



To: Richmond City Council
From: Dave Semple
Director of Parks Operations

Date: July 21, 2004
File: 06-2345-01/2004-Vol 01

Mike Redpath
Manager, Parks - Programs, Planning &
Design

Re: **UBC Rowing Boathouse Lease and Facility Agreement**

Staff Recommendation

1. That the Lease agreement for a portion of the Water Lot N at 7411 River Road between the City and the University of British Columbia as outlined in Attachment 1 to this report be approved, and;
2. That the UBC Boathouse Facility Agreement detailing the operation and future facility program opportunities as outlined in Attachment 2 be approved.

Dave Semple
Director of Parks Operations
(3350)

Mike Redpath
Parks - Programs, Planning & Design
(1275)

Att. 3

FOR ORIGINATING DIVISION USE ONLY					
ROUTED TO:		CONCURRENCE		CONCURRENCE OF GENERAL MANAGER	
Law.....		Y <input type="checkbox"/> N <input type="checkbox"/>			
REVIEWED BY TAG		YES <input type="checkbox"/>	NO <input type="checkbox"/>	REVIEWED BY CAO	
				CAO YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	

Staff Report

Origin

In November 1998 the City advertised a proposal call for Expressions of Interest to use a portion of the City-owned water lot at 7411 River Road. As a result of the responses received, staff explored the possibility of the UBC/Thunderbird Rowing Club establishing a rowing centre to the north side of the Richmond Yacht Club.

This project was supported in principle by Council on July 26, 1999 with the following resolution:

“That the submission by the Thunderbird Rowing Centre for the proposed use of the City’s water lot at 7411 River Road be supported, and that staff work with the Rowing Centre to achieve the necessary planning and other approvals, so that they can establish their facility at that location ”.

After Council approval of the Middle Arm location for the UBC Rowing Facility, Council approved the following recommendation at the Regular Council meeting of March 11, 2002:

“That a memorandum of understanding with the University of British Columbia Department of Athletics, Thunderbird Rowing Club, be developed that outlines the necessary planning and permit approvals for leasing a portion of the lands known as Lot N- the Water Lot located at 7411 River Road for a rowing clubhouse facility.”

At the May 10th, 2004 Regular Council meeting, Council approved the following recommendation:

“That the proposed lease area for the future UBC Thunderbird Rowing and Paddling Centre be approved, (as set out in the report dated April 6th, 2004 from the Director of Parks Operations.”

The purpose of this report is to present the UBC Rowing Boathouse Lease (Attachment 1) and UBC Rowing Boathouse Facility Agreement (Attachment 2) for approval.

Analysis

Since 1998, UBC has worked to realize the construction of a permanent paddling and rowing boathouse facility on the Middle Arm of the Fraser River. Beginning in 2002, UBC signed a temporary licence to occupy agreement with the City and from a temporary float on the water, commenced rowing and dragonboating operations at the site.

In April 2003 UBC hosted Brown Cup Rowing regatta on the Middle Arm of the Fraser River for UBC, SFU, UVIC and other universities, feedback regarding the site and watercourse from participants was excellent with over 300 spectators on site along dyke trail.

UBC has commenced the process of conceptual facility design to conform to the parameters of this site, in accordance with a Memorandum of Understanding between the Rowing group and the City, approved by Council on July 14, 2003 (Attachment 3).

The proposed rowing centre building footprint will be approximately 85 metres in length and a ramp and float will extend some 115 metres from the western edge of the building. The purpose of this configuration is to ensure maximum public view of the rowers activities from the dyke trail, as they bring the rowing shells from the clubhouse storage to the float to prepare to enter the water at that location, and then return to the float after rowing.

Public use and access of the rowing centre building itself (for public washrooms, meeting room space and closer access to the water) will be directly from the dyke trail some 100 metres east from this viewing area.

In order that the Development Application Process can proceed, the lease and facility agreements for the rowing centre are presented for approval. The lease agreement, Memorandum of Understanding, and Facility Agreement all bind UBC to resolving all issues regarding the facility construction process to the City's development application and building permit process. The following development application criteria will be considered :

- Integration of the proposed facility into the existing dyke trail system and pedestrian accessibility
- Overall aesthetics of the facility and its impact on area beautification
- Potential environmental impacts
- Potential direct and indirect financial returns to the city as a result of the proposed facility
- Assessment of traffic impacts and the identification of off-site road and traffic improvements
- Establishment of a traffic management plan for daily operation and events
- Establishment of a parking management plan for daily operation and events

Financial Impact

At this time the financial implications of this proposal include staff time to liaise with the UBC Rowing staff towards the development of a lease to use a portion of Lot N- the water lot located at 7411 River Road. It should be noted that since the proposal from UBC is to establish an 'off campus' educational facility that it may be exempt from property tax status. All other necessary Development Cost Charges and building permit approvals would be levied against any approved development at the site. Potential future economic benefits exist to the City in the future through the hosting of rowing and dragonboating events from the proposed multi-million dollar facility.

Conclusion

The proposal from UBC supports civic directions of "working with organizations focused on marine type activities to maximize the recreation potential of the Fraser River Middle Arm." In addition, the potential for Richmond to be the host of community recreational waterfront activities such as dragonboating, rowing, and international/national recreational and elite (Olympic calibre) watersport activities contributes both to community vibrancy, and liveability.

July 21, 2004

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A great opportunity exists to have Richmond and this portion of the Fraser River known around the world as the premier rowing facility with kilometres of publicly accessible viewing spots along the existing dyke trail system.

Approval of the lease and facility agreements will advance the project to the development application phase.

A handwritten signature in black ink, appearing to read "M. Redpath". The signature is stylized with a long horizontal stroke extending to the right.

Mike Redpath
Manager, Parks - Programs, Planning & Design
(1275)

MER:mer

THIS INDENTURE made as of the ___ day of July, 2004

BETWEEN:

CITY OF RICHMOND, 6911 No. 3 Road
Richmond, British Columbia V6Y 2C1

(hereinafter called the "Landlord")

OF THE FIRST PART

AND:

THE UNIVERSITY OF BRITISH COLUMBIA
through its Department of Athletics and
Recreation, Room 272, War Memorial Gymnasium
6081 University Boulevard, Vancouver British Columbia
V6T 1Z1

(hereinafter called the "Tenant")

OF THE SECOND PART

WITNESSETH THAT:

ARTICLE 1
DEFINITIONS AND TERM

Section 1.1 Definitions:

The following expressions were used in this lease shall have the following meanings:

- (a) "Commencement Date" shall mean the ___ day of _____, 2004:
- (b) "Lands" shall mean those lands owned by the Landlord and situated in the City of Richmond and known and described as:



Section 1.2 Interpretation.

