

**Heldenfels, Leane**

**From:** Matt Knifton <[REDACTED]>  
**Sent:** Thursday, November 05, 2015 9:41 PM  
**To:** Raymond Yin; Heldenfels, Leane  
**Cc:** Matt Knifton  
**Subject:** Re: Postpone BOA Hearing of Variance for 1541 W. Cesar Chavez

m1  
17

Hi Leane,

Just to follow-up on Ray's email, we are negotiating with an important stakeholder to gain its support for the project. That stakeholder's board does not meet until mid-November. We prefer to proceed with that stakeholder's support, and that is the reason we are requesting postponement until December. Thank you, Matt Knifton (TRC owner)

On 11/5/2015 5:08 PM, Raymond Yin wrote:

> Leane,  
>  
> Please postpone hearing of our variance application for the PARD/TRC  
> project at 1541 West Cesar Chavez to the next available hearing date.  
>  
> Should I ask Matt Knifton as the agent for PARD to send you an email  
> officially requesting the postponement?  
>  
> Thanks,  
> Raymond  
> 512-417-4303



## MEMORANDUM

**TO:** Vincent Harding, Chair  
Board of Adjustment

**FROM:** Sara L. Hensley, CPRP, Director  
Austin Parks and Recreation Department *S. Hensley*

**DATE:** October 27, 2015

**SUBJECT:** Texas Rowing Center Dock Modifications and Floating Boat Storage;  
Contract #R000011

---

The Parks and Recreation Department ("PARD") administers a rowing and paddling concession located adjacent to the hike and bike trail on the north bank of Lady Bird Lake near Austin High School. The concessionaire is Texas Rowing Center ("TRC"), owned by Mr. Matthew Knifton.

Co-applicants TRC and PARD are seeking a variance from the Board of Adjustment to permit the modification of the TRC dock and the construction of a floating boathouse facility to move boat storage and office activities to the dock. By moving boat storage and office activities from the current location north of the trail to the dock, TRC will remove the present growing hazard arising from increasing traffic of boats (up to 60' long) crossing the heavily used hike and bike trail. This project is a priority Life Safety Issue for PARD.

The particulars of the project, including dimensional site plan and building elevations are incorporated into Amendment No. 5 of the Concession Agreement No. R000011, between the City of Austin and Texas Rowing Center, dated May 5, 2015 (attached). Paragraph 2.10.4 of the Concession Agreement requires that TRC complete the project or be subjected to additional concession fee amounts. Section 1.0 requires that the project will become the property of the City upon termination of the agreement. The Concession Agreement and the project itself have been approved by the Parks and Recreation Board at separate meetings on February 24, 2015 (approval of contract amendment), and on June 23, 2015 (approval of project).

By way of this letter, I state PARD's support for the project contingent upon successful compliance with all pertinent development and navigation requirements.

Should you have any questions, please contact my office at (512) 974-6717.

cc. Marty Stump, Assistant Director, Parks and Recreation Department

Attachment: Amendment No. 5 of the Concession Agreement No. R000011



**Amendment No. 5**  
**to**  
**Contract No. R000011**  
**for**  
**Concession: Rowing & Sculling**  
**Between**  
**Texas Rowing Center, Inc.**  
**and the**  
**City of Austin, Texas**

1.0 The City hereby amends the referenced contract to remove Section 2.10 of the referenced contract in its entirety and replace it with the following

2.10. Concession Repairs and Improvements Contractor shall not make any structural alterations, repairs, or improvements of the premises without written permission from the Contract Manager. Any alteration made by the Contractor shall become the property of the City at the termination of the contract. City reserves the right to require Contractor to restore the property to its original condition at Contractor's expense. Contractor shall make written report to Contract Manager of any needed repairs or suggested alterations or improvements.

2.0 The City hereby amends the referenced contract to add the following sub-sections to Section II, Scope of Work:

2.10.1. The Operator shall finance, design, permit and construct an extension to and structure (s) on the existing dock (Improvement) used by the Operator for the provision of water-based recreational rentals, services, programming and instruction as noted in the above referenced contract. The Improvement will conform in scope, materials, construction to the conceptual plan referred to in *Exhibit A: 50% Construction Documents Phase (attached)* of this amendment.

2.10.2. Operator shall provide PARD Contract Manager (CM) design and construction documents including cost estimates in the following phases for review and approval:

1. The schematic phase;
2. The design development phase
3. The 50% completion of construction documents phase; and,
4. The 95% completion of construction documents phase.

