

ATTACHMENT A

MUTUAL TERMINATION OF COOPERATIVE AGREEMENT BETWEEN THE CITY OF NEWPORT BEACH AND THE REGENTS OF THE UNIVERSITY OF CALIFORNIA FOR THE MARINA PARK COMMUNITY BOATING PROGRAM

THIS MUTUAL TERMINATION OF COOPERATIVE AGREEMENT ("Termination") is made and entered into as of this 23 day of June, 2020 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California domestic non-profit corporation, on behalf of the University of California, Irvine ("University"), whose address is 250 Public Services Building, Irvine, California 92697, and is made with reference to the following:

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City and University entered into a certain Cooperative Agreement between the City of Newport Beach and the Regents of the University of California for the Marina Park Community Boating Program, dated September 8, 2015 ("Agreement").
- C. Section 6.3.2 of the Agreement provides that City and/or the University shall have the right, at its sole and absolute discretion and without cause, to terminate the Agreement at any time by giving no less than one year (365 calendar days) prior written notice to the respective other party, however, the City and University mutually agree to terminate the Agreement at this time.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERMINATION

1.1 The City and University hereby waive the right to one (1) year prior written notice of termination and mutually agree to terminate the Agreement, attached hereto as Exhibit "A," which shall take effect on June 30, 2020 ("Termination Date"). Upon the Termination Date, Programming authorized under Sections 1.1 through 1.9 of the Agreement shall terminate except as provided in Section 1.2.

1.2 Notwithstanding the foregoing, Section 1.7 (UCI Sailing Association (UCISA) Members) of the Agreement authorizes UCISA members to use University fleet subject to certain conditions. University provided City a list of existing UCISA members and City agrees to honor UCISA members use of vessels identified in Section 4.2.5 of this Termination subject to availability and term of membership, provided the UCISA member has successfully passed skipper rating tests. These rated members may sign up for "open sail hours" in accordance with Section 1.7 of the Agreement, and membership registration and boat check-outs at Marina Park shall be managed by the City.

2. ACCOUNTING

2.1 Section 1.13 (Accounting and Reconciliation) of the Agreement requires the City and University to provide an accounting to the other party within specific time frames for the immediately preceding enrollment period. On or before June 30, 2020, the University shall provide the City a final statement, in writing, certified by the University to be correct, showing the total enrollment fees attributable to the Marina Park Community Boating Program ("Program") during the Spring 2020 and any precedent academic quarter, a reconciliation statement supporting the final statement and pay any amounts owed to the City.

2.2 Likewise, on or before June 30, 2020, the City shall provide University a final statement, in writing, certified by the City to be correct, showing the total enrollment fees attributable to the Program during the preceding quarter or any preceding period, a reconciliation statement supporting the final statement, and pay any amounts owed to the University.

3. FACILITY

3.1 Dedicated Space. On or before the Termination Date, University shall remove all equipment, personal property, or materials owned by University from the Facilities identified in Section 2 (Facility) of the Agreement. The City shall retain ownership of all Program Facilities and their associated furniture, fixtures, and equipment as provided in Section 2.2 of the Agreement.

3.2 Security. University shall provide all materials in its possession regarding use of the Program Facility's security system, all key cards and pass codes to the City on or before the Termination Date.

4. EQUIPMENT

4.1 This Section 4 (Equipment) addresses the allocation of Equipment identified in Section 3.2 and more particularly described in Exhibit "D" ("Vessel Fleet") of the Agreement based upon this Termination. Equipment owned or acquired exclusively by the City prior to, or during the term of this Agreement, includes the following:

- 4.1.1 Two (2) RS Ventures
- 4.1.2 Twelve (12) RS Quests
- 4.1.3 Twenty (20) Sabots
- 4.1.4 Three (3) 2011 WD Schock Lido 14's
- 4.1.5 Eight (8) Kayaks - Singles
- 4.1.6 Sixteen (16) Kayaks - Doubles
- 4.1.7 Thirty-five (35) Stand-Up Paddleboards

4.2 Equipment owned or acquired exclusively by the University prior to, or during the term of this Agreement, includes the following:

- 4.2.1 Seven (7) Vanguard Flying Juniors (FJ's)
- 4.2.2 One (1) 1984 Boston Whaler Motor Boat
- 4.2.3 Three (3) 2012 WD Schock Lido 14's
- 4.2.4 Two (2) 2016 Zodiac Inflatable Boats
- 4.2.5 Six (6) 2011 Waterline J22's

4.3 The City shall retain ownership of the vessels identified in Section 4.1 above. University shall retain ownership of the vessels identified in Sections 4.2.1 through 4.2.4. The University agrees to sell to the City and the City agrees to purchase from the University the vessels identified in Section 4.2.5 for the fair market value identified below, plus City shall pay all applicable taxes and fees, including sales taxes and transfer fees directly to the California Department of Motor Vehicles. (The vessels identified in Section 4.2.5 may collectively be referred to herein as "Transferred Vessels.") Details regarding the vessels described in Sections 4.1 and 4.2 above are provided in Exhibit "B" which is attached hereto and incorporated by reference. University shall remove the vessels identified in Sections 4.2.1 through 4.2.4 and any other University property within ten (10) days of the Termination Date.

4.4 Upon payment by City of the amount set forth in the following paragraph, University shall execute and deliver all necessary documentation to ensure the transfer of title and ownership of the Transferred Vessels from University to City and provide all maintenance records for the Transferred Vessels to the City on or before the Termination Date. City agrees to pay University all amounts due under the Agreement and this Termination via wire transfer, plus Forty-Five Dollars and 00/100 (\$45.00) for wire transfer fee each wire transfer. Following execution of this Termination, University shall provide wire transfer instructions to City.

