

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 26-2022

Adopted August 2, 2022

AUTHORIZING THE FIRST AMENDMENT TO LICENSE AND AGREEMENT WITH THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, SAN FRANCISCO FOR USE OF THE KAYAK STORAGE BUILDING LOCATED IN MISSION CREEK PARK, PARCEL NP4; MISSION BAY NORTH REDEVELOPMENT PROJECT AREA

- WHEREAS, On September 17, 1998, the former Redevelopment Agency of the City and County of San Francisco (“Former Agency”) approved, by Resolution No. 185-98, the Redevelopment Plan for the Mission Bay North Redevelopment Project (“Redevelopment Plan”). The Redevelopment Agency also conditionally authorized, by Resolution No. 188-98, the execution of the Mission Bay North Owner Participation Agreement (“North OPA”) and related documents with Catellus Development Corporation, a Delaware corporation (“Catellus”). On October 26, 1998, the San Francisco Board of Supervisors (“Board of Supervisors”), adopted, by Ordinance No. 337-98, the Redevelopment Plan; and,
- WHEREAS, FOCIL-MB, LLC, (“FOCIL-MB”) assumed all of Catellus’s obligations on November 22, 2004, under the North OPA, as well as all responsibilities under the related public improvement agreements and land transfer agreements with the City and County of San Francisco (“City”). FOCIL-MB is bound by all terms of the North OPA and related agreements, including the requirements of the affordable housing program, equal opportunity program, and design review process; and,
- WHEREAS, As required by the North OPA, and consistent with the Redevelopment Plan and Plan Documents (as that term is defined in the Redevelopment Plan), FOCIL-MB has constructed or is responsible for constructing public open space in the Mission Bay North Redevelopment Project Area (the “Mission Bay Open Space System”), which is owned by the City (“Open Space Parcels”) and leased to the Successor Agency to the Redevelopment Agency of the City and County of San Francisco (commonly known as the Office of Community Investment and Infrastructure or “OCII”); and,
- WHEREAS, On March 15, 2005, by Resolution No. 46-2005, the Former Agency Commission approved Schematic Designs for Open Space Parcels NP4 and NP5 in Mission Creek Park. Construction was completed in 2008 and includes a facility to store kayak boats (“Kayak Storage Building”), located at the street address of 401 Berry Street, to allow the public to use a small boat launch along Mission Creek within Open Space Parcel NP4; and,
- WHEREAS, On September 2, 2008, the Former Agency Commission authorized, by Resolution No. 102-2008, a five-year license agreement, with an option to extended an additional nine years, in three-year increments, with The Regents of the University of California, San Francisco, a public corporation (“The Regents”) for the use of the Kayak Storage Building to conduct not-for-profit kayak classes and programming by the San Francisco campus of the University of California (“Agreement”), and thereafter the Former Agency and The Regents entered into the Agreement; and,