The captions and headings in this lease are for convenience of reference only, and shall not affect the scope, intent, or interpretation of any provisions.

Section 1.3 Governing Laws.

This lease shall be governed by the laws of the Province of British Columbia.

ARTICLE 2

DEMISE AND TERM

Section 2.1 Demise.

In consideration of the rents, covenants and agreements herein reserved and contained on the part of the Tenant to be paid, observed and performed, the Landlord by these presents does demise and lease unto the Tenant and the Tenant does hereby take on lease from the Landlord the Lands free and clear of all encumbrances.

Section 2.2 Term.

To have and to hold the Lands for and during the term of five (5) years commencing on the Commencement Date but subject to prior termination as provided herein.

Section 2.3 Renewal Option

Provided the Tenant has duly and punctually paid the rent and duly and punctually observed the other covenants and obligations on its part contained in the Lease, the Tenant shall have the option to renew the Lease, for two further terms of Thirty (30) years each on the same terms and conditions as this Lease save and except the second renewal option. The Tenant shall exercise its options to renew by notice in writing given to the Landlord not less than six (6) months prior to the expiry of the initial term of this Lease or the first renewal Term as the case may be.

Section 2.4 Access

The Landlord covenants and agrees with the Tenant to grant the Tenant suitable access to the Lands.

Section 2.5 Consent

The Landlord covenants and agrees with the Tenant that it will as upland owner consent to the Tenant's water lot lease with the North Fraser Port Authority.

ARTICLE 3

RENT AND PAYMENT OF RENT

Section 3.1 Annual Rent.

Yielding and paying therefore the rent of One Dollar (\$1.00) per annum which the Tenant covenants and agrees to pay to the Landlord, or as the Landlord may in writing direct, in lawful money of Canada, without any abatement, set off, compensation or deduction whatsoever on the days and at the times hereinafter specified.

Section 3.2 Payment of Rent.

The rental provided for in this Article III shall be paid by the Tenant from and after the Commencement Date and throughout the balance of the term hereof in advance on the first day of January, in each year.

Section 3.3 Rental for Irregular Periods.

All rent reserved herein, to be paid pursuant to Section 3.1 shall be deemed to accrue from day to day, and if for any reason it shall become necessary to calculate rental for irregular periods of less than one year an appropriate pro rata adjustment shall be made on a daily basis in order to compute rental for such irregular period.

ARTICLE 4

TAXES AND IMPOSITIONS

Section 4.1 Payment.

The Tenant will during the term hereof pay and discharge, promptly when due:

- (a) all taxes, assessments, levies, rates, duties, license, permit or inspection fees and any tax that may be imposed or levied by any lawful authority and whether on the Lands, or which arise in respect of the occupancy, use, operation, possession or ownership of the Lands;
- (b) all charges for water, sewer, gas, light, heat, telephone, electricity, power and other utility and communication services rendered or used on or about the Lands; and

- (c) all charges for refuse or garbage collection and disposal made in respect of the Lands:

The Tenant shall promptly at the request of the Landlord furnish receipts or other documents evidencing payment of the aforesaid items from time to time.

Provided however, that notwithstanding the foregoing provisions of this section, the Tenant shall not be required to pay any corporate, estate, inheritance, succession, net income, excess profits, capital or similar tax required to be paid by the Landlord.

Section 4.2 Contest.

The Tenant may at its expense contest by appropriate legal proceedings conducted in good faith and with due diligence the amount, validity, or application, in whole or in part, of any tax or other charge payable by it pursuant to the provisions of Section 4.1 hereof and failure to pay such tax during such proceedings shall not be a default under Section 4.1 hereof, provided the Lands are not in danger of immediate forfeiture because of such non-payment and the Tenant shall have furnished reasonable security to the Landlord for the payment thereof or proof of such security having been furnished to the appropriate Taxing Authority.

ARTICLE 5

NET LEASE

Section 5.1

It is the intention of the parties hereto that this lease shall be a net lease, and that the rent provided to be paid to the Landlord hereunder shall be net to the Landlord, and shall yield to the Landlord the entire such rent during the full term of this lease, and that all costs, expenses and obligations of every kind and nature whatsoever relating to the Lands whether or not herein referred to and whether or not of a kind now existing or within the contemplation of the parties hereto, shall be paid by the Tenant except as otherwise specifically provided herein.

ARTICLE 6

LANDLORD'S PERFORMANCE OF TENANT'S COVENANTS

Section 6.1 Landlord May Perform.

In the event of default by the Tenant in performance of any of its obligations hereunder other than the payment of rent, (but including without limitation payment of taxes, and compliance with laws and agreements) the Landlord may perform the same and the amount of any expenditures made by the Landlord in

connection therewith shall be deemed to be rent payable hereunder, and shall be reimbursed to the Landlord by the Tenant on demand. The Landlord shall however be under no obligation to remedy any default of the Tenant, and shall not incur any liability to the Tenant for any act or omission in the course of its curing or attempting to cure any default.

Section 6.2 Notice.

Prior to performing any of the Tenants obligations under Section 6.1 hereof the Landlord shall give notice to the Tenant specifying the default and requiring that the Tenant remedy such default within a reasonable time period. If the Tenant shall either not have remedied the default or be diligently pursuing such remedy at the expiration of such time period the Landlord may exercise its rights under Section 6.1 hereof.

ARTICLE 7

COMPLIANCE WITH LAW

Section 7.1

During the term hereof the Tenant shall, at its own cost and expense, promptly observe and comply with all present and future demolition, building and zoning by laws and ordinances, other by-laws and ordinances, requirements, orders, directions, rules, regulations and laws of all federal, provincial and municipal governments and agencies and other authorities having or claiming jurisdiction over the Lands or appurtenances or any part thereof.