The estimated fair market value of the vessels identified in Section 4.2.5 is Twenty Thousand Dollars and 00/100 (\$20,000.00) per vessel, for a total of One Hundred Twenty Thousand Dollars and 00/100 (\$120,000.00) for all six (6) vessels. The City acknowledges and agrees that it has had adequate time prior to the execution of this Termination to perform any desired or recommended inspection and/or testing of the Transferred Vessels. Further, City expressly understands and agrees the Transferred Vessels are being sold by University to City "as is" and without any warranty.

4.5 Fleet Refurbishment Payment. The City and University mutually agree that all fleet refurbishments payments pursuant to Section 3.5 (Annual fleet refurbishment payment) of the Agreement have been paid and that no outstanding balances are owed by either party.

5. STAFFING

Under Section 4 (Staffing) of the Agreement, University assumed staffing responsibilities for the Program and University or its employees are not agents or employees of the City. No civil service status or other right of employment accrued, or shall accrue, to University or its employees. Nothing in the Agreement or this Termination shall be deemed to constitute approval for University or any of University's employees or

agents, to be the agents or employees of City. Upon Termination, the City shall not be responsible for the employment, termination, benefits or any amounts owed to University employees and/or agents.

6. INDEMNIFICATION / INSURANCE

Each party shall indemnify, defend, and hold harmless the other party as set forth in Section 5 (Indemnification/Insurance) of the Agreement, and maintain required levels of insurance as set forth in Exhibit "E" (Insurance Requirements) of the Agreement, until the date that title and ownership of all Transferred Vessels are officially in the name of the City. Upon the transfer of title and ownership in all Transferred Vessels to the City, City shall defend, indemnify and hold harmless University, UCI, UC Regents, its officers, employees, and agents from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury, including death, or damages arising out of the use of the Transferred Vessels under this Termination.

7. UNIVERSITY'S RESPONSIBILITIES

University agrees to reasonably cooperate with the City in the transition of the operation of the Program by the City or a new provider including providing requested documents and/or responding to reasonable informal requests for information in a timely manner. In light of COVID-19, the City understands and agrees that delays may occur in the University's response to the City's requests for documents and/or information.

8. STANDARD PROVISIONS

8.1 Recitals. City and University acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Termination.

8.2 Waiver. By this Termination, the City and University waive any breach, of any term, covenant or condition of the Agreement except for any breach of any term, covenant or condition that is not reasonably foreseeable at the time of execution of this Termination.

8.3 Integrated Contract. This Termination represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

8.4 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Termination and the Agreement or any other attachments attached hereto, the terms of this Termination shall govern.

8.5 Interpretation. The terms of this Termination shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Termination or any other rule of construction which might otherwise apply.

8.6 Severability. If any term or portion of this Termination is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

8.7 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

8.8 No Attorneys' Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorneys' fees.


8.9 Counterparts. This Termination may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Termination to be executed on the dates written below.

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

Date: 6/9/20

By: 
Aaron C. Harp
City Attorney

ATTEST:

Date: _____

By: _____
Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Will O'Neill
Mayor

**UNIVERSITY: THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA,** a
California domestic non-profit corporation

Date: 6/8/2020

By: 
Snehal Bhatt
Chief Procurement Officer

[END OF SIGNATURES]

Attachments: Exhibit A – Cooperative Agreement Between the City of Newport Beach and the Regents of the University of California for the Marina Park Community Boating Program

Exhibit B - Vessel Fleet Detail

C-10282

**COOPERATIVE AGREEMENT
BETWEEN THE CITY OF NEWPORT BEACH AND
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
FOR THE MARINA PARK COMMUNITY BOATING PROGRAM**

THIS COOPERATIVE AGREEMENT ("Agreement"), is made and entered into this 8th day of September, 2015 by and between the CITY OF NEWPORT BEACH ("City") and The Regents of the University of California, (hereinafter the "University") individually referred to as "Party" or collectively as "Parties."

RECITALS

WHEREAS, City's Marina Park Project ("Project") encompasses a 10.5-acre site and contemplates construction of a public park; a 24,000-square-foot Community and Sailing Center building; a 23-slip marina; a reconstructed 19th Street restroom building; a freestanding playground lighthouse feature; themed playground; café; outdoor fitness circuit; parking lots; and frontage street improvements;

WHEREAS, the University expressly acknowledges that the legislature of the State of California has placed public trust restrictions on the use of a portion of the land where the Project is situated pursuant to that certain "Compromise Title Settlement and Land Exchange Agreement Regarding Certain Lands in the Vicinity of Lower Newport Bay City of Newport Beach California" recorded by the Orange County Clerk-Recorder as Instrument No. 2012000667036 on October 31, 2012 in the Official Records of the County of Orange, California and the 1978 legislative grant found in Chapter 74 of the Statutes of 1978 ("Beacon Bay Bill") wherein City acts as trustee, as portions of the Project site constitute filled tidelands. City has made no representation or warranty relative to the validity of the Beacon Bay Bill or the power of the legislature of the State of California to remove public trust restrictions on tidelands through legislation. The University shall not take any action that would cause City to be in violation of any provisions of the Beacon Bay Bill. If the State of California terminates, or modifies the Beacon Bay Bill to prohibit the uses contemplated under this Agreement, this Agreement shall terminate as a result and the Parties shall be released from all liabilities and obligations under this Agreement and City shall owe no compensation to the University.