- WHEREAS, The Agreement required The Regents offer 13 kayaking programs, free-of-charge, to underserved youth per year, with a goal of at least 200 youths each year, targeting youth groups such as schools, after-school programs, Boys and Girls Clubs, community centers and other providers of youth programs to ensure that San Francisco's youth populations are served by the kayaking program; and,
- WHEREAS, On February 1, 2012, the State of California dissolved all redevelopment agencies, including the Former Agency, by operation of law pursuant to California Health and Safety Code Sections 34170 et seq. ("Redevelopment Dissolution Law"). Under the authority of the Redevelopment Dissolution Law and under San Francisco Ordinance No. 215-12, adopted on Oct. 4, 2012, (establishing the Successor Agency Commission ("Commission") and delegating to it state authority under the Redevelopment Dissolution Law), OCII is administering the enforceable obligations of the Former Agency in the Project Area, including the maintenance and management of the Mission Bay Open Space System through the Ground Lease; and,
- WHEREAS, On December 7, 2015, the State Department of Finance ("DOF") approved, under the Redevelopment Dissolution Law, OCII's long range property management plan (PMP), which requires, among other things, the early termination of OCII's leasehold interest in the Open Space Parcels. Oversight Board Resolution No. 14-2015 authorizes OCII, upon approval of the PMP, to take all actions as needed, to the extent permitted under applicable law, to implement the PMP; and,
- WHEREAS, In accordance with the terms of the Agreement, previous Executive Directors extended the termination date of the Agreement for an additional nine years, in three-year increments, to September 2, 2022; and,
- WHEREAS, The Regents are not in default of the Agreement, adhered to the terms of the Agreement, and exceeded the amount of required free-of-charge kayaking programs offered and youth participation goals each year; and,
- WHEREAS, The Regents are now requesting an extension to the Agreement and in consultation with the City, OCII staff is proposing a First Amendment to the Agreement that would extend the term of the Agreement for two additional years commencing on September 2, 2022 and terminating on September 1, 2024 ("First Amendment"); and,
- WHEREAS, During the term of the Agreement, OCII intends to assign the Agreement to the City consistent with the PMP; and,
- WHEREAS, The proposed First Amendment would increase the required programming offered by the Regents to underserved San Francisco youth free of charge, from 13 to 26 programs and a goal of at least 200 to a goal of at least 400 youths annually. The Regents have exceeded the required programming annually, averaging participation of 1000 youths; and,
- WHEREAS, At its May 12, 2022 meeting, the Mission Bay Citizens Advisory Committee recommended to the Commission that it authorize the First Amendment to the Agreement; and,
- WHEREAS, Approval of the First Amendment is categorically exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Sections 15301 because it authorizes the operation, repair, maintenance or minor alteration of existing facilities with negligible or no expansion of existing uses; now, therefore, be it

RESOLVED, That the Commission authorizes the Executive Director to execute, substantially in the form of Exhibit A to this Resolution, the First Amendment to the Agreement with the Regents for use of the Kayak Storage Building, located in Open Space Parcel NP4 within Mission Creek Park and to take all actions necessary to implement the Agreement.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of August 2, 2022.



Commission Secretary

Exhibit A: First Amendment to the License and Agreement with The Regents of the University of California, San Francisco

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**OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE
(SUCCESSOR AGENCY TO THE SAN FRANCISCO REDEVELOPMENT AGENCY)**

FIRST AMENDMENT TO LICENSE AND AGREEMENT TO CONDUCT NON-PROFIT ACTIVITIES

This First Amendment ("**First Amendment**") to that certain License and Agreement to Conduct Non-Profit Activities dated September 2, 2008 ("**Agreement**"), by and between the Redevelopment Agency to the City and County of San Francisco, a public body, corporate and politic ("**Former Agency**"), predecessor-in-interest to the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body organized and existing under the laws of the State of California (commonly known as the Office of Community Investment and Infrastructure, or "**OCII**"), and The Regents of the University of California, San Francisco, a California public corporation ("**The Regents**"), is dated for reference purposes as August __, 2022 and is effective as of September 2, 2022 (the "**Effective Date**").

RECITALS

This First Amendment is made with reference to the following facts and circumstances:

A. On September 2, 2008, the Former Agency Commission authorized, by Resolution No. 102-2008, a five-year license agreement with The Regents for the use of the kayak storage building, located at the street address of 401 Berry Street in Mission Creek Park within Mission Bay North Redevelopment Plan Open Space Parcel NP4, to conduct not-for-profit kayaking classes and programming by the San Francisco campus of the University of California, and thereafter the Former Agency and The Regents entered into the Agreement. The Recitals of the Agreement are incorporated herein by this reference, and all initially capitalized terms used but not defined herein shall have the meanings ascribed to them in the Agreement.

B. In accordance with the terms of the Agreement, the Executive Director extended the termination date of the Term of the Agreement for an additional nine years, in three-year increments, to September 2, 2022.

C. The Regents are not in default of the Agreement and have satisfactorily adhered to the terms of the Agreement.

D. The Former Agency was dissolved on February 1, 2012 pursuant to California Health and Safety Code Sections 34170 et seq. (the "**Redevelopment Dissolution Law**"), which vested in successor agencies certain authority, rights, powers, duties, and obligations to complete work related to approved enforceable obligations and to wind down redevelopment activities.

