes its successors.

"Director" shall mean the director of City's Center City Development and Operations Department.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence upon execution and terminate upon completion of the scope of services and all related covenants and commitments.

III. SCOPE OF SERVICES

3.1 Consultant agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation.

JM 4/25/16

3.2 All work performed by Consultant hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant's work not be satisfactory to Director.

IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed $399,212.00 as total compensation. Consultant shall submit monthly Applications for Payment to City, as defined in Exhibit C. Payments will be contingent upon Consultant's certification that work has progressed to the point indicated and proof that Consultant is entitled to payment in the amount requested.

4.2 In addition to the fees for design services specified above Consultant shall be reimbursed for following expenses encountered in performing under this contract:

- Travel costs not to exceed $45,932. City maintains the right of prior approval of any reimbursable expenditure by Consultant and shall not pay any expenses that have not been agreed to and accepted in writing by City prior to the execution of this Agreement. When authorized by City in writing, Consultant shall be entitled to reimbursement at actual cost incurred for services and related expenses for the following:
    - 11.10.1 Travel only if approved in writing by City prior to such travel. If approved by City, reimbursement for travel costs shall be limited to costs directly associated with Consultant's performance of Service under this Agreement. Travel costs are limited to the per diem rates set annually by the Federal Government's General Services Administration. Consultant shall proved detailed receipts for all reimbursable charges.
    - 11.10.4 City shall not allow a markup on any of the above reimbursable items and only shall reimburse actual costs incurred with City's written approval.
- Payments to third party manufacturers or fabricators assisting in the production of the prototype barge in an amount not to exceed $135,000.00.

4.3 Consultant shall submit invoices to City, in a form acceptable to City, which City shall pay within 30 days of receipt and approval by Director. Invoices shall be submitted to: City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy to City of San Antonio, Center City Development and Operations Department, P.O. Box 839966, San Antonio, Texas 78283-3966.

AV 4/25/16

4.4 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council by passage of an ordinance therefore.

4.5 Final acceptance of work products and services require written approval by City. The approval official shall be Director. Payment will be made to Consultant following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services. City shall provide feedback within (5) business days from receipt of invoice and work product or evidence thereof. If the work product is deemed insufficient to release the requested funds, the city shall notify and accept remediation to the work product within 5 working days without any delay to the funding of the requested draw. If such remediation is deemed by the City to be insufficient, City shall provide detailed steps to remedy within 5 working days, and accept final remediation to the work product with no more than 10 days delay to the funding of the requested draw.

V. OWNERSHIP OF DOCUMENTS

5.1 The work performed under this Agreement is a work for hire. Any and all writings, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Consultant.

5.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.

VI. RECORDS RETENTION

6.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is

4/25/16

litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Consultant to return the documents to City at Consultant's expense prior to or at the conclusion of the retention period. In such event, Consultant may retain a copy of the documents.

6.3 Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party pertaining to open records, financial auditing, costs of work, or identification of subcontractors or consultants, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests.

VII. TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Agreement may be terminated by City upon thirty (30) calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting.

7.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of an material term of this Agreement it shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have 30 calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

JM 4/25/16

7.4.1 Failure to comply with the terms and conditions stated in Article XIV. SBEDA.
7.4.2 Bankruptcy or selling substantially all of company's assets
7.4.3 Failing to perform or failing to comply with any covenant herein required
7.4.4 Performing unsatisfactorily

7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Agreement is terminated, Consultant shall effect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Consultant in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.8 Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subcontractors pursuant to this Agreement.

7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper

JM 4/25/16

postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City of San Antonio
Center City Development and Operations Department
P.O. BOX 839966
San Antonio Tx 78283-3966

If intended for Consultant, to:

IX. [Reserved]

X. INSURANCE

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

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

10.3 A Consultant's financial integrity is of interest to the City; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant's sole expense, insurance coverage written

JM 4/25/16

on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $500,000/$500,000/$500,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you g. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability. h. Explosion, collapse, underground	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage $100,000
4. Business 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
5. Professional Liability (Claims Made) To be maintained and in effect for no less than two years subsequent to the completion of the professional services	$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

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

10.5 As they apply to the limits required by the City, the City shall be entitled, upon

4/25/16

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

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

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

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

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

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

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

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

10.8 In addition to any other remedies the City may have upon Consultant'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 Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

10.9 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property

JM 4/25/16

resulting from Consultant's or its subcontractors' performance of the work covered under this Agreement.