CM will provide direction to continue or identify areas of concern within ten (10) working days of receipt of documents.

After approval by the Project Manager (PM) of the 95% completion of construction phase documents, including any necessary approvals by applicable boards and commissions, PM shall provide Operator with a memorandum of support for the project addressed to applicable permitting authorities and shall send a representative to attend meetings with the applicable permitting authorities, as requested by Operator.

2.10.3. Operator shall design, permit, and construct the Improvements to parkland according to the following timelines:

- 2.10.3.1 Operator shall receive a Notice to Proceed from PARD to construct the Improvement within 60 days from the effective date of this amendment to the contract.
- 2.10.3.2 Operator shall design, permit, bid, construct and demonstrate completion of the dock platform phase of the project for the Improvement within 180 days from the effective date of this amendment to the contract.
- 2.10.3.3 Operator shall design, permit, bid, construct and issue to the City a Certificate of Occupancy (C.O.) for the Improvement within 360 days from the effective date of this amendment to the contract.

2.10.4. If, in the event that the Operator does not obtain a Notice to Proceed, or complete the phases of construction as stated above, the following terms will be in effect:

2.10.4.1. The Operator shall submit to PM a detailed account of good faith efforts and request for an extension. The City will either: a) issue a written Notice of Extension to the Operator; or b) Section 4.1 of the contract shall be amended as follows:

m7  
20

Payment of fees owed to the City under the terms of this Agreement shall be \$1,500, for each month of the contract and shall be remitted to the Contract Manager on or before the tenth (10th) day of the month following the month in which sales are made. In addition, at the end of each calendar year, contractor shall pay the City the following amount: one percent (1%) of the club's yearly net revenue (gross sales - sales tax) and twelve percent (12%) of the net revenue above \$80,000 per year. This amount will be paid in four equal payments, due May 31, June 30, July 31, and August 31 of each year.

2.10.5. The cost of the work to complete the Park Improvements will exceed \$100,000, therefore, Vendor shall obtain a performance bond in favor of the City. The bond shall be issued by a surety licensed in the state of Texas and the bond shall be in a form acceptable to the City.

2.17. Operator shall not reduce or eliminate Fee Discounts or Waivers or Programming providing Education, Instruction, or Services for AISD students or others as described in Exhibit B during the remainder of the contract without express written consent of Contract Manager and AISD representative.

3.0 The total contract amount is recapped below:

| Term/Description                                                                |
|---------------------------------------------------------------------------------|
| Basic Term: 05/19/00 – 05/18/05                                                 |
| Amendment No. 1: Option 1<br>05/19/05 – 05/18/10                                |
| Amendment No. 2: Correction to Amendment No. 1<br>05/19/05 – 05/18/10           |
| Amendment No. 3: Option 2<br>05/19/10 – 05/18/15                                |
| Amendment No. 4: Contract Modifications<br>05/19/10 – 05/18/15                  |
| Amendment No. 5: Option 3 and Contract Modifications<br>05/19/2015 – 05/18/2020 |

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

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

6.0 All other terms and conditions remain the same.

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

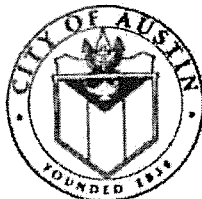
Signature & Date:

Printed Name: Matthew J. Knifton  
Authorized Representative

Texas Rowing Center  
1541 W. Cesar Chavez  
Austin, TX 78703

Signature & Date:

5/4/15  
Terry Nicholson, Senior Buyer Specialist  
City of Austin  
Purchasing Office



37  
21

Amendment No. 4  
to  
Contract No. R000011  
for  
Concession: Rowing & Sculling  
Between  
Texas Rowing Center, Inc.  
and the  
City of Austin

- 1.0 The City hereby amends the above referenced revenue contract. Effective March 1, 2011 the term for the extension option May 19, 2010 to May 18, 2015 and there is one remaining option.
- 2.0 In accordance with Paragraph, 6.16, **Modifications**. This contract is amended to add rental of canoes and stand-up paddleboards (SUPs). Section 2, Scope of Work is amended to read as follows:
- 2.1 **Section II. SCOPE OF WORK.** Texas Rowing Center, Inc. shall operate a rowing concession on Town Lake to provide instructional and recreational rowing, sculling, stand-up paddle boards, canoes and kayaks, with emphasis on overall esthetic appeal and compatibility with existing lake uses.
- 2.2 In accordance with 1.2.3 Additional Services, Contractor may rent canoes and stand-up paddleboards (SUPs) under this contract. All requirements of Section II, III & IV and subsequent amendments apply to the addition of these rentals.
- 2.3 Paragraph 6.7 **Notices**. City Contact :