WHEREAS, City strives to enhance the quality of life by providing diverse opportunities in safe and well-maintained facilities and parks and pledges to respond to the community needs by creating quality educational, environmental, recreational, cultural, and social programs for people of all ages. The City continues to foster community partnerships and opportunities to enhance recreation offerings while minimizing general fund support; and

WHEREAS, since 1965, the University has offered a comprehensive boating program in Newport Harbor and has partnered with City since 2009 to successfully

manage City's summer boating program. The University's focus on safety and education has delivered a variety of recreational boating opportunities in Newport Beach through the highest of training standards for beginner and continuing education in sailing and boating; and

WHEREAS, City and the University desire to enter into a Cooperative Agreement to allow City's boating program to be available on a year-round basis while minimizing overhead costs through utilization of the University's highly-trained staff. Through a Cooperative Agreement, the University will be able to maintain its university boating program in Newport Harbor at Marina Park, in conjunction with the programs offered by the City of Newport Beach; and

WHEREAS, a Cooperative Agreement between the City's Recreation & Senior Services Department and the University's Recreation and Boating Program will facilitate the expansion of City's summer sailing program into a year-round boating safety, education and recreational program at the newly constructed Marina Park Sailing Center; and

WHEREAS, City and the University share a common mission and set of values in providing quality programs and accessibility to boating for all abilities, through excellent customer service, creativity and innovation, with an emphasis on learning through recreational programs; and

WHEREAS, by entering into a Cooperative Agreement, City and the University commit to providing beginning through advanced sailing, kayaking and stand up paddle boarding classes for Newport Beach residents, visitors and the University campus affiliates at Marina Park; and

WHEREAS, this Agreement is intended to memorialize the obligations and responsibilities of the Parties in order for the parties to offer a successful boating program to the community and the University throughout the term of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals of fact, and of the mutual covenants and conditions contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. PROGRAMMING

1.1 Description of Programming. The boating program that is jointly operated by City and the University at Marina Park shall be known as the Marina Park Community Boating Program and shall be referred to hereinafter as the "Program." University will manage the operations of the comprehensive boating Program to include classes and programs in the areas of sailing, stand up paddling and kayaking, which will be available to youth, teens and adult residents of the City of Newport Beach, visitors and the University affiliates. Programs shall be offered in the beginner to advanced skill

level categories, utilizing equipment including, but not limited to, sail and powerboats, dinghies, keelboats, stand up paddle boards and kayaks. These programs are generally described in the attached Exhibit "A", which is incorporated herein by this reference, and is a Sample Quarterly Programming Activity Schedule. The City and the University agree to work cooperatively in good faith to adjust this schedule as necessary based on community needs and demand.

1.2 Except as provided otherwise herein, the University shall be the exclusive vendor at Marina Park for programs in the following disciplines: sailing, stand up paddling and kayaking.

1.2.1 The City of Newport Beach shall continue to operate its municipal camp programs including paddle boarding and kayaking and shall provide, maintain and be responsible for City-owned equipment when doing so.

1.2.2 If the University provides prior written approval, which approval may be withheld at the University's sole and absolute discretion, other third-parties may enter into a contract with City to operate programs in the areas of sailing, stand up paddling or kayaking at Marina Park.

1.3 University and Scheduled Classes. Program registrations for the University staffed programming will be administered by City ActiveNet software program or equivalent. City shall pay the University an amount equal to 65% of the amount of total enrollment fees collected, minus a five dollar (\$5.00) per transaction administration fee for each class held.

1.4 Private and Semi-Private Lessons. Registrations for Private and Semi-Private lessons (1-2 registered participants) will be administered by City ActiveNet program or equivalent. City shall pay the University an amount equal to 75% of the amount of total enrollment fees collected, minus a five dollar (\$5.00) per transaction administration fee for each class held.

1.5 University-Affiliated Private Group Classes. From time to time, University administers custom programming for the University-affiliated groups such as UCI Student groups or UCI Faculty groups. The University shall collect and retain 75% of collected registration fees and pay 25%, minus a five dollar (\$5.00) per transaction administration fee to City.

1.6 Non-Affiliated Private Group Classes. Programs for a variety of non-affiliated organizations such as Girl Scouts or Corporations, which are organizations not associated with the University, may be provided and registration for these programs will be administered by City ActiveNet program. City shall pay the University an amount equal to 65% of the amount of total enrollment fees collected, minus a five dollar (\$5.00) per transaction administration fee for each class held.

1.7 UCI Sailing Association (UCISA) Members. UCISA members have successfully passed skipper ratings tests and are permitted to use the University fleet of sailboats for their personal use. Up to 50% of membership slots shall be open to the University affiliates and 50% of slots shall be open to residents of the City of Newport

Beach. Rated skippers with a current membership shall have access to an online registration system and may sign up for "open sail hours." Boat check-outs at Marina Park will be managed and facilitated by the University. Membership registration shall be administered by and the University. The University shall collect and pay City an amount equal to 25% of the amount of total membership fees collected, minus a five dollar (\$5.00) per transaction administration fee.

1.8 UCI Sailing Team. The UCI Sailing Team ("UCI Team") is comprised of approximately 20 undergraduate students who compete in inter-collegiate regattas. The UCI Team utilizes their fleet of 14' Flying Juniors ("FJ's"), which shall be stored and operated at Marina Park along with their associated equipment. The FJ's may be used for advanced racing classes in supervised class settings offered to the public. The UCI Team shall be the only competitive sailing team with practice and boat storage at Marina Park. Additional teams may be added with the mutual consent of both the University and City. UCI Team members may serve as the University's boating program instructional staff and are considered role models to youth and adults who matriculate through the Program.

1.9 Boating Program Special Events. All events outside of regularly scheduled class programming and private or custom class programs (i.e., Regattas) that are considered by City's Municipal Code as "Special Events" shall be regulated by Chapter 11.03 of the Newport Beach Municipal Code as the same may be amended from time to time.

1.10 Meet and Confer. City and the University shall meet on a quarterly basis to discuss the Marina Park Community Boating Program to assure a cohesive effort in the programming of the Marina Park Sailing Center.