E. Under the Redevelopment Dissolution Law, OCII succeeded to the organizational status of the Former Agency and assumed all non-housing assets and enforceable obligations of the Former Agency. See also San Francisco Ordinance No. 215-12 (Oct. 4, 2012) (establishing the Successor Agency Commission ("**Commission**") and delegating to it state authority under the Redevelopment Dissolution Law).

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F. As a result of these legislative acts, OCII (1) became a separate public entity from the City and County of San Francisco (the “City”), and (2) has leasehold interest in improved Open Space Parcels of land located in the Mission Bay North Redevelopment Project Area and Mission Bay South Redevelopment Project Area owned by the City and leased to the Former Agency by the City, acting through its Department of Real Estate or through the Port of San Francisco, under a ground lease (“**Ground Lease**”), with a term continuing through 2043, as such Ground Lease may be amended from time to time to increase the area of the premises subject thereto as Open Space Parcels are improved.

G. On December 7, 2015, the State Department of Finance (“**DOF**”) approved, under the Redevelopment Dissolution Law, OCII’s long range property management plan (PMP), which requires, among other things, the early termination of the Ground Lease and OCII’s leasehold interest in the Open Space Parcels. Oversight Board Resolution No. 14-2015 authorizes OCII, upon approval of the PMP, to take all actions as needed, to the extent permitted under applicable law, to implement the PMP.

H. Under this First Amendment, the parties hereto propose to extend the term of the Agreement for two additional years commencing on September 2, 2022 and terminating on September 2, 2024.

I. During the term of the Agreement, as extended by this First Amendment, OCII plans to implement the PMP’s requirement that OCII terminate its leasehold interest in the Open Space Parcels. At that time, OCII would assign its rights and obligations under the Agreement to the City.

J. Under this First Amendment, the parties intend to increase the number of kayaking programs offered by the Regents to underserved youths, free of charge, from 13 to 26 annually, and increase the number of such youths participating from a goal of at least 200 to a goal of at least 400 youths annually.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, OCII and The Regents agree as follows:

1. Unless otherwise specifically provided herein, all provisions of this Amendment shall be effective as of the Effective Date set forth above.
2. All references in the Agreement to Former Agency shall be deemed references to OCII.
3. Section 1.3 of the Agreement is deleted in its entirety and replaced with the following:

“1.3 The Regents shall, at a minimum, offer 26 kayaking programs, free-of-charge, to underserved youth per year. As a goal, The Regents shall use good faith efforts to serve at least 400 youths each year of the Term of this Agreement. The Regents shall target youth

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groups such as schools, after-school programs, Boys and Girls Clubs, community centers and other providers of youth programs to ensure that San Francisco's youth populations are served by the kayaking program. If, after the first full year of the extended Term (i.e., after September 2, 2023), 400 youths are not being served per year of the extended Term, The Regents shall submit a detailed outreach and marketing program to OCII for review and approval that demonstrates how The Regents intend to reach the goal of at least 400 youths.”

4. Sections 3.1, 3.2, 3.3, and 3.4 of the Agreement are deleted in their entirety and replaced with the following:

“3.1 The term of this Agreement shall be from September 2, 2008 until September 1, 2024 ("Term"), provided that during the Term either party may terminate this Agreement without cause for any reason whatsoever, upon providing sixty (60) days prior written notice to the other”

5. Assignment, Section 5.1 of the Agreement is retained and the following text is added to the section:

“The Regents acknowledges and agrees that OCII may transfer, in its sole and absolute discretion, all of its rights, interests and obligations under this Agreement to the City, subject to additional terms and conditions imposed by the City. If any conditions resulting from such assignment are not acceptable to The Regents in its sole discretion, The Regents may terminate this Agreement by providing thirty (30) days’ notice to the City.”