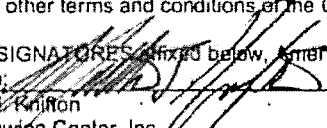
City of Austin, Parks and Recreation Department  
Contract Administrator, Financial Services ,512-974-6700  
200 S.Lamar Blvd.  
Austin, Texas 78701

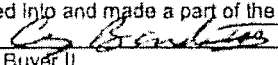
Agreement Recap:

|                                                               |
|---------------------------------------------------------------|
| Description:                                                  |
| Basic Term: 05/19/00 – 05/18/05                               |
| Amendment No.1 Option 1<br>05/19/05 – 05/18/10                |
| Amendment No.2 Correction to Amendment No.1<br>10/12/05       |
| Amendment No.3: Option 3<br>05/19/10 – 05/18/15               |
| Amendment No.4: Contract Modifications<br>05/19/10 – 05/18/15 |

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

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

Signature:   
Mathew J. Knifton  
Texas Rowing Center, Inc.  
1541 W. Cesar Chavez  
Austin, Texas 78703

Signature:   
Cruz Banda, Buyer II  
City of Austin  
Purchasing Office

Date: 10/12/2011

Date: 10/12/11



m7  
22

Amendment No. 3  
to  
Contract No. R000011  
for  
Concession: Rowing & Sculling  
between  
Texas Rowing Center, Inc.  
and the  
City of Austin

- 1.0 The City hereby exercises the extension option for the above referenced revenue contract. Effective May 19, 2010, the term for the extension option will May 19, 2010 to May 18, 2015 and there is one remaining option.

|                                                            |
|------------------------------------------------------------|
| Description:                                               |
| Basic Term: 05/19/00 – 05/18/05                            |
| Amendment No. 1: Option 1<br>05/19/05 – 05/18/10           |
| Amendment No. 2: Correction to Amendment No. 1<br>10/12/05 |
| Amendment No. 3: Option 3<br>05/19/10 – 05/18/15           |

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

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

Signature:

Printed Name:

Authorized Representative

Matthew J. Knilton

Signed:

Cruz Banda, Buyer II

City of Austin

Purchasing Office

Bea Washington For

Texas Rowing Center, Inc  
1541 W. Cesar Chavez  
Austin, TX. 78703

City of Austin, Reviewed and Approved  
n/a

Cynthia Gonzales, Contract Compliance Manager Corporate

m7  
23



Amendment No. 2  
to  
Contract No. R000011  
for  
Concession: Rowing & Sculling  
between  
Texas Rowing Center, Inc.  
and the  
City of Austin

- 1.0 The purpose of this amendment is to administratively correct the the remaining options in section 1.0 of amendment number 1 which should read as follows:
- 2.0 The City hereby exercises the extension option for the above referenced contract. Effective May 19, 2005, the term of the extension option will be May, 19, 2005 to May 18, 2010 and there are two remaining options.
- 3.0 All other terms and conditions remain the same.

Signed: Bea Washington for

R.C. Hernandez, Senior Buyer  
City of Austin  
Purchasing Office

Date: 10/12/05

m7  
24



Amendment No. 1  
to  
Contract No. R000011  
for  
Concession: Rowing & Sculling  
between  
Texas Rowing Center, Inc.  
and the  
City of Austin

- 1.0 The City hereby exercises the extension option for the above referenced contract. Effective May 19, 2005, the term for the extension option will be May 19, 2005 to May 18, 2010.
- 2.0 This is a revenue contract.
- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 Payment of fees owed to the City under the terms of this Agreement shall be \$1,000, for each month of the contract and shall be remitted to the Contract Manager on or before the tenth (10th) day of the month following the month in which sales are made. In addition, at the end of each contract year, contractor will pay the City the following amount minus \$4,000: one percent (1%) of the club's yearly net revenue (gross sales - sales tax) and eight percent (8%) of the net revenue above \$80,000 per year. This amount will be paid in three equal payments due May 31, June 30, and July 31 of each year.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, Amendment No. 1 is hereby incorporated into and made a part of the above-referenced contract.