ARTICLE 8

INDEMNITY

Section 8.1

The Tenant will indemnify and save harmless the Landlord from and against any and all manner of actions or causes of action, loss, costs, damages or expenses of whatever kind which the Landlord may sustain, incur or be put to by reason of or arising out of the use or occupation by the Tenant of the Lands and without limiting the generality of the foregoing, from the non-observance or non-performance by the Tenant, its servants or agents, of any of the obligations imposed on the Tenant by the provisions of this lease, unless caused by the negligence of the Landlord, its servants or agents. Provided that nothing in this Section shall relieve the Landlord from its obligations under this lease or entitle the Landlord to indemnity in respect

of any proceedings taken by the Landlord which shall be held by any court of competent jurisdiction to have been unjustifiably taken.

ARTICLE 9

INSURANCE AND REPAIR

Section 9.1 Liability Insurance.

The Tenant shall during the term hereof maintain in the names of the Landlord and Tenant liability insurance for damages to persons or property caused by the maintenance, use or occupation of the Lands by the Tenant or by reason of the conduct of any business carried on thereon by the Tenant in an amount not less than ___ dollars (\$●), which liability insurance will include an endorsement of cross-liability (if possible) and the Tenant will pay all premiums in respect of such insurance promptly as the same shall become due, and will deliver to the Landlord evidence that such insurance has been fully effected.

Section 9.2 Fire Insurance.

The Tenant shall during the term hereof cause the buildings, fixtures, machinery, equipment and other improvements on the Lands to be insured from hazards covered by standard commercial fire and extended coverage endorsement as a reasonably prudent landlord would require in a sum equal to the full insurable value thereof from time to time throughout the term hereof and whenever feasible will cause all insurance monies received by virtue of such insurance to be laid out in rebuilding and reinstating the buildings, fixtures, machinery, equipment and other improvements on the Lands or any part thereof in respect of which such monies shall have become payable. Premiums for such insurance shall be paid by the Tenant.

Section 9.3 Repair.

The Tenant shall at its expense maintain and keep in good and substantial repair and condition the buildings, fixtures, machinery, equipment and other improvements on the Lands, reasonable wear and tear excepted, and will at its expense in the event of damage to or destruction of such buildings, fixtures, machinery, equipment and improvements from time to time either in whole or in part by fire or other cause promptly restore them to the same condition as prevailed immediately prior to the damage or destruction.

Section 9.4 Good and Workmanlike Manner.

The Tenant shall cause all work done in connection with any such repair or replacement to be done promptly and in a good and workman like manner in

accordance with all applicable building and zoning ordinances, and with all applicable laws, orders, rules, regulations and requirements of all federal, provincial and municipal governments and agencies.

ARTICLE 10

CONSTRUCTION, REPAIRS, ALTERATION AND DEMOLITION OF IMPROVEMENTS

Section 10.1 Construction.

The Tenant shall be entitled to construct improvements and facilities on the Lands.

Section 10.2 Alterations, Additions and Demolitions.

The Tenant shall be entitled to make alterations and additions to the improvements and facilities from time to time created on and constituting part of the Lands or to demolish and replace the whole or any part of such improvements and facilities provided that:

- (a) the Tenant is not then in default hereunder, and
- (b) in the case of demolition and replacement the proposed replacement improvements and facilities will be worth not less than the replacement cost of the existing improvements and facilities;

Section 10.3 Good and Workmanlike Manner.

The Tenant shall cause all work done in connection with any such alteration, addition or demolition and replacement to be done promptly and in a good and workmanlike manner in accordance with all applicable building and zoning ordinances, and with all applicable laws, orders, rules, regulations and requirements of all federal, provincial and municipal governments and agencies.

Section 10.4 Builders Liens.

The Tenant shall subject to the following proviso payoff, as and when any amounts payable in respect thereof become due, any builders or similar liens that may be filed against the Lands during the term of this lease, and shall cause the same to be discharged, provided that the Tenant may contest the validity of any such lien, by giving reasonable assurance to ensure payment and to prevent any sale, foreclosure or forfeiture of the lands by reason of such non-payment. Provided further that upon the determination of the validity of any such lien, the Tenant shall pay any

judgment in respect thereof rendered against the Lands, Tenant and/or the Landlord with all proper costs and charges, including costs incurred by the Landlord in connection with any such lien, and shall cause the discharge of such lien to be registered without cost to the Landlord.

ARTICLE 11

ASSIGNMENT AND SUBLETTING

Section 11.1 Assignment and Subletting

The Tenant may not assign or sublet the whole or any portion of the Lands without the prior written consent of the Landlord, such consent not to be unreasonably withheld.

ARTICLE 12

TENANT'S RIGHT TO MORTGAGE

Section 12.1 Right to Mortgage.

The Tenant shall have the right at any time and from time to time to mortgage the leasehold estate created hereby in any manner whatsoever, including by way of assignment or by sub-lease, and to make assignments by way of security of sub-leases and rents, and to extend, modify, renew, or replace any such mortgage or assignment.

Section 12.2 Rights of Mortgagee.

The mortgagee under any such mortgage may enforce such mortgage and acquire title to the leasehold estate in any lawful way, and, by its representative or by a receiver, as the case may be, take possession of and manage the Lands, and upon foreclosure of such mortgage may sell or assign the leasehold estate and the purchaser or assignee of the leasehold estate shall be liable to perform the obligations imposed on the Tenant by this lease only so long as such purchaser or assignee has ownership or possession of such leasehold estate.

Section 12.3 Notice and Cure.

If, at the time of the occurrence of an Event of Default herein as provided in Article XIV, the leasehold estate created hereby is subject to a mortgage, then, provided that the mortgagee thereunder has previously filed written notice thereof with the Landlord together with an address for service, the Landlord shall notify such

mortgagee in writing of the existence of the Event of Default, specifying the nature thereof, and such mortgagee:

- (a) shall have a period of 60 days after the date such notice is received within which to cure the default or defaults concerned; or,
- (b) if such default or defaults cannot reasonably be cured within said 60 day period, such mortgagee shall diligently prosecute to conclusion as soon as possible all acts necessary to cure said default or defaults; or,
- (c) if such default consists of a default which can not be cured, the term of this lease may be preserved if such mortgagee shall within 60 days after receipt of such notice commence and thereafter continue to perform and observe all the Tenant's covenants and obligations here under, and without delay commence and diligently prosecute to conclusion foreclosure proceedings under its mortgage; and

this lease shall not be forfeited or terminated because of such default, it being understood and agreed however that in the event of failure by any such mortgagee so to cure or begin to cure the Landlord may terminate this lease as herein provided without further notice to such mortgagee.