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

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

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

XI. INDEMNIFICATION

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

11.2 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. CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONSULTANT's cost. The CITY shall have the right, at its

JM 4/25/16

option and at its own expense, to participate in such defense without relieving CONSULTANT of any of its obligations under this paragraph.

11.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by CONSULTANT in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. CONSULTANT shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If CONSULTANT fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and CONSULTANT shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

11.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONSULTANT or any subcontractor under worker's compensation or other employee benefit acts.

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 Consultant shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Consultant. Consultant, its employees or its subcontractors shall perform all necessary work.

12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.

12.4 Except as otherwise stated herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee or subcontractor.

12.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should

JM 4/25/16

Consultant assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of "respondeat superior" shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Consultant. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind the City.

XIV. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

Non-discrimination. As a condition of entering into this agreement, Consultant represents and warrants that it will comply with City's Commercial Nondiscrimination Policy, as described under Section IILC.1 of the SBEDA Ordinance. As part of such compliance, Consultant shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Consultant retaliate against any person for reporting instances of such discrimination. Consultant shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in City's Relevant Marketplace. Consultant understands and agrees that a material violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification of Consultant from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Consultant shall include this nondiscrimination clause in all subcontracts for the performance of this agreement.

JM 4/25/16

XV. CONFLICT OF INTEREST

15.1 Consultant 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 Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

15.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Consultant further warrants and certifies that is has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XVI. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant, and subject to approval by the City Council, as evidenced by passage of an ordinance.

XVII. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVIII. STANDARD OF CARE AND LICENSES/CERTIFICATIONS

18.1 Consultant warrants that the services required under this Agreement shall be performed with the same degree of professional skill and care that typically are exercised by similar consulting professionals performing similar services in Bexar County, Texas.

18.2 Consultant warrants and certifies that Consultant and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XIX. COMPLIANCE

Consultant shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XX. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXI. LAW APPLICABLE

21.1 **THIS AGREEMENT 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.**

21.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

 4/25/16

XXII. LEGAL AUTHORITY

The signer of this Agreement for Consultant represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Consultant and to bind Consultant to all of the terms, conditions, provisions and obligations herein contained.

XXIII. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXIV. CAPTIONS

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

XXV. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below, with this document taking priority over all exhibits:

- Exhibit A "Scope of Services"
- Exhibit B "Design Competition Submittal"
- Exhibit C "Draw Schedule"

XXVI. INCORPORATION OF ATTACHMENTS

Each of the attachments listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below, with this document taking priority over all attachments:

XXVI. ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated

 4/25/16

subsequent to the date hereto, and duly executed by the parties, in accordance with Article XVI. Amendments.

XXVII. PROHIBITED CONTRIBUTIONS

27.1 Consultant acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for a proposed contractual relationship that applies for a "high-profile" discretionary contract, as defined by the City of San Antonio Contracting Policy and Process Manual, may not make a campaign contribution to any councilmember or candidate at any time from the time the person submits the response to the Request for Proposal (RFP) or Request for Qualifications (RFQ) until 30 calendar days following the contract award. Consultant understands that if the legal signatory entering the contract has made such a contribution, the city may not award the contract to that contributor or to that contributor's business entity. Any legal signatory for a proposed high-profile contract must be identified within the response to the RFP or RFQ, if the identity of the signatory will be different from the individual submitting the response.

27.2 Consultant acknowledges that the City has identified this Agreement as high profile.

27.3 Consultant warrants and certifies, and this Agreement is made in reliance thereon, that the individual signing this Agreement has not made any contributions in violation of City Code section 2-309, and will not do so for 30 calendar days following the award of this Agreement. Should the signor of this Agreement violate this provision, the City Council may, in its discretion, declare this Agreement void.