Signature: *Matthew J. Kraft*  
Printed Name: Matthew J. Kraft  
Authorized Representative

Texas Rowing Center Inc.  
4413 Sinclair Ave.  
Austin, TX. 78756-3509

Date

10/3/05

Signed: *R.C. Hernandez*  
R.C. Hernandez, Senior Buyer  
City of Austin  
Purchasing Office

Date

10/3/05

m7  
25

**AGREEMENT BETWEEN THE CITY OF AUSTIN, TEXAS  
AND  
TEXAS ROWING CENTER, INC.  
FOR  
OPERATING A ROWING AND SCULLING CONCESSION ON TOWN LAKE**

This agreement is made on the 19 day of May, 2000, by and between the City of Austin (City), a home-rule municipality incorporated by the State of Texas, and the corporation of Texas Rowing Center, Inc., and having offices at 4010 Ramsey Avenue, Austin, Texas 78756.

**WHEREAS**, the City has a requirement for a concession on Town Lake for rental of rowboats, kayaks, instruction, coaching, associated services, and on-site sale of related commodities; and

**WHEREAS**, the Contractor has qualifications and experience in the rental of rowing and sculling equipment, and in providing instruction and coaching to develop rowing and sculling skills and to promote water safety; and

**WHEREAS**, the City desires to engage the services of this Contractor to provide the services for one of the two rowing concessions on Town Lake, with the priorities for both concessions being safety, accessibility and affordability, and careful consideration for the carrying capacity of Town Lake;

**NOW, THEREFORE**, the parties, intending to be legally bound, hereby agree as follows:

**SECTION I. GRANT OF AUTHORITY, SERVICES AND DUTIES**

**1.1 Engagement of the Contractor** Subject to the general supervision and control of the City, the Contractor is engaged to manage and provide necessary equipment and personnel to operate a rowing concession and related activities, including but not limited to non-alcoholic beverages. The Contractor shall begin work on the tasks immediately upon Contract award.

**1.2 Responsibilities of the Contractor**

**1.2.1 Resources** The Contractor shall be responsible for all personnel, equipment, and other resources required, except for the concession location.

**1.2.2 Problems Affecting Services** The Contractor will promptly inform the Contract Manager of any problems encountered that might threaten the timely provision or the adequacy of results obtained in providing the services described below.

**1.2.3 Additional Services** In the event that the need arises for the Contractor to perform services beyond those stated, the Contractor and the City will negotiate mutually agreeable terms and compensation for completing the additional services.

m7  
26

### 1.3 Responsibilities of the City.

- 1.3.1 Contract Manager The City shall designate a Contract Manager, who will be responsible for exercising general oversight and direction of Contractor's efforts in providing the services described in the Scope of Work. Specifically, the Contract Manager will be available to the Contractor to discuss and assist in the resolution of any contractual issues that might arise during the term of the Agreement and shall maintain all files for the City concerning the contract.
- 1.3.2 Feedback. The Contract Manager shall give the Contractor timely feedback on requests for changes in hours of operation, structural alterations, repairs, or improvements.
- 1.3.3 Contract Administration The Contract Manager shall maintain records provided to the City by the Contractor and shall work with City management to determine the acceptability of deliverables and services provided under the terms of this Agreement.
- 1.3.4 Concession Location The City will provide a suitable location with adequate public access to concession facilities and to adjacent shoreline from which the Contractor will operate the concession.

### 1.4 Designation of Key Personnel

- 1.4.1 Contractor The Contractor's designated Concession Manager for this Agreement is Matthew Knifton, and the Principal Contractors are Anne Marie Heilman, Matthew Knifton, and Kristin Knifton. The Concession Manager and Principal Contractors shall be responsible for the requirements of the contract.
- 1.4.2 City of Austin The Parks and Recreation Department's Contract Manager will be the Financial Manager of PARD or his designee. The Contract Manager will represent the interests of the City in resolving any and all issues that may arise incidental to and during the execution of this Agreement.
- 1.4.3 Stability The City and the Contractor resolve to use best efforts to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace the key personnel listed above, the replacement will be an individual having equivalent experience and competence in carrying out activities such as those described herein. Additionally, the Contractor will promptly notify the Contract Manager and obtain approval for the replacement.