6. Indemnification and Exculpation, Sections 7.1 and 7.2 are deleted in their entirety and replaced with the following:

“7.1 Indemnity by The Regents

The Regents shall indemnify and defend OCII and OCII’s Agents from and against any and all claims, cause of action, obligation, liability, costs and expenses, including, without limitation, reasonable attorneys’ fees, (collectively, "Claims"), arising out of (a) The Regents’ use of or activities on the Premises and other areas described in Section 1.2 of this Agreement (together the “Premises” and areas described in Section 1.2 are referred to as the “License Area”), (b) any default by The Regents in the performance of any of its material obligations under this Agreement, or (c) any negligent acts or omissions of The Regents or The Regents’ Agents in, on or about the License Area; provided, however, The Regents shall not be obligated to Indemnify OCII or OCII’s Agents to the extent any Claim arises out of the negligence or willful misconduct of OCII or OCII’s Agents. The Regents shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, subject to the approval of OCII which shall not be unreasonably withheld, and provided that OCII shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost. The Regents’ obligations under this Section shall survive the termination of this Permit. For purposes of this

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indemnity provision, a party's "Agents" shall mean and refer to such party's employees, representatives and agents.

7.2 Indemnity by OCII

OCII shall indemnify The Regents against any and all Claims arising out of (a) OCII's activities on the License Area that cause injury or damage to person or property, (b) any default by OCII in the performance of any of its material obligations under this Agreement, or (c) any negligent acts or omissions of OCII or OCII's Agents on or about the License Area; provided, however, OCII shall not be obligated to indemnify The Regents to the extent any Claim arises out of the negligence or willful misconduct of The Regents or The Regents' Agents. In any action or proceeding brought against The Regents by reason of any Claim indemnified by OCII hereunder, OCII may, at its sole option, elect to defend such Claim by attorneys selected by OCII. OCII shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, subject to the approval of The Regents which shall not be unreasonably withheld, and provided that The Regents shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost. OCII's obligations under this Section shall survive the termination of the Agreement.

7. Nondiscrimination, Section 9.1 of the Agreement is hereby deleted and replaced with the following:

"9.1 There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, disability (including AIDS or HIV status), sexual orientation or other protected class status in The Regents' use, occupancy, transferring or enjoyment of the Premises pursuant to this Agreement. The Regents, or any person claiming under or through it, shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, use, or number of its passengers, customers, or other users of its business services. The Regents further agrees that the use of the Premises shall be provided in compliance with the Americans with Disabilities Act ("ADA")."

8. Notices, Section 12.1 of the Agreement is hereby deleted and replaced with the following:

"12.1 All notices, demands, consents or approvals required under this Agreement (except reservations) shall be in writing and shall be deemed given when delivered personally or three (3) business days after being deposited in the U.S. Mail, first class postage prepaid, return receipt requested, addressed as follows:

If to the Agency: Office of Community Investment and Infrastructure
1 South Can Ness Avenue, 5th Floor
San Francisco, CA 94104
Attention: Executive Director

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If to The Regents: The Regents of the University of California
UCSF Real Estate Services
San Francisco, CA 94143-087
Attention: Assistant Vice Chancellor
UCSF Real Estate – Real Estate Services

With a copy to:

The Regents of the University of California
654 Minnesota Street, Second Floor
San Francisco, CA 94143
Attn: Senior Counsel, Real Estate & Construction

If to the City: Real Estate Division Director
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102

with a copy to

City Attorney, City of San Francisco
Room 234, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Attention: Land Use Team

or to such other addresses as the parties may designate by notices as set forth above.”

9. Successors and Assigns, Section 12.4 of the Agreement is hereby deleted.
10. Attachment B: UCSF Kayak Program Summary, Attachment B of the Agreement is hereby deleted and replaced with Attachment B: UCSF Kayak Program Summary 22-24 attached herein as Exhibit A.
11. Miscellaneous. The following miscellaneous provisions apply to this First Amendment:
 - a. Incorporation. This First Amendment constitutes a part of the Agreement and any reference in any document to the Agreement as amended hereby.
 - b. Ratification. To the extent of any inconsistency between this First Amendment and the Agreement, the provisions contained in this First Amendment shall control. Except as otherwise amended hereby, all terms, covenants, conditions and provisions of the Agreement shall remain in full force and effect.