1.11 Class Slots. All Program classes (excluding UCISA and the University or general program Private Group Classes) shall be open to the general public. Certain programs will have restrictions based on age, skill level, experience levels and prerequisites. Classes will be run jointly and registration will be available to University affiliates and the general public, with the special attention, consideration and intention to allow for equal access and class spaces to University and City affiliates.

1.12 Fees to All Others. City, by virtue of the "Beacon Bay Bill," acts on behalf of the State of California as the trustee of tidelands located within City's limits. As the Program classes will be located on that portion of Marina Park that is located on tidelands and in accordance with the non-discrimination language contained within the Beacon Bay Bill, City shall charge the same fees to City of Newport Beach residents as non-residents.

1.13 Accounting and Reconciliation. Within thirty (30) calendar days after the end of each academic quarter beginning with the first full quarter following the commencement of operation of the Marina Park Community Boating Program and for the term hereof, as may be extended as provided herein, University shall furnish to City a statement in writing, certified by University to be correct, showing the total enrollment

fees attributable to the Marina Park Community Boating Program during the preceding quarter. The fees due to City pursuant to this section shall be remitted to the City concurrent with the submission of the reconciliation statement.

Within twenty one (21) business days after the final class meeting, City shall pay the University an amount equal to the percentage identified herein of the total amount of enrollment fees collected for the class minus a five dollar (\$5.00) per person administration fee for each enrolled class held:

2. FACILITY

2.1 The University shall be responsible for safeguarding the facility, as defined below, which may only be utilized for mutually agreed upon purposes identified in this agreement. The University-run programs require the University supervision of the facility at all times.

2.2 Dedicated Space. The Program's Facilities (hereinafter "Facilities") include two (2) office spaces furnished by City and a sailing bay provided for use by the University as generally depicted on Exhibit "B" attached hereto and incorporated herein. Office one (1) shall be dedicated as a Sailing Director's Office and shall be furnished with one (1) desk and chair, two (2) guest chairs, one (1) computer, monitor, and printer. Office two (2) shall be dedicated as a reception/registration office and shall be furnished with built in desk, one (1) computer, one (1) monitor and printer.

2.3 Classroom Space. All sailing classes conducted under the Program shall be granted space as available at no charge. Requests for space shall coincide with City's quarterly *Newport Navigator* production schedule for class submissions. All submissions shall be submitted prior to the *Newport Navigator* proposal deadline each quarter.

2.4 Security. A security system and key card system shall be provided by City, training to be provided on operation of the system to the University Boating Director.

2.5 Signage. Permanent signage shall be provided by City for the University at the sailing bay office. The University shall provide a logo and any necessary images to complete the production of signage. The University shall be given the opportunity to review and approve any signage prior to production.

2.6 Janitorial Service. The City shall provide janitorial service for Office one (1) and Office two (2). The University shall be responsible for providing janitorial maintenance for the sailing bay.

2.7 Dock Space. Dock space and boat storage shall be provided by City and utilized by the University as further detailed in Exhibit "C", as attached hereto and incorporated herein. Dock space shall be maintained by City.

2.7 Parking. Non-exclusive parking shall be provided in the Marina Park parking lots.

2.8 Utilities. All associated with the operation of the Program, including refuse, shall be paid by City.

3. EQUIPMENT

3.1 The University shall be responsible for safeguarding the equipment, as defined herein, and the equipment may only be utilized for the mutually agreed upon uses identified in this Agreement. All University-scheduled and affiliated programs require University supervision of the equipment at all times.

3.2 Equipment. Equipment shall be defined to include the following:

3.2.1 Boat, Paddle Board and Kayak Fleet. An existing fleet shall be increased to make whole the Lido (or equivalent), Sabot, and Boston Whaler or power boat equivalent boat fleet as detailed in Exhibit "D", as attached hereto and incorporated herein. City and the University agree to meet and confer in good faith and on a regular basis to ensure that Exhibit "D" is updated as necessary to maintain the existing fleet. The City shall purchase the Lidos and Sabots (or equivalent), Boston Whaler equivalent (coach power boats), Paddle Boards and Kayaks. Equipment purchased by City shall be referred to herein as "City Equipment". The term "Equipment" includes the "City Equipment". The City shall lease City Equipment to the University for a nominal fee of One Dollar and 00/100 (\$1.00) per vessel per year commencing on December 1st, 2015.

3.2.2 J22 Fleet. The University shall purchase and maintain the J22 Fleet (or equivalent) at its sole cost and responsibility. The University will provide six (6) already-owned J22s at the beginning of the program and will determine if additional or replacement vessels need to be purchased in the future.

3.2.3 Flying Juniors (FJs). The University shall purchase and maintain the FJ Fleet (or equivalent) at its sole cost and responsibility. The University will provide eight (8) already-owned FJs at the beginning of the program and will determine if additional or replacement vessels need to be purchased in the future.

3.2.4 The Program shall utilize boats and equipment included on Exhibit "D" and purchased by either the University or City. The University shall maintain insurance for the J22 and FJ Fleet, and all vessels stored at Marina Park (except for the City-owned equipment that is solely used for City (not joint) program). The University is responsible for all maintenance associated with the fleet. The University's insurance shall satisfy the requirements set forth in Exhibit "E," which is attached hereto and incorporated herein by this reference.

3.3 Equipment Storage. The racks and storage facilities for boats, Paddle Boards, Kayaks, and related support equipment shall be purchased by City. The ongoing maintenance, as defined herein, of items shall be responsibility of the University.