**SECTION II. SCOPE OF WORK.** Texas Rowing shall operate a rowing concession on Town Lake to provide instructional and recreational rowing, sculling, and kayaking, with emphasis on overall esthetic appeal and compatibility with existing lake uses.

- 2.1 Location Texas Rowing will operate from a boat house facility which is located on the north side of Town Lake shoreline immediately south of Austin High School.

m  
27  
27

- 2.2 Hours of Operation Minimum hours of operation shall be seven days a week from May through September and on weekends during the remaining months of the year, except during periods of inclement weather. (Exhibit A) Contractor shall contact the Contract Manager to request approval to adjust hours of operation.
- 2.3 Utilities Contractor shall secure and pay for any required utilities on the premises necessary for the operation of the rowing concession.
- 2.4 Postings
- 2.4.1 Prices Contractor shall provide and display in a conspicuous place a list of rental prices, prices of all other items for sale, other services for sale, and hours of operation. (Exhibit B) The design and location of this posting shall be subject to the approval of the Contract Manager.
- 2.4.2 Complaint Number A Parks and Recreation Department phone number shall be included on Postings for information and complaints.
- 2.5 Employees Contractor shall provide, at Contractor's sole expense, a sufficient number of trained employees to assist him/her in the performance of the contract and to satisfactorily perform scheduled operations and meet the demands of the public at the contract premises. Contractor's staff shall wear nametags and uniforms when performing services on the City premises.
- 2.6 Equipment Contractor shall provide all equipment, and maintenance of all equipment and structures necessary for the operation of the concession.
- 2.7 Fleet Contractor shall maintain a functional fleet to include no fewer than twenty (20) boats at all times.
- 2.8 Safety Plan Contractor shall maintain a Safety Plan that includes but is not limited to detailed action plans for management, staff, and instructors in the event of an accident or injury to a concession patron or in the vicinity of the concession operation.
- 2.8.1 Personal Flotation Devices (PFDs) Contractor shall maintain adequate numbers of personal flotation devices (PFDs, life preservers) for both adults and children and maintain the PFDs in good condition. Contractor shall submit to the Contract Manager an annual inventory of the types and sizes of PFDs that includes age and condition of the PFDs.
- 2.8.2 Cardio Pulmonary Resuscitation (CPR) Contractor shall ensure that at least one employee on duty at any time is trained in first aid and CPR and that all instructors are trained in first aid and CPR.
- 2.8.3 Inspections Contractor shall submit to a minimum of four (4) safety inspections annually by Park Police, Lake Patrol, or Park Safety for compliance with applicable sections of the Texas Water Safety Act.

m7  
28

- 2.8.4 Policies Contractor shall comply with all applicable U.S. Rowing safety policies, required safety guidelines and safety procedures and shall furnish a current copy of U.S. Rowing safety policies to Contract Manager annually.
- 2.8.5 Rescue Rope Bags Contractor shall ensure that all instructor boats and powered "chase" boats are equipped with at least one rescue throw rope bag containing at least fifty (50) feet of rope. All instructors are required to be trained in the use of the throw rope bag.
- 2.9 Facility Maintenance Facilities and premises shall be maintained in good condition and repair. Contractor shall permit no advertising at or on the operation's buildings other than Contractor's business signs. Contractor shall allow no defacing of facilities.
- 2.10 Concession Repairs and Improvements Contractor shall not make any structural alterations, repairs, or improvements of the premises without written permission from the Contract Manager. Any such alteration made without permission shall become the property of the City at the termination of the contract. City reserves the right to require Contractor to restore the property to its original condition at Contractor's expense. Contractor shall make written report to Contract Manager of any needed repairs or suggested alterations or improvements.
- 2.11 Reinvestment Contractor guarantees a reinvestment of at least ten percent (10%) of net income, after sales tax and City payments, into equipment and facilities maintenance and purchase. A quarterly reconciliation shall be provided to the Contract Manager by the 10<sup>th</sup> of the month. (Quarters will be reported in January, April, July, and October.)
- 2.12 Waste Containers Contractor shall provide an adequate number of waste containers as specified by Contract Manager for the eating area, including separate containers for recyclable materials. City reserves the right to approve waste containers.
- 2.13 Citizen Comments Contractor shall provide and install a locking "suggestion box" approved by Contract Manager, to receive citizen's comments. Contractor will provide comment forms for citizen's suggestions and comments and will collect the comment cards and submit them to the Contract Manager with other required reports.
- 2.14 Complaints Contractor shall contact Contract Manager within twenty-four (24) hours regarding any complaints.
- 2.15 Behavior of Guests Contractor shall not permit undue loitering or objectionable language.
- 2.16 Glass Contractor shall not permit glass in the buildings, on concession's rental equipment or on the premises of the concession.