Section 12.4 Modification of Lease.

Subject to Section 12.3 if there exists any unpaid mortgage against the leasehold estate of which the Landlord has notice the Landlord agrees that it will not cancel or modify this lease or accept a surrender of the Lands, or a cancellation or modification of this lease from the Tenant prior to the end of the term of this lease without the written consent of such mortgagee.

Section 12.5 Tripartite Agreement.

The Landlord shall from time to time at the request of the Tenant enter into an agreement with the Tenant and any mortgagee of the Tenant on the same terms and conditions as provided in this Article. The Tenant agrees to pay to the Landlord all reasonable costs of the Landlord in respect to such agreement.

ARTICLE 13

ESTOPPEL CERTIFICATES

Section 13.1

The Landlord and Tenant agree that at any time and from time to time upon not less than ten (10) days' prior request by the other party, each will execute, acknowledge and deliver to the other a statement in writing certifying:

- (a) that this lease is unmodified and in full force and effect (or if there have been modifications that the same is in full force and effect as modified and identifying the modifications),
- (b) the dates to which the rent and other charges have been paid, and
- (c) that, so far as the maker of the certificate knows, the party who requests the certificate is not in default under any provisions of this lease (or, if in default, the particulars thereof). It is intended that any such statement may be relied upon by any third party proposing to acquire the interest of the party who requests the certificate or any prospective mortgagee of, or assignee of any mortgage of such interest.

ARTICLE 14

DEFAULTS AND REMEDIES

Section 14.1 Events of Default.

If and whenever:

- (a) the Tenant shall default in the payment of rent or of any other sum required to be paid to the Landlord by any provision of this lease, and such default shall continue for 60 days after notice thereof is given by the Landlord to the Tenant; or
- (b) the Tenant shall default under this Lease or the Boat House Agreement and such default shall continue for 90 (ninety) days after notice thereof is given by the Landlord to the Tenant; or
- (c) the Tenant files in any court or there is filed against the Tenant in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of the Lands, and within 180 days after the

commencement of any such proceedings against the Tenant such petition shall not have been dismissed; or

- (d) the Tenant makes an assignment for the benefit of creditors; or
- (e) the Tenant shall vacate or abandon the Lands for a period of 180 days,

then and in any such event an Event of Default shall be deemed to have occurred hereunder, and the current rental instalment and the rent for the three (3) months next following, calculated at the same rate as would have been payable if such Event of Default had not take place, shall immediately become due and payable and the Landlord may without further notice or any form of process whatever forthwith re-enter upon the Lands or any part thereof and take possession thereof whereupon this lease and the term hereof as well as all right, title and interest of the Landlord hereunder shall, subject to Section 12.3, forthwith terminate notwithstanding anything contained in any statute or law to the contrary; provided however that such termination shall be wholly without prejudice to the right of the Landlord to recover arrears of rent, damages and costs for any antecedent breach of covenant on the part of the Tenant.

Section 14.2 Remedies Cumulative.

The remedies of the Landlord specified in this lease are cumulative and are in addition to any remedies of the Landlord at law or in equity. No remedy shall be deemed to be exclusive, and the Landlord may from time to time have recourse to one or more or all of the available remedies specified herein or at law or in equity.

Section 14.3 No Waiver.

No waiver of, nor neglect to enforce any right to forfeiture of this lease, or right of re-entry upon breach of any covenant, agreement or condition herein contained, shall be deemed a waiver of such rights on any of them upon any subsequent breach of the same or any other covenant, agreement or condition herein contained.

ARTICLE 15

QUIET ENJOYMENT

Section 15.1

The Landlord covenants that upon the Tenant paying the rent hereby reserved, and performing and observing the covenants hereinbefore on its part contained, the Tenant shall and may quietly possess and enjoy the Lands for the term hereby granted without any interruption or disturbance from the Landlord or from any other person or persons lawfully claiming by, from, through or under it.

ARTICLE 16

USE OF LANDS

Section 16.1

The Tenant may use the Lands for the construction of a rowing facility together with ancillary facilities for recreational, educational, competitive and social rowing and paddling programs and ancillary social functions together with a media and conference centre.

ARTICLE 17

EXPROPRIATION

Section 17.1

The Tenant shall have the right to intervene in any condemnation or expropriation proceedings, to defend and prosecute any claims and in general shall have the right to take any appropriate action to protect and enforce any rights or interest it may acquire by virtue of this lease. The Tenant shall pay all costs, interest and penalties which may result from any such contest, application or action, and shall give prompt notice of the commencement of such contest, application or action to the Landlord.

ARTICLE 18

TENANT'S HOLDING OVER

Section 18.1

If at the expiration of this lease the Tenant shall hold over for any reason, its tenancy thereafter shall be from month to month only, and shall be subject to all terms and conditions of this lease, except duration, in the absence of written agreement to the contrary.

ARTICLE 19

NOTICE

Section 19.1 Notice

All notices, demands, consents, approvals and other communications which may or are required to be given pursuant to any provision of this Lease shall be given or made in writing and shall be deemed to be validly given if served personally or by telecopy, in each case addressed to the particular party at:

(a) If to the Landlord, at:

City of Richmond
6911 No. 3 Road
Richmond, British Columbia
V6Y 2C1

Attention: City Manager
Telecopier No.: ●

with a copy to:

City of Richmond
6911 No. 3 Road
Richmond, British Columbia
V6Y 2C1

Attention: City Solicitor
Telecopier No.: ●

(b) If to the Tenant, at:

THE UNIVERSITY OF BRITISH COLUMBIA
Department of Athletics and Recreation
Room 272, War Memorial Gymnasium
6081 University Boulevard
Vancouver B.C. V6T 1Z1

Attention: ●
Telecopier No.: ●

with a copy to:

Stikeman Elliott
Barristers and Solicitors
Suite 1700 - Park Place
666 Burrard Street
Vancouver, B.C. V6C 2X8

Attention: David E. Gillanders, Q.C.
Telecopier No.: (604) 681-1825

or at such other address of which any party may, from time to time, advise the other party by notice in writing given in accordance with the foregoing. The date of receipt of any such notice shall be deemed to be the date of delivery or telecopying

thereof, provided that if any notice is transmitted by telecopier on a day that is not a Business Day, then such notice shall be deemed delivered on the first Business Day after such transmission.