EXECUTED and **AGREED** to as of the dates indicated below.

CITY OF SAN ANTONIO	**CONSULTANT** *METALAB*
_____ *(Signature)*	_____ *(Signature)*
Printed Name: _____	Printed Name: Joe Meppelink
Title: _____	Title: PRESIDENT
Date: _____	Date: 4/25/2016

Approved as to Form:

_____
Assistant City Attorney

Exhibit A - Scope of Service

Consultant Understands and agrees that time is of the essence under this contract and it shall undertake all its required services under this agreement in order to help the City achieve the delivery of a fleet of barges no later than September 1, 2017.

Pre-solicitation

No later than July 1, 2016 Consultant shall deliver detailed design specifications ("Fabrication Documents"), including the Boat Specifications defining materials, hardware and performance criteria for the construction of barges based on its designs submitted as part of the design competition ("Competition Submittals"). The Competition Submittals are attached hereto as Attachment B. In the event there is a need to issue addenda to the Fabrication Documents based upon observed performance and feedback from the prototype vessel Consultant shall issue such Addenda no later than August 31st.

The Fabrication Documents shall be in such form and content as will, in the judgment of City be sufficient for the solicitation for the fabrication of barges for use in providing concession services on the San Antonio River. Consultant shall coordinate with any other necessary consultants as relates to the creation of the Fabrication Documents.

Such designs shall be compliant with all applicable federal, state and local laws for the manufacture of boats to be used with commercial passengers.

Consultant shall make such corrections and modifications to the specifications as requested by City consistent with its professional judgment.

Prototype Barge

Consultant shall deliver to City a working prototype barge no later than July 28, 2016. Because City's damages from such a breach would be difficult to estimate or quantify, Consultant accepts the amount of $5,000.00 as a reasonable, negotiated estimate of City's damages. In addition, if the prototype is not delivered before October 1, 2016, Consultant accepts the amount of $5,000.00 as a reasonable, negotiated estimate of City's further damages for a total $10,000.00 in liquidated damages for late delivery of the prototype. The prototype shall, at a minimum, have the following accessories: 1) group tour seating; 2) group dining table and accessories; 3) cocktail cruse tables; 4) fixed and swiveling center seating; and 5) all necessary hardware for the above components.

 4/25/16

Consultant shall have such barge launched on the San Antonio River in a place of City's choosing.

Consultant shall coordinate with and pay independent manufacturers for the component portions of the barge. City shall reimburse Consultant for the payments to such manufacturers. Consultant shall, along with City, conduct extensive testing of a test barge in to ensure for compliance with the specifications, the needs of the City and its concessionaire in providing services to the public on the barges and the final aesthetic appearance of the barges as delivered. Consultant shall provide modifications to the specifications as needed to correct any issues that arise in such review and shall coordinate with the City in the publication of the modifications as part of the Solicitation for Fabrication.

Services related to Solicitation for Fabrication

Consultant shall review and provide feedback on the solicitation document before its release.

Consultant shall assist City in identifying qualified Manufacturers to be solicited for the fabrication of the barges.

Consultant shall review and offer comments all submittals received to the solicitation for fabrication.

Consultant shall provide its professional opinion regarding the quality and responsiveness of any submittals.

Consultant hereby agrees that all information it receives (solicitations, proposals, discussions during all meetings) are confidential and cannot be disclosed outside the City's evaluation team, and City management personnel and City Attorney's Office).

Evaluation of City Marinas for compatibility with Consultants designs

Consultant shall conduct up to (2) on site reviews of the City's existing marina facilities and shall provide information as requested to coordinate with professional consultants (architect, electrical engineer, etc) for the retrofitting of the marina to accommodate the electric fleet and its requirements for charging and maintenance

Further Evaluation of Barges delivered from Manufacturer

Consultant shall assist City in inspecting and assessing all other barges delivered to City for compliance with the fabrication contract and the design specifications.