### **SECTION III. REPORTS AND DELIVERABLES**

- 3.1 Activity Report Contractor shall submit to Contract Manager no later than the tenth (10<sup>th</sup>) day of each month a monthly activity/attendance report to be completed on a form provided by Contract Manager.

m7  
29

- 3.2 Bank Records Contractor shall establish and maintain during the term of the contract separate records and accounts, including a separate bank account, relating to the operation of the rowing concession. These records and accounts shall be subject to examination and audit within twenty-four (24) hours of notification by Contract Manager.
- 3.3 Revenue Reports Contractor shall use a cash register to enter transactions and provide each customer with a printed receipt. The cash register shall have a grand total, started at zero upon daily commencing business and shall print out daily sales totals (Z tapes). Contractor shall submit to Contract Manager, by the tenth (10<sup>th</sup>) of each month, the Monthly Concession Revenue Report and the cash register tapes (Z tapes) from the previous month. Contractor shall retain copies of the cash register tapes for three (3) years after the contract expires.
- 3.4 Tax Forms Contractor shall provide to Contract Manager a copy of Internal Revenue Service Form 1040, Schedule C (Statement of Operations), and all other applicable federal tax forms, including Extension forms pertaining specifically to concession business. The form shall be submitted to Contract Manager annually within seven (7) days of filing with the IRS.
- 3.5 Sales Tax Reports Contractor shall submit to Contract Manager a copy of the monthly or quarterly sales tax report by the 10<sup>th</sup> of each month.

#### SECTION IV. COMPENSATION PLAN

- 4.1 Payment Payment of fees owed to the City under the terms of this Agreement shall be \$667.00, for each month of the contract and shall be remitted to the Contract Manager on or before the tenth (10<sup>th</sup>) day of the month following the month in which sales are made. In addition, at the end of each calendar year, contractor will pay the City one percent (1%) of the club's yearly net revenue (gross sales – sales tax) and eight percent (8%) of the net revenue above \$80,000 per year. This payment will be in one lump sum, due May 31 of each year.
- 4.2 Interest If payment is not timely made, interest shall accrue on the unpaid balance at the lesser of one percent (1%) per month or the maximum lawful rate; except, if payment is not timely made for a reason, interest shall not accrue until ten (10) days after the grounds for withholding payment have been resolved.
- 4.3 Transition Funding. Contractor shall establish a funding source which shall be available to meet the obligations to dues-paying clubmembers upon contract termination. The amount of funds to be secured shall be at a minimum equal to the unmet obligation to all dues-paying clubmembers at any point in time.
- 4.3.2 Performance Bond
- 4.3.2.1 The Contractor shall provide a Performance Bond in an amount equal to \$20,000. In addition, Contractor shall maintain a balance in a bank account to satisfy the remaining unmet obligation to all dues-paying

m7  
30

clubmembers at any point in time. This Performance Bond and bank account number will be provided to the City within fourteen (14) days of contract signing. The Performance Bond and bank account shall serve as security for the faithful performance of all of the Contractor's obligations to dues-paying clubmembers.

4.3.2.2 Amendments made to the Performance Bond and the bank account in order to maintain the minimum security of funding shall be provided to the Contract Manager by the 10<sup>th</sup> of the month after the amendment has been secured.

4.3.2.3 The Performance Bond shall be issued by a solvent company authorized to do business in the State of Texas, and shall meet any other requirements established by law or by the City pursuant to applicable law. The Performance Bond shall remain in effect throughout the term of the Contract and shall be renewed for each respective extension.

## SECTION V. TERM AND TERMINATION

5.1 Term. This Agreement shall become effective on May 19, 2000 and shall expire five (5) years from this date. This Agreement may be extended thereafter for up to three (3) additional five (5) year periods subject to the approval of the Contractor and the City Manager or his designee.

5.1.1 Extensions Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 days unless mutually agreed on in writing).

5.2 Right to Assurance. Whenever one party to the Agreement in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Agreement.

