

**Sailing Program Agreement**

**Between The**

**CITY OF MARCO ISLAND**

**And**

**MARCO ISLAND YACHT CLUB**

This Agreement ("Agreement") is made and entered this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the **City of Marco Island**, a Florida municipal corporation, whose principal address is 50 Bald Eagle Drive, Marco Island, Florida 34145, (hereinafter referred to as "City") and the **Marco Island Yacht Club**, a private non-profit corporation, whose principal address is 1400 N Collier Blvd., Marco Island, Florida 34145, (hereinafter referred to as "MIYC"). The above parties do, commencing with the dates identified on the signature pages within the Agreement, mutually agree to the following:

WITNESSETH:

**WHEREAS**, the Marco Island Community Sailing Center (MICSC) and its predecessor, the Marco Island City Kids Youth Sailing program (MICKYS), has been in existence for a number of years to promote and provide sailing instruction and recreational services for the City's residents and visitors. MICSC is a member of the United States Sailing Association, the National Governing Body for the sport of sailing. Prior to 2012, the Marco Island Yacht Club (MIYC) and other local organizations sponsored MICKYS for the benefit of this community; and

**WHEREAS**, in 2010, in support of the MICKYS program the City secured a Sovereignty Submerged Land Lease (SSLL) from the state of Florida on a parcel of land that was deeded to Florida Department of Transportation (FDOT). The SSLL was secured for the purpose of locating and operating the MICKYS program on the SSLL parcel, which adjoins the MIYC, the seawall and beach are located contiguous to the Marco River. The SSLL parcel is located along the Marco River beneath the Judge Jolly Bridge which is FDOT Right Of Way which Bridge crosses the Marco River Pass. The City was able to secure the land lease by (i) establishing a lease with the Marco Island Marina Association (MIMA) to secure upland rights required for the SSLL and (ii) a confirmation of support from MIYC, who at the time was sponsoring MICKYS; and

**WHEREAS**, the City has built and currently maintains the improvements on the SSLL property to accommodate the sailing vessels, the storage of the associated equipment and to further promote and provides sailing instruction and recreational services for the residents and visitors of the City; and

**WHEREAS**, the SSLL terms provide that the lease can be assigned or transferred with prior written consent of the FDOT, subject to the terms and conditions of the SSLL; and

**WHEREAS**, the City desires to contract with MIYC to license the SSLL property and to continue to provide sailing instruction and recreational services for this purpose on behalf of the City; and

**WHEREAS**, MIYC has the necessary expertise, personnel and desire to safely and efficiently maintain the SSLL property and to provide these services on behalf of the City as specified herein.

**NOW, THEREFORE**, in consideration of the above mutual covenants and conditions herein expressed and the faithful performance of all such covenants and conditions, the parties agree as follows:

**1. Property.** The City has a Sovereignty Submerged Land Lease (“SSLL”) from the state of Florida for the property owned by the state of Florida at 1400/1402 N Collier Blvd., Marco Island, Florida 34145, with the following legal description:

A parcel of sovereignty submerged land in Section 09, Township 52 South, Range 26 East in Marco River, Collier County, containing 1,742 square feet, more or less, as is more particularly described and shown on Exhibit “A”, dated September 1, 2010 (“Property”).

**2. Right of Entry.** The City agrees that MIYC shall have the right to enter the Property to provide a sailing training program, subject to the City’s rights and responsibilities under the SSLL.

**3. Sailing Program.** MIYC agrees to provide as part of its overall sailing training program, a sailing program that is instructional and recreational in nature as outlined in Exhibit “B” (the “Program”). Furthermore, the City agrees to provide services to MIYC, in support of the Program as identified in Exhibit “B”.

- a. MIYC will support the Program through engagement of volunteer services of its members, and with the support and engagement with other organizations and entities necessary to provide the Program and services identified in the Agreement and related attachment(s). MIYC is solely responsible for the Program and oversight of MIYC Sailing Club. The City shall not have any responsibility for any oversight of the Program.
- b. Services provided in support of the Program shall be provided at the SSLL parcel, Property or on the premises of MIYC or the Marco Island Marina Association (“MIMA”).