JM 4/25/16

Minimum Requirements for Design of the barges:

1. All-electric, battery-powered
2. Motor propulsion shall be outboard and concealed as per the design proposal inboard
3. Shall be designed to last 15-20 years with proper maintenance to be defined in a maintenance manual to be provided by the manufacturer with assistance from consultant. Exception: electric battery storage and propulsion systems shall be covered by manufacturer's warranty terms for a lifespan as defined by that manufacturer. Consultant shall design toward a not-to-exceed budget for full fleet manufacturing of $65,000 per boat, and shall inform the City of projected cost over-runs along with recommendations to remedy such over-runs by modifying the scope of work, quality, quantity, and/or functionality as defined herein.
4. Accommodations for disabled riders, including companion seating for riders in wheelchairs
5. Accommodations for commuters
6. Accommodate up to 40 passengers per barge tour
7. Accommodations for dining and other events
8. Ability to traverse through the lock with a barge size no larger than 9 feet by 28 feet
9. Provides a safe ride with minimal wake
10. Complements City of San Antonio branding
11. Operate under maximum load for a minimum of 12 hours on a single charge
12. Be capable of being fully recharged within 10 hours

4/25/16

Exhibit B – Design Competition Submittal

JM 4/25/16

Exhibit C – Draw Schedule

4/25/16

SAN ANTONIO RIVER BOATS

Fixed Fee Proposal 18 April 2016

Proposed Draw Schedule

TOTAL FEES	$	157,200.00	N.T.E. Fixed Fee for Design and Fabrication Documents
	$	25,400.00	Fixed Fee for Project Management for Prototype Boat (PM)
	$	135,000.00	N.T.E. Prototype Production
	$	31,680.00	Fixed Fee for Fleet Manufacturing Quality Assurance/Control
	$	4,000.00	N.T.E. Printing Reimbursables
	$	21,908.00	N.T.E. Travel Reimbursables Prior to Fleet Manufacturing (FM)
	$	24,024.00	N.T.E. Travel Reimbursables During Fleet Manufacturing (QA/QC)

Draw Period	Benchmark	Description	Date	Fee Type	Fee %	Total
Draw #s	*Design, Construction Documents, and Prototype Manufacturing*					
Draw #0	*100% SD*		4/5/2016		0%	$ -
Draw #1	*100% DD*		4/28/2016			
	Includes Providing Updated Critical Path			Fixed Fee Drawings FD	40%	$ 62,880.00
				Travel Prior to FM*	25%	$ 5,477.00
				TOTAL		$ 68,357.00
Draw #2	*50% CDs*		5/26/2016			
	Construction Documents at 50% with fabrication of prototype to begin construction			Fixed Fee Drawings FD	25%	$ 39,300.00
				Travel Prior to FM*	25%	$ 5,477.00
				Fixed Fee PM	25%	$ 6,350.00
				Prototype Production	25%	$ 33,750.00
				TOTAL		$ 84,877.00
Draw #3	*100% CDS*		6/30/2016			
	Construction Documents at 100% with progress photos of prototype			Fixed Fee Drawings FD	25%	$ 39,300.00
				Travel Prior to FM*	25%	$ 5,477.00
				Fixed Fee PM	50%	$ 12,700.00
				Prototype Production	50%	$ 67,500.00
				TOTAL		$ 124,977.00
Draw #4	*Prototype*		7/28/2016			
	Delivery of prototype and documentation			Fixed Fee Drawings FD	2%	$ 3,144.00
				Travel Prior to FM*	5%	$ 1,095.40
				Prototype Production	25%	$ 33,750.00
				Fixed Fee PM	25%	$ 6,350.00
				Printing Reimbursables	100%	$ 4,000.00
				TOTAL		$ 48,339.40