5.3 Default. The Contractor shall be in default under the Agreement if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Agreement, (b) fails to provide adequate assurance of performance under Paragraph 5.2, or (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States.

5.4 Termination for Cause. In the event of a default by the Contractor, the City shall have the right to terminate the Agreement for cause, by written notice effective ten (10) days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys'

fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for up to three (3) years and any offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Agreement are cumulative and are not exclusive of any other right or remedy provided by law.

- 5.5 Termination Without Cause. The City shall have the right to terminate the Agreement, in whole or in part, without cause any time upon thirty (30) days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Agreement, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds appropriated or otherwise legally available for such purposes, for all improvements that will remain, reasonable settlement costs, including fair market value less depreciation for all approved permanent structures constructed at the Contractor's expense in the City parkland as of the effective date of termination.
- 5.6 Fraud. Fraudulent statements by the Contractor on any Offer shall be grounds for the termination of this Agreement for cause by the City and may result in legal action.
- 5.7 Stop Work Notice. The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.
- 5.8 Take over. City reserves the right to take over and operate the rowing concession on Town Lake, using the equipment of Contractor at any time if the Contractor or Contractor's agent is unable to perform under the contract. Should City operation become necessary Contract Manager will, when practicable, give Contractor notice of such intention to operate the concession by mailing notice of intention to Contractor at Contractor's last known address by regular U.S. Mail. City will render an account to Contractor of all business done during City operation and shall be entitled to deduct from the gross sales all costs incurred by City operation. All costs incurred by City operation of the concession shall be included in the calculation of annual gross sales reported to City by Contractor as provided in this contract.

## SECTION VI. MISCELLANEOUS

### 6.1 Workforce

- 6.1.1 Workers The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Agreement.
- 6.1.2 Controlled Substances The Contractor, its employees, subcontractors, and subcontractor's employees may not use or possess any firearms, alcoholic or other intoxicating beverages, illegal drugs or controlled substances while on the

m7  
32

job or on the City's property, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

- 6.1.3 Employee Violations If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Agreement services, and may not employ such worker again on Agreement services without the City's prior written consent.

## 6.2 Right to Audit.

- 6.2.1 City's Access to Records The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Agreement.
- 6.2.2 Contractor's Responsibility The Contractor shall retain all such records for a period of three (3) years after final payment on this Agreement or until all audit and litigation matters that City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to pay to the City any underpayments disclosed by any such audit.
- 6.2.3 Subcontractors The Contractor shall include sections 6.2.1 and 6.2.2 above in any subcontractor agreements entered into in connection with this Agreement.

## 6.3 Indemnity.

### 6.3.1 Definitions:

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

m7  
33

6.3.2 The Contractor shall defend (at the option of the City), indemnify, and hold the City, its successors, assigns, officers, employees and elected officials harmless from and against all Indemnified Claims arising out of, incident to, concerning or resulting from the fault of the Contractor, or the Contractor's agents, employees or subcontractors, in the performance of the Contractor's obligations under the Agreement. Nothing herein shall be deemed to limit the rights of the City or the Contractor (including, but not limited to, the right to seek contribution) against any third party who may be liable for an indemnified claim.

6.4 Insurance. Insurance shall be provided as follows:

6.4.1 General Requirements.

- 6.4.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Agreement.
- 6.4.1.2 The Contractor shall forward Certificates of Insurance with the endorsements required below to the City as verification of coverage within fourteen (14) days of contract signing and prior to beginning work under this Agreement, unless otherwise notified.
- 6.4.1.3 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- 6.4.1.4 The Contractor must submit certificates of insurance for all subcontractors to the City prior to them commencing work on the project.
- 6.4.1.5 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- 6.4.1.6 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the Agreement number and the following information:

City of Austin Purchasing Office  
ATTN: Lydia Rodriguez-Torres  
P. O. Box 1088  
Austin, Texas 78767

m7  
34

- 6.4.1.7 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Agreement, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- 6.4.1.8 If insurance policies are not written for amounts specified below, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- 6.4.1.9 The City shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- 6.4.1.10 The City reserves the right to review the insurance requirements set forth during the effective period of this Agreement and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- 6.4.1.11 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Agreement or as required in the Agreement.
- 6.4.1.12 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.
- 6.4.1.13 The Contractor shall provide the City thirty (30) days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Agreement.
- 6.4.1.14 The insurance coverages specified below are required minimums and are not intended to limit the responsibility or liability of the Contractor.