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- c. Successors and Assigns. This First Amendment shall be binding upon and inure to the benefit of the successors and assigns of OCII (including the City or its assignee) and The Regents, subject to the limitations set forth in the Agreement.
- d. Counterparts. This First Amendment may be executed in any number of counterparts, all of which, together, shall constitute the original agreement without the production of the other such originals. The parties hereto agree that facsimile and electronic signatures (e.g. DocuSign or similar electronic signature technology) may be used in place of original signatures on this First Amendment or any document delivered pursuant hereto. All parties to this First Amendment intend to be bound by the signatures on the faxed, electronic or e-mailed document, are aware that the other party or parties will rely on the faxed, electronic or e-mailed signatures, and hereby waive any defenses to the enforcement of the terms of this First Amendment based on the form of signature. The parties further agree that after execution this First Amendment, it may be maintained in electronic form and that such electronic record shall be valid and effective to bind the party so signing as a paper copy bearing such party's hand-written signature.
- e. Governing Law; Venue. This First Amendment shall be governed by and construed in accordance with the laws of the State of California. The parties agree that all actions or proceedings arising directly or indirectly under this First Amendment shall be litigated in courts located within the County of San Francisco, State of California.
- f. Integration. This First Amendment contains the entire agreement between the parties with respect to the subject matter of this First Amendment. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded by this First Amendment. No prior drafts of this First Amendment or changes from those drafts to the executed version of this First Amendment shall be introduced as evidence in any litigation or other dispute resolution proceeding by either party or any other person, and no court or other body shall consider those drafts in interpreting this First Amendment.

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IN WITNESS WHEREOF the parties have executed this First Amendment to the Agreement as of the date first above written.

OFFICE OF COMMUNITY
INVESTMENT AND
INFRASTRUCTURE, Successor Agency
to the San Francisco Redevelopment
Agency, a public body organized and
existing under the laws of the State of
California

By: _____

Thor Kaslofsky
Executive Director

The Regents of the University of California,
a California public corporation

By: _____

Bruce Lanyon
Assistant Vice Chancellor
UCSF Real Estate - Real Estate Services

Approved as to Form:

APPROVED AS TO FORM:

By: _____

General Counsel
James B. Morales

Authorized by OCII Resolution No. ___ -2022 adopted on _____, 2022.

Exhibit A

UCSF Kayak Program Summary

UCSF Outdoor Programs

**Kayak Storage Shed and Boat Launch Facility
NP4, Mission Creek Park**

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Introduction

As part of the University of California San Francisco (UCSF), Outdoor Programs will provide the stability, experience and access required to make kayaking a successful component of Mission Creek Park. The public boat launch will provide access to those who already have boats and training. Housing UCSF Outdoor Programs at the park will provide kayaking opportunities for those who have little or no experience and equipment.

Outdoor Programs, a sub-unit of Campus Life Services' Fitness & Recreation unit at UCSF, has over 40 years of experience leading outdoor adventures in the Bay Area. In fact, Outdoor Programs was one of the first University based outdoor adventure programs in the country. Outdoor Programs has a dual commitment to serve both the UCSF community and the general public and is under contract with the California Department of Boating and Waterways to provide on the water training to enhance basic boating safety education.

Outdoor Programs no longer has kayak storage in Sausalito or any other location in San Francisco. By securing a convenient location on the calm waters of Mission Creek, Outdoor Programs will be able to continue to serve youth groups as it is well located for both mass transit and within walking distance of many community organizations. A dedicated kayaking program in Mission Creek Park will also help support the Blue Greenway, a planned 13-mile path providing walking, biking and water access along San Francisco's southern waterfront.

Summary of Programming

The location of Mission Creek Park is ideal in that it provides a protected body of water perfect for beginning level paddles while at the same time provides a launching point for more advanced paddling destinations. Outdoor Programs is committed to providing programs that provide quick and easy access to the Bay with an emphasis on the essentials of safe boating. Programs are exclusively guided tours around the bay to guarantee safety especially when paddling beyond the calm waters of McCovey Cove. Programs will be open to both the general public and persons affiliated with UCSF. Below is a sample of courses and trips that will be offered:

Mission Creek Tours

Goal: Using stable double sit on top kayaks, participants will be introduced to basic paddling and safety skills and then go for an easy paddle to practice skills and to explore Mission Bay from the water. Trip itineraries will take advantage of currents and weather conditions to access destinations such as the SF Waterfront and Crane Cove park.