- c. The City and MIYC agree to mutually collaborate on advertising, publication and communication of the Program identified in Exhibit "B".
4. **Term.** The Term of this Agreement shall commence on \_\_\_\_\_, 2019 ("Effective Date") and shall remain in full force and effect for one year after the Effective Date. Upon the expiration of the initial term, provided that neither the City nor MIYC is in default, this Agreement shall automatically renew on an annual basis, unless either party provides written notice (and then no later than thirty (30) days prior to the expiration of said term) declaring intent to not renew the Agreement.
5. **Termination.** Either party may terminate this Agreement with or without cause upon 30 days' written notice to the other party. Upon termination of this Agreement, MIYC will not be entitled to any lost revenue or lost profits. Likewise, any fees or charges paid by either party for services not actually performed (if any) will be forfeited.
6. **Compliance with Laws.** MIYC will adhere to all federal, state, county and local laws and any City policies, regulations and ordinances that apply to the Program. MIYC will obtain any necessary permits or licenses required for the Program. All permits and licenses will be kept on file at MIYC's office for review by the City if requested.
7. **Independent Organization.** MIYC is an independent organization, and its personnel shall not be entitled to participate in group, life, or health insurance programs or pension plans of the City and shall not be covered under any fringe benefits of the City, including but not limited to: vacation, sick and personal leave, holidays, unemployment compensation, and worker's compensation. Nothing set forth in this Agreement shall be construed to create the relationship of employer and employee or principal and agent between the City and MIYC. MIYC shall not act or attempt to act or represent itself, directly or indirectly or by implication, as an employee of the City or in any manner assume or create, or attempt to assume or create, any obligation on behalf of or in the name of the City. Accordingly, MIYC shall not attain, nor be entitled to, any rights or benefits of the City, nor any rights generally afforded City employees. MIYC further understands that Florida Worker's Compensation benefits available to employees of the City are not available to MIYC or to any employee or agent of MIYC. All employees and subcontractors of MIYC shall be considered to be, at all times, the sole employees or contractors of MIYC, under its sole direction and not an employee, contractor or agent of the City.
8. **Maintenance of Property.** The City will take such steps as necessary to maintain the current submerged land lease associated with the location of the Program referenced above. MIYC shall be responsible for routine clean up and site maintenance of the SSLL parcel; the maintenance and repair of MIYC sailing vessels, the associated equipment, and the SSLL wood deck and improvements. In addition, the City and MIYC may collaborate, from time to time, upon written agreement to modify the submerged land lease to improve access for users of the program and access to the site.

9. **Background Check.** MIYC hereby authorizes the City to check any and all records pertaining to criminal convictions, and any law enforcement agency to release to the City information regarding convictions under Florida state or local law and/or the state or local laws of other jurisdictions for MIYC staff and personnel involved in the Program.
10. **Public Records.** MIYC acknowledges and agrees that this Agreement is subject to Chapter 119, Florida Statutes. that the public shall have access, at all reasonable times, to certain documents and information pertaining to City contracts, pursuant to the provisions of Chapter 119, Florida Statutes. MIYC agrees to maintain public records in its possession or control in connection with MIYC's performance under this Agreement and to provide the City with access to public records in accordance with the record maintenance, production and cost requirements set forth in Chapter 119, Florida Statutes, or as otherwise required by law. MIYC shall ensure that public records that are exempt or confidential from public records disclosure requirements are not disclosed except as authorized by law.
- a. MIYC agrees to keep and maintain those public records related to the sailing program offered on behalf of the City in MIYC's possession or control in connection with MIYC's performance under this Agreement. MIYC additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. MIYC shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the City.
  - b. Upon request from the City's custodian of public records, MIYC shall provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.
  - c. Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the City.
  - d. Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the MIYC shall be delivered by MIYC to the City Manager, at no cost to the City, within seven (7) days. All such records stored electronically by MIYC shall be delivered to the City in a format that is compatible with the City's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, MIYC shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

- e. Any compensation due to MIYC shall be withheld until all records are received as provided herein.
- f. MIYC's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the City.

g. **Section 119.0701(2)(a), Florida Statutes**

**IF MIYC HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO MIYC'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.**

**Custodian of Records: Liza Litzan, CMC**  
**Mailing address: 50 Bald Eagle Drive**  
**Marco Island, Florida 34145**  
**Telephone number: (239) 389-5010**  
**Email: llitzan@cityofmarcoisland.com**

- 11. Indemnification.** MIYC shall indemnify and hold harmless the City from and against any and all claims, losses, and/or liabilities for personal injury, death, and property damage arising out of or related to MIYC acts or omissions done pursuant to, and/or in conjunction with, this agreement. MIYC also shall defend the City from and against all claims, losses, and/or liabilities for personal injury, death, and property damage arising out of or related to MIYC's acts or omissions done pursuant to, and/or in conjunction with, this Agreement. MIYC will not be liable for any judgments that arise out of the willful misconduct by the City, its agents or employees arising out of and/or in conjunction with this Agreement. Nothing in this Agreement shall be deemed or treated as a waiver by the City of any immunity to which it is entitled by law, including but not limited to the City's sovereign immunity as set forth in Section 768.28, Florida Statutes.
- 12. Insurance.** MIYC shall furnish insurance certificates indicating satisfactory insurance coverage at its sole cost and expense, maintain in full force and effect during the term of this Agreement, policies of insurance of the type and in the minimum amounts endorsed by the US Sailing Association (USSA) and referenced in Exhibit "B".
- a. Such policies shall be issued by an insurer of recognized responsibility and rated no less than A-VI or better by the A.M. Best Company or similar insurance rating firm and meet the levels.
  - b. Such policies shall be primary and non-contributory with waiver of subrogation in favor of the City shall provide that the City will be given thirty (30) days advance

written notice in the event of cancellation, termination, or modification, which materially restricts the coverage thereof.