3.4 Boat Maintenance. All Boats, Paddle Boards, and Kayaks shall be maintained by the University. Maintenance shall be inclusive of cost and labor to maintain the fleet in a condition that is safe and seaworthy. Maintenance shall include

regular washing, polishing, sanding, and varnishing; frequent assessment for broken/near broken or loose parts; proper storage and care of Equipment. When breakdowns outside of Program's control occur, repairs shall be made with care and in a timely manner. If major damage occurs (damage resulting in repairs over \$500.00) to a vessel that is a Lido, Sabot, Boston Whaler, Kayak or stand up Paddle Board, City and the University shall each be responsible for paying fifty percent (50%) of the cost of repairs and/or replacement parts of vessels, which may include the costs associated with any insurance deductibles.

3.5 Annual fleet refurbishment payment. Commencing on July 1, 2017, and continuing each City fiscal year thereafter, City shall pay to the University up to five thousand dollars and 00/100 (\$5,000.00) annually to allocate to expenses relating to repairs, maintenance, equipment, and fleet preparation associated with the Lido, Sabot, Boston Whaler, Kayak, or stand up Paddle Board fleet for the year based on actual repair costs. City will reimburse University upon submission of receipts.

3.6 Capital Purchases of Fleet. As the fleet ages and repair of boats is no longer cost effective new boats shall be purchased. The parties agree to work together cooperatively to meet and confer in good faith in order to plan and fund the fleet as needed. Every effort shall be made by the University and City to seek and secure grants to defer the cost of capital purchases. All boating equipment, donations or vessel purchases shall be mutually agreed upon by the University and City. This includes Lidos, Sabots, Paddle Boards, Kayaks, and Boston Whalers.

4. STAFFING

4.1 The University to provide the following staffing:

a. The University shall designate a Boating Director that has expertise and experience in boating program management and who will oversee the day-to-day operations of the Program and the Equipment. This person shall serve as the primary contact for the University and City may rely on the representations and approvals provided by Boating Director.

b. The University shall provide maintenance personnel that will be responsible for the boating fleet and all related Equipment. Equipment shall be maintained at a level that protects the value of the property, is safe and seaworthy, and available for the Program.

c. The University shall provide instructional staff that are trained in proper boating instructional technique, and are compliant in all related participant and boating safety standards.

d. The University shall provide sufficient management, waterfront supervisory staff, and office support to ensure that all participants' needs are addressed in a timely manner and that the safety of the program and security of the facility and equipment is maintained.

4.2 All Contractors and their employees, agents and representatives must submit to and pass a criminal background investigation by providing a complete set of fingerprints to the City at least thirty (30) calendar days prior to teaching, substituting for contractor or assisting with any Class. Such Contractors and their employees, agents and representatives are required to submit fees in the amount of up Seventy Three Dollars and 00/100 (\$73.00) per person to the City of Newport Beach, Recreation & Senior Services Department, to cover all costs associated with fingerprinting through the City of Newport Beach Police Department and the Department of Justice. Fingerprints may be required to be updated every five (5) years. Upon the University's request, the City will provide written confirmation of completed background investigations.

4.3 All Classes involving minors age seventeen (17) or younger must be taught in an open atmosphere where parents and guardians are able to observe Class instruction, if so desired. At no time can the parent or guardian of a minor be denied access to a Class. By signing this Agreement, the University agrees to the provisions of this Paragraph.

5. INDEMNIFICATION / INSURANCE

5.1 The University shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, and employees (collectively, the "Indemnified Parties") from and against any and all claims (including attorney's fees and reasonable expenses for litigation and settlement) for any loss or damages, bodily injuries, damage to, or loss of property caused by the negligent acts, omissions or willful misconduct by City, its officers, directors, employees or agents in connection with or arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of UCI, its officers, employees, or agents.

5.2 City shall indemnify, defend and hold harmless the University, its officers, directors, employees or agents, and/or its officers, directors, employees or agents from and against any and all claims (including attorney's fees and reasonable expenses for litigation and settlement) for any loss or damages, bodily injuries, damage to, or loss of property caused by the negligent acts, omissions or willful misconduct by City, its officers, directors, employees or agents in connection with or arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of UCI, its officers, employees, or agents.

5.3 Without limiting the University's indemnification of City, and prior to commencement of the Program, the University shall obtain, provide and maintain at its own expense during the term of this Agreement or for other periods as specified in this Agreement, policies of insurance of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit "E," and incorporated herein by reference

6. ADDITIONAL PROVISIONS

6.1 Term of Agreement. The initial term of this Agreement shall be ten (10) years from the Effective Date ("Initial Term"), unless terminated sooner as provided in this Agreement, or extended as provided in Section 6.2.

6.2 Option to Extend. Provided the University is not then in default under this Agreement beyond applicable notice and cure periods, City may extend the term of this Agreement for two (2) additional successive terms of five (5) years (the "Option Term") commencing on expiration of the Initial Term or an Option Term, on the same terms and conditions as contained in this Agreement. The University must exercise its option by giving City written notice of its intention to extend the Term at least six (6) months prior to expiration of the Initial Term or an Option Term.

6.3 Termination.

6.3.1 In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of thirty (30) calendar days, or if more than thirty (30) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within thirty (30) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, and thereafter diligently take steps to cure the default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

6.3.2 Notwithstanding the above provisions, City and/or the University shall have the right, at its sole and absolute discretion and without cause, of terminating this Agreement at any time by giving no less than one year (365 calendar days) prior written notice to the University or City (other party). In the event of termination under this Section, City shall pay the University for costs incurred as agreed upon under this Agreement up to the effective date of termination for which the University has not been previously paid. On the effective date of termination, the University shall deliver to City all reports, documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

6.3.3 Shared equipment should be split to each party based on ownership at the time of contract entry and/or program commencement. Each party shall keep a running inventory and items shall be divided up based on ownership of property.

6.4 City and the University agree to work together in good faith, using reasonable efforts to resolve any unforeseen issues and disputes arising out of the performance of this Agreement.