* Estimated Based On Travel Schedule

METALAB

SAN ANTONIO RIVER BOATS

Fixed Fee Proposal 18 April 2016

Draw #s	*Bid Negotiation*				
Draw #5	8/25/2016				
	Respond to RFP questions, addendums,	Fixed Fee Drawings FD	2%	$	3,144.00
	Continued documentation of prototype	Travel Prior to FM*	5%	$	1,095.40
		TOTAL		$	4,239.40
Draw #6	9/29/2016				
	Respond to RFP questions, addendums,	Fixed Fee Drawings FD	2%	$	3,144.00
	Continued documentation of prototype	Travel Prior to FM*	5%	$	1,095.40
		TOTAL		$	4,239.40
Draw #7	10/27/2016				
	Respond to RFP questions, addendums,	Fixed Fee Drawings FD	2%	$	3,144.00
	Continued documentation of prototype	Travel Prior to FM*	5%	$	1,095.40
		TOTAL		$	4,239.40
Draw #8	11/24/2016				
	Respond to RFP questions, addendums,	Fixed Fee Drawings FD	2%	$	3,144.00
	Continued documentation of prototype	Travel Prior to FM*	5%	$	1,095.40
		Fixed Fee QA/QC	9.09%	$	2,880.00
		Travel During FM*	9.09%	$	2,184.00
		TOTAL		$	9,303.40
Draw #s	*Quality Assurance/Control*				
Draw #9	12/29/2016				
	Quality Assurance and Control of Fleet	Fixed Fee QA/QC	9.09%	$	2,880.00
	Manufacturing	Travel During FM*	9.09%	$	2,184.00
		TOTAL		$	5,064.00
Draw #10	1/26/2017				
	Quality Assurance and Control of Fleet	Fixed Fee QA/QC	9.09%	$	2,880.00
	Manufacturing	Travel During FM*	9.09%	$	2,184.00
		TOTAL		$	5,064.00
Draw #11	2/23/2017				
	Quality Assurance and Control of Fleet	Fixed Fee QA/QC	9.09%	$	2,880.00
	Manufacturing	Travel During FM*	9.09%	$	2,184.00
		TOTAL		$	5,064.00
Draw #12	3/30/2017				
	Quality Assurance and Control of Fleet	Fixed Fee QA/QC	9.09%	$	2,880.00
	Manufacturing	Travel During FM*	9.09%	$	2,184.00
		TOTAL		$	5,064.00

* Estimated Based On Travel Schedule

Draw #13	4/27/2017				
	Quality Assurance and Control of Fleet	Fixed Fee QA/QC	9.09%	$	2,880.00
	Manufacturing	Travel During FM	9.09%	$	2,184.00
		TOTAL		$	5,064.00
Draw #14	5/25/2017				
	Quality Assurance and Control of Fleet	Fixed Fee QA/QC	9.09%	$	2,880.00
	Manufacturing	Travel During FM	9.09%	$	2,184.00
		TOTAL		$	5,064.00
Draw #15	6/29/2017				
	Quality Assurance and Control of Fleet	Fixed Fee QA/QC	9.09%	$	2,880.00
	Manufacturing	Travel During FM	9.09%	$	2,184.00
		TOTAL		$	5,064.00
Draw #16	7/27/2017				
	Quality Assurance and Control of Fleet	Fixed Fee QA/QC	9.09%	$	2,880.00
	Manufacturing	Travel During FM	9.09%	$	2,184.00
		TOTAL		$	5,064.00
Draw #17	8/31/2017				
	Quality Assurance and Control of Fleet	Fixed Fee QA/QC	9.09%	$	2,880.00
	Manufacturing	Travel During FM	9.09%	$	2,184.00
		TOTAL		$	5,064.00
Draw #18	9/28/2017				
	Quality Assurance and Control of Fleet	Fixed Fee QA/QC	9.09%	$	2,880.00
	Manufacturing	Travel During FM	9.09%	$	2,184.00
		TOTAL		$	5,064.00
TOTALS		Fixed Fee Design FD	100%	$	157,200.00
		Fixed Fee PM	100%	$	25,400.00
		Prototype Production	100%	$	135,000.00
		Fixed Fee QA/QC	100%	$	31,680.00
		Printing Reimbursables	100%	$	4,000.00
		Travel Prior to FM*	100%	$	21,908.00
		Travel During FM*	100%	$	24,024.00
TOTAL ALL FEES				**$**	**399,212.00**

* Estimated Based On Travel Schedule