ARTICLE 20

INDEPENDENT COVENANTS

Section 20.1 Independent Covenants

Each and every covenant and agreement contained in this lease is, and shall be construed to be a separate and independent covenant and agreement, and the breach of any such covenant or agreement by the Tenant shall not discharge or relieve the Tenant from its obligations to perform the same. If any term or provision of this lease or the application thereof to any person or circumstance shall to any extent be invalid and unenforceable, the remainder of this lease, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this lease shall be valid and shall be enforced to the extent permitted by law.

ARTICLE 21

NO PARTNERSHIP OR JOINT VENTURE

Section 21.1

This lease is not intended nor shall it be construed to create the relationship of either a partnership or a joint venture between the Landlord and Tenant.

ARTICLE 22

RULE AGAINST PERPETUITIES

Section 22.1

The terms of any options, interests or rights of first refusal set out in this lease shall be for the lesser of the lives of the descendants now living of His late Majesty King George the Fifth plus twenty years or the term of this lease.

ARTICLE 23

Section 23.1

Wherever the neuter is used herein it should be construed as if the masculine or feminine had been used where the context so requires, and the rest of the sentence

concerned shall be construed as if the grammatical and terminological changes thereby rendered necessary had been made.

ARTICLE 24

SUCCESSORS AND ASSIGNS

Section 24.1

The word "Landlord" wherever it occurs in this lease, shall mean and extend to the Landlord, its successors and assigns, and the word "Tenant" wherever it occurs in this lease shall mean and extend to the named Tenant, and its successors and assigns.

ARTICLE 25

ENTIRE AGREEMENT

Section 25.1

This lease contains the entire agreement between the Landlord and the Tenant and cannot be changed or terminated orally, but only by an instrument in writing executed by the parties.

UBC ROWING BOATHOUSE AGREEMENT

This Agreement dated the _____ day of _____, 2004 at the City of Richmond, British Columbia

BETWEEN

CITY OF RICHMOND, 6911 No. 3 Road, Richmond, British Columbia, V6Y 2C1

(the "City");

AND

THE UNIVERSITY OF BRITISH COLUMBIA, through its Department of Athletics and Recreation, Room 272 – War Memorial Gymnasium, 6081 University Boulevard, Vancouver, British Columbia, V6T 1Z1

("UBC")

WHEREAS:

- A. Richmond City Council supports the proposal of UBC to use the Site for the construction of a boathouse;
- B. UBC will provide opportunities for Richmond residents, community organisations and the School District #38 Richmond to participate in future rowing and paddle sport activities at the Site;

THEREFORE:

- C. This agreement has been established to facilitate the day-to day operation of the Rowing Facility and public amenities and to establish a working relationship between the parties.

In consideration of the following mutual covenants, the parties agree as follows:

1. DEFINITIONS

1.1. In this agreement the following words and expressions have the following meanings unless the context otherwise requires:

1.1.a. The "Facility" means the boathouse, floats, ramps and associated buildings to be located on the Property, also known as the John Lecky UBC Boathouse

1.1.b. "UBC" means: **THE UNIVERSITY OF BRITISH COLUMBIA**, through its Department of Athletics And Recreation, Room 272 – War Memorial Gymnasium, 6081 University Boulevard, Vancouver, British Columbia, V6T 1Z1.

1.1.c. The "City" means: **CITY OF RICHMOND**, 6911 No. 3 Road, Richmond, British Columbia, V6Y 2C1.

- 1.1.d. The "Property" means: the land and water lot, Lot "N" owned by the City located at 7477 River Road more particularly known and described as: N SEC BLK RG6W PL 23828 Block 4N, 5N, Section 5, 6, 7, 8, Except Plan 35001, 2.26 AC PTN OF LOT N - SEE R-083-466-000, R-083-467-000, R-083-467-505, R-083-468-000 FOR REMAINDER .
- 1.1.e. "Meeting Room and Banquet Space" means rooms in the Facility which are available for rent by the community.
- 1.1.f. "Dyke" means the perimeter flood-proofing structures in Richmond.
- 1.1.g. "Middle Arm" means the portion of the Fraser River.
- 1.1.h. "RRPC" means Richmond Rowing and Paddling Centre within the John M.S. Lecky Boathouse.

2. PERMISSION TO USE

- 2.1. The portion of the Property to be used as the Facility site is shown in cross-hatch on the diagram attached as Schedule A and forms part of this agreement. Permission to Use is dealt with in a separate legal Land Lease between the City and UBC and is not attached to this agreement.

3. PARTIES AND THEIR RELATIONSHIP

- 3.1. This agreement is between the City and UBC. The relationship created by this agreement is contractual only and the parties shall not be partners or agents of each other by virtue of this agreement. None of the parties hereto has the authority to bind either or both of the other parties hereto, except with express prior written consent.

4. COORDINATING COMMITTEE AND LIAISON

4.1. Coordinating Committee:

The Coordinating Committee monitors the operation of the Facility and gives guidance to UBC and City staff. The Coordinating Committee recognizes the authority of each party to control the following areas of responsibility designated to it:

- 4.1.a. UBC: operation and maintenance of the Facility, programs, and all water based activities, special events by the University of British Columbia;
- 4.1.b. City: physical maintenance of the Dyke and surrounding trail system and park areas, including but not limited to all City assets.

4.2. Membership and Procedures of the Boathouse Coordinating Committee

The Coordinating Committee membership and procedures are detailed in Schedule B which is attached and forms part of this agreement.

4.3. **Annual Reporting**

UBC will submit an annual summary of: the Facility activities, attendance, Richmond resident participation rates, and other statistics including an advance program of the coming year's planned activities to the City's Parks, Recreation and Cultural Services Committee of Council, once per annum in October. This presentation will also include a presentation of the Facility annual audited financial statements, and goals and objectives for the coming calendar year.