6.5 Legal Authority. City and the University hereto consent that they are authorized to execute this Agreement on behalf of said Parties and that, by so executing this Agreement, the Parties hereto are formally bound to the provisions of this Agreement.

6.6 Recitals. City and the University acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Agreement.

6.7 Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

6.8 Severability. If any term, provision, covenant or condition of this Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

6.9 Counterparts of Agreement. This Agreement may be executed and delivered in any number of counterparts, each of which, when executed and delivered shall be deemed an original and all of which together shall constitute the same Agreement. Electronic signatures will be permitted.

6.10 Compliance with all Laws. The Parties shall comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether in force or hereafter enacted.

6.11 Force Majeure. Either Party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by an unforeseeable cause beyond its control, including but not limited to; any incidence of fire, flood; acts of God; commandeering of material, products, plants or facilities by the federal, state or local government; national fuel shortage; or a material act or omission by the other Party; when satisfactory evidence of such cause is presented to the other Party, and provided further that such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the Party not performing.

6.12 Assignment. Neither this Agreement, nor any of the Parties' rights, obligations, duties, or authority hereunder may be assigned in whole or in part by either Party without the prior written consent of the other Party in its sole and absolute discretion. Any such attempt of assignment shall be deemed void and of no force and effect. Consent to one (1) assignment shall not be deemed consent to any subsequent assignment, nor the waiver of any right to consent to such subsequent assignment.

6.13 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

6.14 Equal Opportunity Employment. The University represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, sexual orientation, age or any other impermissible basis under law.

6.15 City Authorization. The City Manager of the City of Newport Beach or his/her designee is hereby authorized, on behalf of City, to sign all documents necessary and appropriate to carry out and implement this Cooperative Agreement and to administer City's obligations, responsibilities, and duties to be performed under this Cooperative Agreement.

6.16 Notices. Any notice, demand, request, consent, approval or communication under this Agreement shall be in writing and either served personally or sent by prepaid, first-class mail to the address set forth below. Either Party may change its address by notifying the other Party of the change of address in writing. Notice shall be deemed given (a) upon personal delivery or (b) forty-eight (48) hours from deposit of such notice in the United States mail, postage prepaid.

To University:

Nidavone Niravanh
Risk Manager
250 Public Services Building
Irvine, CA 92697

With a copy to:

Mandy McDonnell
Boating Director
Anteater Recreation Center
680 California Avenue
Irvine, CA 92697-4515

To City of Newport Beach:

City of Newport Beach
City Manager
100 Civic Center Drive
Newport Beach, CA 92660

With a copy to:

City of Newport Beach
Department of Recreation & Senior
Services
100 Civic Center Drive
Newport Beach, CA 92660

6.17 No Attorney Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorneys' fees.

6.18 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

6.19 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Exhibits to this Agreement, the terms of this Agreement shall govern.

6.20 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

6.21 Amendments. This Agreement may be modified or amended only by a written document executed by both Contractor and City and approved as to form by the City Attorney.

[SIGNATURES ON NEXT PAGE]

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

Date: 8/26/15

By: [Signature]
Aaron C. Harp
City Attorney

**CITY OF NEWPORT BEACH,
a California municipal corporation**

Date: 9-10-15

By: [Signature]
Edward D. Selich
Mayor

ATTEST:

Date: 9.11.15

By: [Signature]
Leilani I. Brown
City Clerk



**THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA**

Date: 8/25/2015

By: [Signature]
Jill Schindele
Director of Campus Recreation

Date: 8-25-15

By: [Signature]
Nidavone Nirayanh
Risk Manager

[END OF SIGNATURES]

ATTACHMENT: Exhibit A: Sample Quarter of Programming Activity Schedule
 Exhibit B: Program Facilities
 Exhibit C: Dock Space and Boat Storage
 Exhibit D: Vessel Fleet
 Exhibit E: Insurance Requirements