#### 6.4.2 Specific Requirements.

- 6.4.2.1 Worker's Compensation and Employers' Liability Insurance. Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Art. 8308-1.01 et seq Tex. Rev. Civ. Stat.). The minimum policy limits for Employer's Liability are \$100,000 bodily injury

m7  
35

each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.

6.4.2.1.1 The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:

- (i) Waiver of Subrogation, Form WC 420304
- (ii) Thirty (30) days Notice of Cancellation, Form WC 420601

6.4.2.2 Commercial General Liability Insurance. The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A and B.

6.4.2.2.1 The policy shall contain the following provisions:

- (i) Blanket contractual liability coverage for liability assumed under this Agreement and all Contracts related to the project.
- (ii) Independent Contractor's Coverage.
- (iii) Products/Completed Operations Liability for the duration of the warranty period.

6.4.2.2.2 The policy shall also include these endorsements in favor of the City of Austin:

- (i) Waiver of Subrogation, Endorsement CG 2404
- (ii) Thirty (30) days Notice of Cancellation, Endorsement CG 0205
- (iii) The City of Austin listed as an additional insured, Endorsement CG 2010

6.5 Claims. If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Agreement, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to Norwood Tower, 114 West 7th Street, 5th floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

6.6 Incorporation of Contract Documents/Order of Precedence. The documents listed below, taken together, contain the terms and conditions of the Agreement between the parties. In the event of a conflict between any of the provisions governing this business relationship, any inconsistency shall be resolved by

m7  
36

giving precedence in the following order: (1) This agreement (2) The Request for Proposal, including the Proposal Summary and Clarification.

- 6.7 Notices. Unless otherwise specified, any notice, request, or other communication required or appropriate to be given under this Agreement shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by any other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, facsimile, or commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

to the City:

City of Austin  
ATTN: PARD Contract  
Manager  
PO Box 1088  
Austin, Texas 78767-8828

: to the Contractor:

Texas Rowing Center, Inc.  
ATTN: Matthew J. Knifton  
4010 Ramsey Avenue  
Austin, TX 78756  
Phone: 512-451-0898  
Fax: 512-469-6180

with a copy to:

City of Austin  
ATTN: Contract Compliance  
Purchasing Department  
PO Box 1088  
Austin, Texas 78767-8828

- 6.8 Rights to Contractual Material. Material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Open Records Act, Chapter 552, Texas Government Code.
- 6.9 Advertising. The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Agreement, except to the extent required by law.
- 6.10 No Contingent Fees. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Agreement upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Agreement without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

m7  
31

- 6.11 Gratuities. The City may, by written notice to the Contractor, cancel the Agreement without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Agreement or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Agreement is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
- 6.12 Prohibition Against Personal Interest in Contracts. No officer, employee, independent Contractor, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Agreement resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Agreement voidable by the City.
- 6.13 Independent Contractor. The Agreement shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent Contractor. The Contractor agrees and understands that the Agreement does not grant any rights or privileges established for employees of the City.
- 6.14 Assignment-Delegation. The Agreement shall be binding upon and inure to the benefit of the City and the Contractor and their respective successors and assigns, provided, however, that no right or interest in the Agreement shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Agreement is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Agreement.
- 6.15 Waiver. No claim or right arising out of a breach of the Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Agreement, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
- 6.16 Modifications. The Agreement can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Agreement.

m7  
38

6.17 Interpretation. The Agreement is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Agreement. Although the Agreement may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Agreement, the UCC definition shall control, unless otherwise defined in the Agreement.

6.18 Dispute Resolution.

6.18.1 If a dispute arises out of or relates to the Agreement, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below.

6.18.2 Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Agreement prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the costs of mediation equally.

6.19 Jurisdiction and Venue. The Agreement is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Agreement shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive

m7  
39

personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

- 6.20 Invalidity. The invalidity, illegality, or unenforceability of any provision of the Agreement shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is the essence of the Agreement be determined to be void.

This Agreement is executed in duplicate originals to be effective as of May 19, 2000.

Texas Rowing Center, Inc.:

CITY OF AUSTIN:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Matthew J. Krutts  
Matthew J. Krutts  
Owner  
5/19/00

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Susanne Dumbke  
Purchasing Officer  
5/19/00