Custom Trips

The classic "2-hour tour" has proven to be the ideal amount of time for most beginners. This includes a 30-40 min. orientation, use of sit on top double kayaks and one guide for every 8 people on the water. Guides are trained regarding local history and are very knowledgeable about the local marine life. Custom trips can be arranged at any of our locations.

Target Participant Groups

As stated, Outdoor Programs is committed to serving the UCSF community as well as the general public. Our main target groups from this site will break down as follows:

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UCSF Groups - Our mission at the University is to help make UCSF an institution of choice for students and staff. Outdoor Programs contributes by creating experiences that promote community, health and wellness for the UCSF students, faculty and staff.

Youth Groups - Another commitment of the University is to provide programs that enrich the local community. Kayaking at Mission Creek provides a great opportunity for youth groups to experience an activity that teaches leadership, teamwork and water safety.

To insure underserved youth have access to kayaking programs, Outdoor Programs will make scholarships available to qualifying groups. It is our goal to provide over 26 trips serving over 400 youth at no cost and increase the scholarship fund each year with additional outside support. We will target youth groups such as schools, after-school programs, Boys and Girls Clubs, community centers and other providers of youth programs to ensure that San Francisco's youth are served by the kayaking program.

Outdoor Programs will also offer courses on a sliding scale to qualifying non-profit youth groups.

General Public – Courses, trips and tours are open to the general public. Outdoor Programs has a special commitment to teaching the public about boating safety.

Course Statistics

Below are the combined participation numbers for July 2021-July 2022. Covid interrupted many youth organizations and schools so that they were not able to participate during the summers of 2020 and 2021.

Outdoor Programs expects to serve approximately 2000 participants from the Mission Creek Storage Shed and Kayaking Launch each year.

Type of Course:

Type of Course	# Of Sessions Offered Annually 2021-2022	Total Participants by Course type 2021-2022	Total Projected Participants by Course type 2022-2023
Mission Creek Kayak Tours	80	800	1000
Mission Creek SUP	25	97	
Youth Kayak Programs	28	605	1000
Totals	133	1502	2000

Participant Demographics:

Population Segment	# Of Participants 2021-2022	# Of Projected Participants 2022-2023
General boating public	252	300
School /youth groups	685	1200
UCSF Staff /Fit members	84	100
UCSF students	548	600
Senior groups	0	0
Disabled groups	0	0
Total Participants	1569	2200

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Course Operations

Programs can be offered year round; however, the main season is from May to October which could support SFUSD end-of-year and back-to school trips as well as Recreation and Parks summer camps. Programs will be run out of the park at least four times a week during the main season, including most weekends and several days during the week. Use of the shed will be during daylight hours with some sunset trips on weekends, from approximately 6:00 a.m. to 10:00 p.m.

UCSF Outdoor Programs will store its kayaks in the kayak storage shed and begin and end its kayak tours and classes from the boat launch. When UCSF Outdoor Program staff are not physically at the kayak shed and boat launch, signs will offer public information about the programs and who to contact to sign-up. UCSF and the Agency will agree on the design and location of the signs.

Quarterly Reports

UCSF Outdoor Programs will provide a quarterly program report to the Agency. The report will describe the activities, including all tours and classes, which took place in the quarter. The report will also include the approximate number of persons served and the demographics of the populations served (i.e., general public, youth, seniors, disabled, UCSF-affiliated groups) as well as document outreach conducted to underserved communities. The report will also note any changes to the condition of the property and any security incidents.

Waivers

UCSF Outdoor Programs will ensure that the waiver form signed by each participant in the kayak programs includes the Agency and the City and County of San Francisco as the indemnified parties and extends to the Agency the same protections that the Regents receive in the waiver.