- 4.4. UBC must provide the City with an annual, current list of the names, addresses, and contact phone numbers of the Board of Directors of the Facility, as well as provide the City with a current list of emergency contacts.
- 4.5. UBC will appoint a designate to participate in the Richmond Sports Council, or any other future designated City Advisory Committee on sport in Richmond.
- 4.6. It will be the responsibility of UBC to liaise with other relevant authorities in the operation of the Facility including but not limited to the Vancouver Airport Authority - YVR, and the North Port Fraser Harbour Commission.

5. **DISPUTE RESOLUTION**

- 5.1. The Coordinating Committee will attempt to determine the issues referred to it under this agreement, and any other issues arising out of this Agreement or relating to the Facility or the Lands. If for any reason the Coordinating Committee cannot or does not determine any such issue, the issue will be referred to UBC Department of Athletics and Richmond City Council. If the issue is still not determined or if a means of determination cannot be agreed to by the parties, then the issue shall be referred to a single arbitrator and the provisions of the British Columbia Commercial Arbitration Act shall apply.

6. **FACILITIES USE PROGRAMMING**

- 6.1. Upon opening the facility UBC will provide programs and events through what will be known as the Richmond Rowing and Paddling Centre (RRPC). This centre will be housed within the boathouse and share space with the established UBC and St. George's Rowing programs. RRPC will be equipped, administered and operated by Foundation 2000 Plus (F2P), a non-profit society formed for the purpose of promoting and providing programs for competitive and recreational rowing and paddling activities in Canada.
- 6.2. RRPC will offer community rowing and dragon boating programs through the Spring, Summer and Fall months on weekdays and weekends. There will be a wide variety of programs for both recreational and competitive youth and adults.

- 6.2. UBC Rowing, St. George's and RRPC will host weekend rowing and dragonboating events periodically throughout the year. Competitors will be invited from all over British Columbia as well as international competitors.
- 6.3. The boathouse will also have rooms available for rent for any variety of social functions and business meetings. These rooms will be available year round and will require advanced booking through the boathouse administration.
- 6.4. UBC will work with the City of Richmond Parks, Recreation & Cultural Services Division to provide an annual series of water based recreational and skill development sport camps for youth specifically between July and September and during other school vacation periods.
- 6.5. UBC will work with the School District No. 38 to encourage the development of school based athletic program access and usage at a reduced community rate. An annual summary of School District #38 student participation in the Facility programs will be presented to the City on an annual basis as part of the annual reporting process.
- 6.6. The City of Richmond will have free access to use the meeting room and banquet hall in the Facility for up to 5 (five) bookings per room, per annum, with a minimum of one month's notice for a booking request.
- 6.7. The boathouse and the programs that run from it will create opportunities for the public to participate in rowing and paddling.
- 6.8. UBC will be responsible for all costs involved in the development and construction of the Facilities, including future expansion opportunities.
- 6.9. All revenues from programs offered by any party in any program shall be the sole property of the party sponsoring the activity. In the case of joint sponsorship of activities the parties will come to a mutual agreement on division of the revenues.
- 6.10. UBC agrees to provide program access for persons with disabilities, and low income families, as well as recognizing the City's Recreation Access Card for program discounts for those persons with permanent disabilities.
- 6.11. The City will provide opportunities for annual and seasonal program promotion in the Parks Recreation & Cultural Services Leisure Guide and program Internet website links.
- 6.12. Snow and ice control for publicly accessible areas surrounding the Facility will be the responsibility of UBC, the front entrance will be kept clear of snow and ice , and the City will not take responsibility for clearing the parking lot of snow and ice accumulations.
- 6.13. UBC will inform the City on an annual basis of the proposed seasonal operating hours for the facility.

7. CONDITIONS OF USE

- 7.1. UBC will not undertake any alterations to the Dyke including but not limited to: tree planting, sign installation, or other modifications without approval from the City.

- 7.2. Exterior Landscaping maintenance of the Facility will be the responsibility of UBC, while maintenance of the Dyke Trail and Waterfront Park areas will be the responsibility of the City.
- 7.3. UBC will agree to adopt the portion of the Dyke Trail and linear park from the Facility to the Dinsmore Bridge. This adoption will be facilitated as part of the City's established Partners for Beautification trail adoption program.
- 7.4. The Rowing Facility will be operated solely by UBC for not-for-profit recreational or athletic activities.
- 7.5. Vehicle access to the Facility by UBC will be limited to the existing and future parking areas at the site. Vehicle access to the Dyke Trail and Waterfront Park areas will be reserved for City and Emergency vehicles and equipment while on City business. Parking will be only in designated parking areas as approved through the Facility development application and building permit process.
- 7.6. UBC agrees to abide by all applicable City Bylaws and Policies while using the site.
- 7.7. UBC will inform the City Parks Department in writing a minimum of one month prior to any special event happening on the site, and UBC will provide the City with an annual calendar of special events happening at the site on or before January 30th of each calendar year. The City will review each proposed special event and provide direction on City requirements including but not limited to: permit issues, transportation plans, and other event related issues.

8. ADMINISTRATIVE RESPONSIBILITIES

- 8.1. UBC will bear Administrative responsibility for programs and activities, including responsibility and authority for planning, promotion, implementation, conduct and supervision.

9. WATER SAFETY/ENVIRONMENT

- 9.1. UBC will develop and implement a safety plan to ensure all boating activities associated with the Facilities will not unreasonably impede existing industrial, commercial, flying, fishing, log booming, or recreational boating activities in the vicinity of the Property.
- 9.2. UBC will ensure that all instruction at the Facility on the water be consistent with Rowing Canada Aviron best practises at all times.

10. INSURANCE

- 10.1. UBC will acquire comprehensive general liability insurance for their activities at the site which names the City as an additional named insured with a minimum of \$5,000,000 (Five Million Dollars) liability.
- 10.2. All private bookings and Facility rentals at the Facility must have adequate insurance coverage
- 10.3. Copies of the annual insurance certification will be provided to the City by UBC, the City will review the policies for adequacy of coverage.

11. INSPECTION

- 11.1. The City, its servants and agents, may enter the Property at any time for the purpose of inspecting the Dyke. Reasonable notice will be given to UBC in the event that such inspection or emergency repairs to the dyke become necessary.
- 11.2. UBC will not undertake any alterations to the upland property at the Site including: the installation of temporary or permanent signage, Facility construction, landscaping or other works unless prior consent has been received from the City.
- 11.3. UBC will keep the Facility in good repair, the City will perform a routine inspection of the Facility on an annual basis to assure compliance to City standards.