EXHIBIT A SAMPLE QUARTER OF PROGRAMMING ACTIVITY SCHEDULE

MARINA PARK COMMUNITY BOATING PROGRAM OPERATED BY UCI
1ST SEASON IN OPERATION - SPRING, 2016*

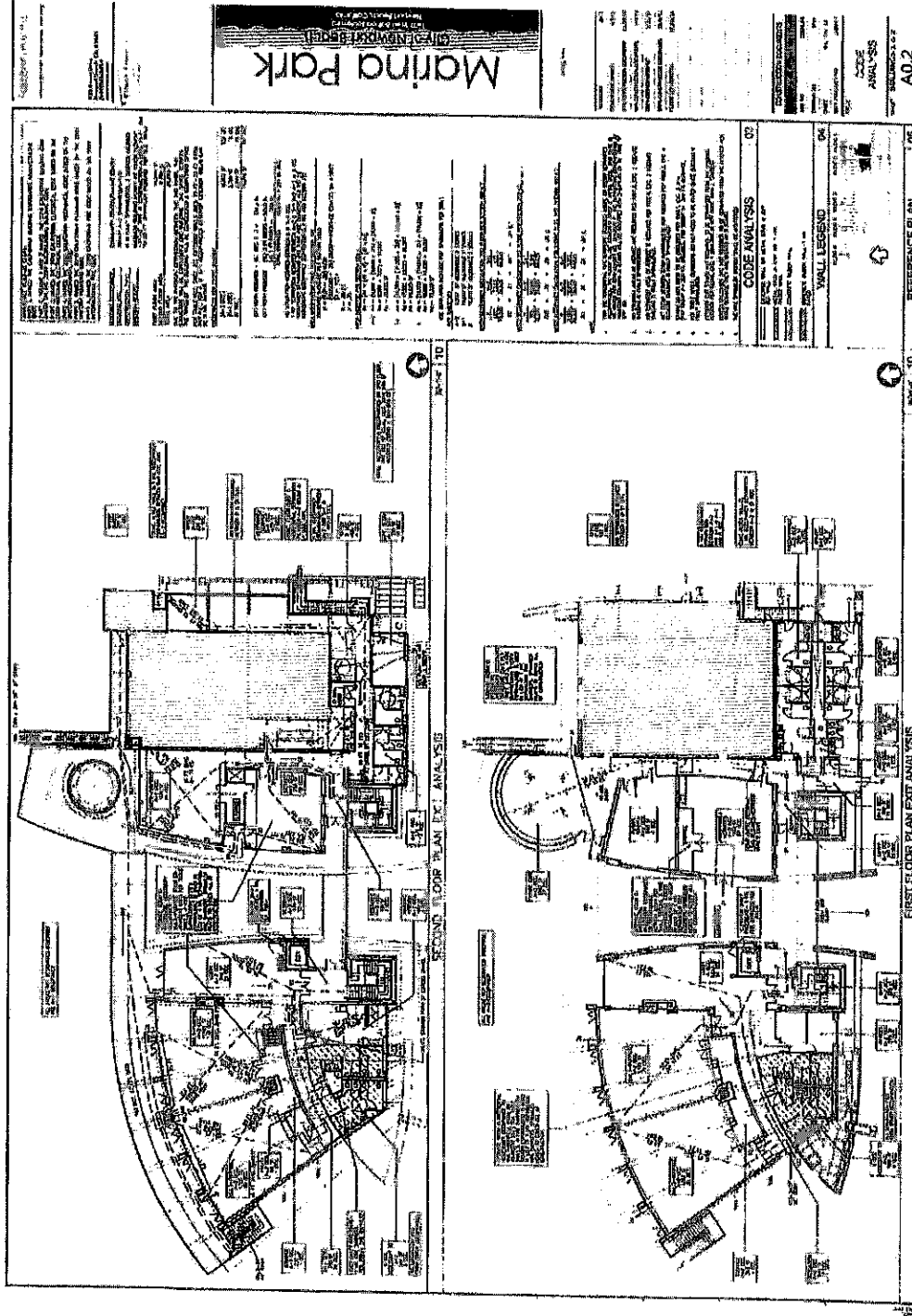
PROGRAMMING SAMPLE				
PROGRAMS	1 Class - 1 Session +/- 2 hrs	1 Class - Multiple Sessions +/- 12 hrs	Multiple Classes (three/days) on Schedule	Rating/Membership Req.
SAILING CLASSES				
SAILING YOUTH				
SAILING PRIVATE LESSONS	X			
SAILING PRIVATE GROUP CLASSES	X			
DINGHY ADULT		X		
DINGHY YOUTH		X	X	
DINGHY 14		X	X	
DINGHY 2		X	X	
DINGHY 25		X	X	
DINGHY RATING PREP	X		X	
DINGHY PRIVATE LESSONS				
KEELBOAT 1	X			
KEELBOAT 2		X	X	
KEELBOAT OCEAN	X			
KEELBOAT SKINNAKER	X			
KEELBOAT RACING	X			
KEELBOAT RATING PREP INT.	X			
KEELBOAT PRIVATE LESSONS	X		X	
KEELBOAT PRIVATE GROUP CLASSES	X			
BOAT CHECKOUT/SAILING ASSOC.				
DINGHY UCI SA OPEN SAIL HOURS				X
KEELBOAT UCI SA OPEN SAIL HOURS				X
SAILING TEAM PRACTICES				
UCI SAILING TEAM PRACTICE				
PADDLING				
SUP INTRO	X		X	
SUP YOGA/FITNESS	X		X	
SUP PRIVATE LESSONS	X			
SUP PRIVATE GROUP CLASSES	X			
SUP OPEN PADDLE HOURS	X			
KAYAK INTRO	X			X
KAYAK THROUGH CLASSES (FULL MOON)	X		X	
KAYAK PRIVATE GROUP CLASSES	X			
KAYAK OPEN PADDLE HOURS	X			X

* Program will likely expand and develop with time and as the program grows. Summer quarter will include youth camp programs and youth programs will likely be added, based on school schedules. Programs will vary, depending on season, weather, school breaks, etc. Classes will likely be added or subtracted, based on demand.

FLEET KEY

SABO
14' DINGHY (LIDO/RS QUEST)
11'
STAND UP PADDLEBOARDS
KAYAKS

EXHIBIT B PROGRAM FACILITIES



[illegible]

EXHIBIT D VESSEL FLEET

VESSEL FLEET

TYPE	DESCRIPTION	MAKE / VENDOR	YEAR	VALUE	QTY	TOTAL VALUE	PURCHASED BY	UNOWNED / LEASED
SABOTS	38' dinghy sailboat designed for youth sailors	Whitlock Boats	New - 2016	\$6,750	20 **	\$95,000	City	Leased
RY CHIEFS	13' dinghy sailboat for youth and adults	RS	New - 2016	\$9,675	16 **	158,800	City	Leased
FLYING HUNTERS	13'3" dinghy sailboat used for racing	Calvin Performance/Vanguard	2001-2012	\$2,000	8	16,000	Univ	Owned
4225	22' keeled sailboat for more advanced	F Boats	2010	30,000	6	180,000	Univ	Owned
KAYAKS	small boat designed to paddle while sitting on top	Ocean Kayak	New - 2016	\$560	23 **	13,480	City	Leased
STAND UP PADDLEBOARDS	11' board designed to paddle while standing up	Bnt SUP	New - 2016	\$225	95 **	25,375	City	Leased
COACH BOATS	12' hard bottom boat with engine	Boston Whaler	1973-1984 hull/2015 engine	\$3,000 engine/\$5,000 hull	3	24,000	Univ	Owned
COACH BOATS	12' hard bottom boat with engine	Boston Whaler	engine new/hull used	\$4,000 engine/\$6,000 hull	2 **	20,000	City	Leased