12. PUBLIC ACCESS TO WASHROOM FACILITIES

- 12.1. UBC will provide public access and maintenance for the washrooms located in the Facility during normal operating hours.
- 12.2. UBC will also, through the development and construction process of the Facility, provide for the construction of one public accessible trails washroom built to City of Richmond specifications. This Facility on the Dyke Trail will be maintained by the City of Richmond and the City will assume sole responsibility for its operation.

13. UTILITIES/TAXES

- 13.1. The payment of all utilities including but not limited to electrical, sanitary, and natural gas for the Facility will be borne by UBC.
- 13.2. UBC will be responsible for payment of property taxes for the Facility.

14. RENEWAL

- 14.1. This Agreement may be amended from time to time upon mutual agreement of the parties in writing.
- 14.2. This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of British Columbia.
- 14.3. This Agreement sets out the entire agreement of the parties and no representations, warranties or conditions have been made other than those expressed or implied herein. No agreement collateral hereto shall be binding upon the City unless made in writing and signed by the City.

15. TERM

15.1. This Agreement is for a term of five (5) years, from August 1, 2004 to August 1, 2009.

16. TERMINATION

16.1. This Agreement may be terminated by either party upon giving 120 days written notice to the other party.

16.2. If UBC defaults in the performance of the conditions of this Agreement and fails to remedy such default within 30 days of notice from the City, the City may terminate this Agreement immediately.

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THE PARTIES have executed this Agreement the day and year first above written.

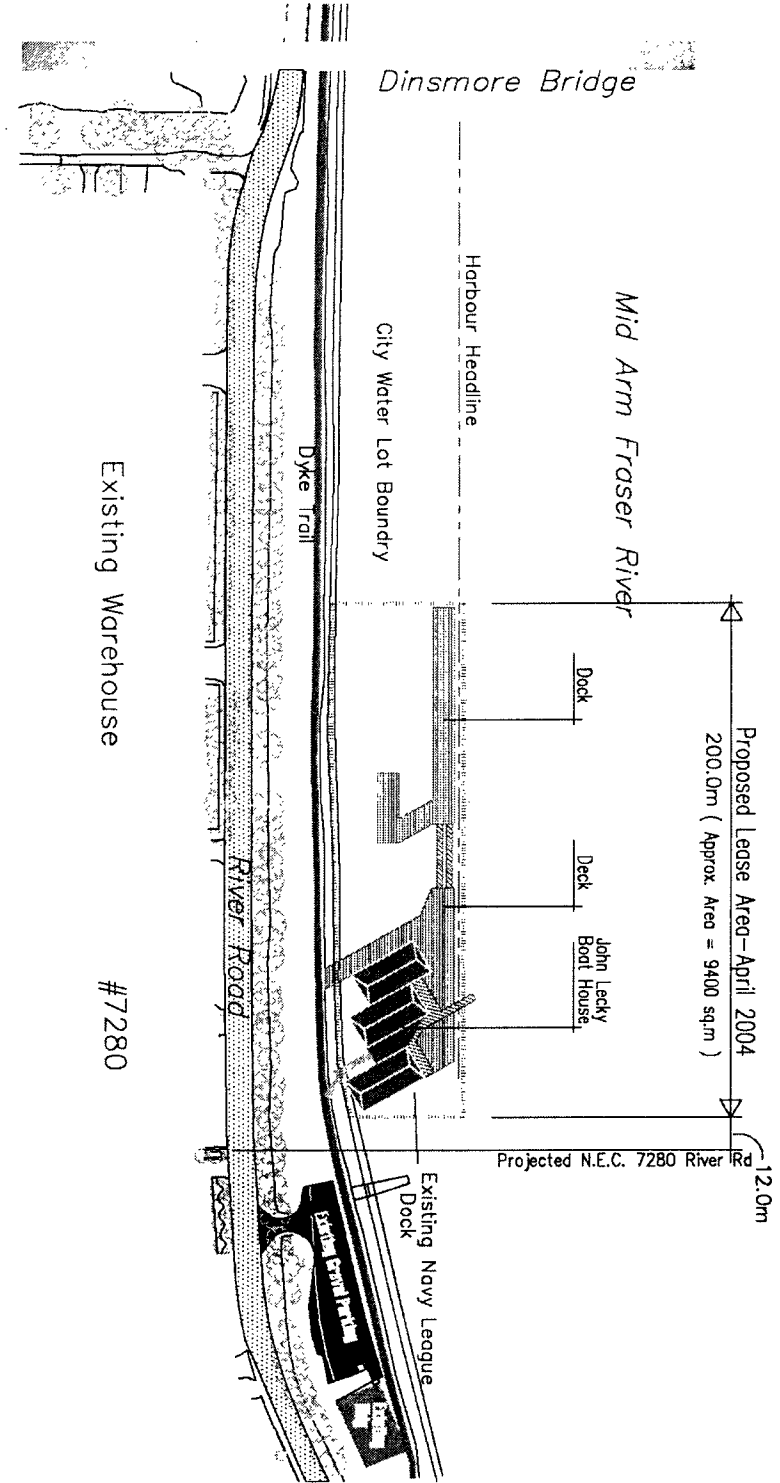
The Corporate Seal of the **CITY OF**)
RICHMOND was affixed in the presence)
of:)
))
_____))
Mayor – Malcolm Brodie)
))
_____))
City Clerk – Richard McKenna)

CITY OF RICHMOND
APPROVED
for content by
originating
dept

UNIVERSITY OF BRITISH COLUMBIA)
through its **DEPARTMENT OF**)
ATHLETICS AND RECREATION was)
affixed in the presence of:)
))
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Authorized Signatory)
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Authorized Signatory)

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SCHEDULE A



Proposed UBC Boathouse
 Site Plan
 Scale=1:2250

SCHEDULE B

UBC BOATHOUSE COORDINATING COMMITTEE MEMBERSHIP & PROCEDURES

Membership:

The Coordinating Committee is comprised of five members as follows:

Three members appointed by UBC being:

- 1 Head Coach of Rowing Programs
- 2 Representative appointed by the UBC Department of Athletics

Two members appointed by the City being:

- 1 Representative from the Parks, Recreation and Cultural Services Division
- 1 Representative from Richmond City Council who will be named as liaison to the Facility.

Procedures:

Meetings: Meetings of the Coordinating Committee will occur at mutually agreed upon times in January, April, June and October of each year. Additional meetings are to be at the call of the chair. All members must attend or send their designate duly appointed in writing to each meeting. Emergency meetings can be called by any party upon 72 hours written notice to the other parties.

Chairperson: A chairperson is selected by the Coordinating Committee from its membership for a one year term at the June meeting.

Decisions: Decisions are made by consensus. If consensus cannot be reached, the issue is referred to the City and UBC.

Resource Persons: UBC Facility staff and City staff act as primary resource persons to the Coordinating Committee, and they or their respective designates will attend all Coordinating Committee meetings. If secondary resource persons are needed by any party, this need will be communicated to the other parties in advance of the meeting.

Roles and Responsibilities:

Chairperson: The chairperson in consultation with all other Coordinating Committee members will establish an annual calendar of specific regular meeting dates and times and will communicate the calendar to all members of the Coordinating Committee by September 15th of each year. All agenda items must be received by the chairperson two weeks in advance of the meeting. All Coordinating Committee members will be in receipt of the agenda one week in advance of the meeting.

Resource Persons: The role of the resource persons is to provide information and advice to the Coordinating Committee members.

Recording Secretary: It will be the responsibility of UBC and the City on an annual basis to provide a recording secretary and distribute committee minutes to all Coordinating Committee members.

MEMORANDUM OF UNDERSTANDING

BETWEEN

CITY OF RICHMOND, 6911 No. 3 Road, Richmond, British Columbia, V6Y 2C1

(the "City");

AND

THE UNIVERSITY OF BRITISH COLUMBIA , through its Department of Athletics And Recreation, Room 272 – War Memorial Gymnasium, 6081 University Boulevard, Vancouver, British Columbia, V6T 1Z1

("UBC").

BACKGROUND

- A. The City called for expressions of interest for proposals to use Lot N and adjacent water lot and river usage, located upstream from the Richmond Yacht Club located at 7411 River Road, as shown on the map attached as Schedule "A" (the "Site");
- B. Council of the City supports the proposal of UBC to use the Site for the construction of a boathouse (the "Facilities");
- C. The parties wish to enter into this Memorandum of Understanding ("MOU") to clarify their respective roles and responsibilities in the development of a plan to develop the Site for Facilities, with a formal agreement and long-term lease;
- D. St. George's School is interested in being part of the development of the Facilities;
- E. Foundation 2000 Plus is a not for profit foundation interested in supporting the development of rowing and paddling sports in Canada;
- F. UBC is desirous of building state-of-the-art Facilities, which will be a major enhancement to the Richmond community consistent with the City's River-Front Development Plan;
- G. UBC will encourage the participation of Richmond residents, community organisations and the School District #38 Richmond to participate in potential future rowing activities at the Site;
- H. UBC has entered into a License Consent to Occupy Agreement with the City of Richmond in February 2003 to temporarily occupy a portion of the Site to conduct rowing activities.

TERMS OF MEMORANDUM OF UNDERSTANDING

Development Plan

UBC will develop and submit to the City a development plan for the Site setting out the details of the plan for construction of the Facilities and such plan will conform to the terms of this MOU and will be subject to the approval of the City through the normal development permit process.

Planning and Permits

UBC will obtain, at its own expense, all necessary permits and approvals for development of the Site and for ensuring compliance with all applicable municipal, provincial and federal statutes and regulations. The City will use its best efforts in assisting UBC.

UBC will develop a transportation study and parking plan for the Site and such plan will be subject to the approval of the City.

UBC will work with City of Richmond Staff to:

1. ensure that development of the Site does not compromise the dyke trail system;
2. address potential environmental impacts;
3. ensure that the plans are consistent with the City's vision and long term waterfront objectives, including both the overall aesthetics of the Facilities itself as well as the impact on the area in general.

Facilities Use Programming

UBC is responsible for programming events at the Facilities, which will include:

1. UBC rowing events and junior development rowing events;
2. water-based programs available to the community, after consultation with the City Park Department and Foundation 2000 Plus.

Financial

1. UBC will be responsible for all costs involved in the development and construction of the Facilities.
2. The City will grant UBC a long-term lease for the Site at \$1.00 per year. UBC is responsible for any taxes payable in respect of the Site and it is UBC's responsibility to apply to the BC Assessment Authority for any exemptions for which it may be eligible. The City agrees to assist UBC with its applications for tax exemptions.
3. Any net profits generated at the Site will be applied to the development of future programs and facilities at the Site, with any such development being subject to the approval of the City.

Water Safety

UBC will develop a safety plan to ensure all boating activities associated with the Facilities will not impede existing industrial, commercial, flying, fishing, log booming, or recreational boating activities in the vicinity of the Site.

Public Process

UBC will participate in any public consultation process that the City determines is necessary with existing watercourse users and neighbours of the Site prior to determining the location of the proposed Facilities within the Site.

Terms and Renewal

This MOU is valid until December 31, 2004.

Termination

In the event that UBC decides not to proceed with development of the Site or the parties are unable to agree on the manner of developing the Site, this MOU may be terminated by either Party upon 180 days written notice.

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Council Approval

This MOU is subject to approval by Richmond City Council and by the Board of Governors of UBC.

The parties have executed this MOU on the 29 day of OCTOBER, 2003.

THE CITY OF RICHMOND

Per: 

Name:
Title: Mayor, Malcolm D. Brodie

CITY OF RICHMOND
APPROVED as to content only
<i>U.S.A.</i>
Dept. Head
APPROVED as to form only
Solicitor
DATE OF COUNCIL APPROVAL (if applicable)
07/14/03

Per: 

Name:
Title: City Clerk, J. Richard McKenna

I/We have the authority to bind the corporation

UNIVERSITY OF BRITISH COLUMBIA through its DEPARTMENT OF ATHLETICS AND RECREATION

Per: 

Authorized Signatory
University Counsel
THE UNIVERSITY OF BRITISH COLUMBIA

Per: 

Authorized Signatory
Vice President, Students