* Boat make, vendor, quantity, year and values are figures as of the date of the execution of the agreement and are estimated/approximate
 ** Purchase pending as of execution of this agreement

Revised 7/10/15

EXHIBIT E

INSURANCE REQUIREMENTS

- A. Provision of Insurance. Without limiting the University's indemnification of City, and prior to commencement of Program, the University shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. The University agrees to provide insurance in accordance with requirements set forth here. The University's online Certificate of Self-Insurance Coverage (<http://www.ucop.edu/risk-services/files/uc-generic-cert-cover-sheet-2014-5.pdf>) is accepted by City, with appropriate endorsements as outlined in this exhibit, as the University's compliance with the requirements of these Insurance Requirements.
- B. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by City Risk Manager.
- C. Coverage Requirements.
1. Workers' Compensation Insurance. The University shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.
 - (a) The University shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees and volunteers.
 - (b) In the event The University has no employees requiring the University to provide Workers' Compensation insurance, the University shall so certify to City in writing prior to City's execution of this Agreement.
 2. General Liability Insurance. The University shall maintain commercial general liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence. The policy shall cover liability arising from premises, operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) with no endorsement or modification limiting the scope of coverage for liability assumed under a contract.

- (a) The University shall have the option of purchasing liability coverage through the City of Newport Beach's Special Event insurance program, or through Southern California Municipal Athletic Federation ("SCMAF") or providing its own coverage. If the University elects to obtain its own coverage, said coverage must be as outlined in this Exhibit.

(b) Please initial the statement that applies:

_____ The University shall provide a copy of the General Liability Insurance with Additional Insured Endorsement that meets the requirements contained herein.

_____ The University shall utilize City-provided insurance through Southern California Municipal Athletic Federation ("SCMAF") and will pay all required fees billed on a quarterly basis by City. I have reviewed the Contractor's Handbook for complete information. *Please note that SCMAF does not provide coverage for Worker's Compensation or Automobile Insurance Liability.*

3. Automobile Liability Insurance. The University shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the University arising out of or in connection with Program to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit each accident.

D. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

1. Waiver of Subrogation. Worker's Compensation coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow the University or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. The University hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subcontractors.
2. Primary and Non Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.

3. Notice of Cancellation. All policies shall provide City with thirty (30) days notice of cancellation (except for nonpayment for which ten (10) days notice is required) or nonrenewal of coverage for each required coverage.
 4. Subcontractors. The University shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and the University shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13.
- E. Additional Agreements Between the Parties. The parties hereby agree to the following:
1. Evidence of Insurance. The University shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by the City Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this contract. City reserves the right to require complete, certified copies of all required insurance policies, at any time.
 2. City's Right to Revise Requirements. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the University sixty (60) days advance written notice of such change. If such change results in substantial additional cost to the University, City and the University may renegotiate the University's compensation.
 3. Enforcement of Contract Provisions. The University acknowledges and agrees that any actual or alleged failure on the part of City to inform the University of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.
 4. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the University maintains higher limits than the minimums shown above, City requires and shall be entitled to coverage for higher limits maintained by the University. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

5. Self-insured Retentions. Any self-insured retentions must be declared to and approved by City.
6. City Remedies for Non Compliance. If the University or any subcontractor fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this agreement, or to suspend the University's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to the University or reimbursed by the University upon demand.
7. Timely Notice of Claims. The University shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from the University's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.
8. The University's Insurance. The University shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Program.

EXHIBIT B

VESSEL FLEET DETAIL

	Vessel Model	Make	Amount	Year	Length	Hull Numbers	CF Numbers
City Owned	RS Venture	RS	2		16' 4"	GB LDC R5044 D515	
						GB LDC R5045 D515	
	RS Quest	RS	12		14' 1"	GB LDC D0064 L516	
						GB LDC D0067 L516	
						GB LDC D0072 L516	
						GB LDC D0074 L516	
						GB LDC D0079 L516	
						GB LDC D0078 L516	
						GB LDC D0077 L516	
						GB LDC D0076 L516	
						GB LDC D0075 L516	
						GB LDC D0060 (?)	
						GB LDC D0071 (?)	
						GB LDC D0028 K516	
	Sabots		20				
	Lido 14's	WD Schock	3	2011	14' 6"	WDSH 6348 C111	CF 5403 XC
						WDSH 6349 C111	CF 5402 XC
						WDSH 6350 C111	CF 5401 XC
	Kayak - Singles		8				
	Kayak - Doubles		16				
	SUP		35				

University Owned	Lido 14's	WD Schock	3	2012	14'	WDSH6355B212	CF 5394 XC
						WDSH6354B212	
						WDSH6356B212	
	J22's	Waterline	6	2011	22'	USW21632H010	CF 9653 XS
						USW21633H010	CF 9654 XS
						USW21634H010	CF 9652 XS
						USW21635K011	CF9672 XS
						USW21636K011	CF 9674 XS
						USW21637A111	CF 9673 XS
	Inflatable Boats (RIB)	Zodiac	2	2016	13' 9"	XDCP4221J516	CF 9978 XS
						XDCP4222J516	CF9979 XS
	Motor Boat	Boston Whaler	1	1984	13' 4"	BWCJ3821M84E	CF 9740 XS
	FJ's	Vanguard	7		13'		CF 8966 XS
							CF 8962 XS
							CF 8963 XS
							CF 8964 XS
							CF 8965 XS
							CF 8995 XS
							CF 9760 XS