- c. Prior to the execution of this Agreement, MIYC shall provide the City with a certificate of insurance and a copy of the policy endorsement naming the City of Marco Island, its employees, directors, officers, agents, independent contractors, successors, and assigns, and other authorized representatives as additional insureds to the extent of the contractual obligation assumed by MIYC. The certificate shall show a waiver of subrogation and hold harmless agreement in favor of the City of Marco Island, its employees, directors, officers, agents, independent contractors, successors and assigns, and other authorized representatives.
  - d. The MIYC will maintain such insurance for Directors and Officers, Program related staff and participants as defined in Exhibit "B".
13. **Waiver.** The waiver by either party of any term, agreement, condition, or provision herein contained shall not be deemed to be a waiver of any subsequent breach of the same or of any other term, agreement, condition, or provision herein contained, nor shall any custom or practice between the parties in the administration of the terms hereof be construed to waive or to lessen the right of such party to insist upon the performance by the other party in strict accordance with said terms.
14. **Attorney's Fees and Costs.** If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, each Party shall be responsible for their own respective attorneys' fees and costs through all appeals incurred in that civil action, or legal proceeding, in addition to any other relief to which such Party or Parties may be entitled.
15. **Waiver of Jury Trial.** In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.
16. **Governing Law and Venue.** This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any litigation arising out of this Agreement shall be proper exclusively in Collier County, Florida.
17. **Notices.** All notices, requests, and demands to be made or given to the parties shall be in writing and shall be delivered in reasonable time to the persons at the addresses indicated below. Such notices, requests, and demands, if sent by mail, shall be deemed delivered three days after deposit in the United States mail or private postal service, or if transmitted by hand, at the time of delivery.

For the City:

City of Marco Island  
Attn: City Manager  
50 Bald Eagle Drive  
Marco Island, Florida 34145

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

For the Marco Island Yacht Club:

Marco Island Yacht Club  
Attn:  
1400 N Collier Blvd.  
Marco Island, Florida 34145

\_\_\_\_\_  
\_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 18. Entire Agreement; Amendments.** This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein. No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document. Proposed changes shall be submitted in writing by the initiating party. MIYC represents that is an entity validly existing and in good standing under the laws of Florida. The execution, delivery and performance of this Agreement by MIYC and the City of Marco Island have been duly authorized, and this Agreement is binding on MIYC and the City of Marco Island and enforceable against MIYC and the City of Marco Island in accordance with its terms. No consent of any other person or entity to such execution, delivery and performance is required.
- 19. Severability.** If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

20. **Certain Terms May Survive Termination.** Any terms or conditions of this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.
21. **Successors and Assigns.** This Agreement shall be binding upon the Parties and their respective successors, heirs and assigns. However, the Parties agree that nothing contained herein shall authorize the assignment of this Agreement or the delegation of any duties hereunder by either Party, unless previously set out in this Agreement, without the prior written consent of the other party.
22. **Headings.** The sections headings used in this Agreement are for reference and convenience only and shall not enter into the interpretation hereof.

**[THIS SPACE INTENTIONALLY LEFT BLANK]**



**In Witness Whereof**, the parties have executed this Agreement on the date first written and set forth above.

**CITY**

**ATTEST:**

**CITY OF MARCO ISLAND**

By: \_\_\_\_\_  
Laura Litzan, City Clerk

By: \_\_\_\_\_  
Michael McNees, City Manager

Executed on this \_\_\_\_ day of August, 2019.

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY**

By: \_\_\_\_\_  
Alan L. Gabriel, City Attorney

MIYC Agreement (Prop. 7.24.19)

**MIYC**

**Marco Island Yacht Club, \_\_\_\_\_**

a \_\_\_\_\_

WITNESSES:

By: \_\_\_\_\_

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

By: \_\_\_\_\_

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

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

By: \_\_\_\_\_

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

Executed on this \_\_\_ day of July, 2019.

## **EXHIBIT "A"**

### **THE PROPERTY**

The **Property** which includes a parcel of sovereignty submerged land in Section 09, Township 52 South, Range 26 East in Marco River, Collier County, containing 1,742 square feet, more or less, as is more particularly described and shown on the Sketch dated September 1, 2010 ("Property").

## **EXHIBIT "B"**

### **SAILING PROGRAM**

MIYC through the engagement of its membership, and its relationship with other boating and sailing organizations such as the Marco Island Community Sailing Center (MICSC), the Power Squadron, MIMA, the Florida Council of Yacht Clubs, etc. is undertaking development of a sailing program ("Program").

1. MIYC will make the Program available to the City of Marco Island Parks and Recreation Department for inclusion in the Department's catalog of available recreational programs.
2. The Sailing Program offerings may include, but are not limited to, the following:
  - Summer Sailing Camp (Beginning, Intermediate, Advanced);
  - Private sailing lessons;
  - High School sailing team activities;
  - Adult Sailing activities; and
  - Organizing the curriculum for the program for each level of instruction, as prescribed by the United States Sailing Association (USSA).
3. The Program will be staffed with qualified, certified sailing instructors, who must have completed the following:
  - USSA Level One (or higher) Certification;
  - State of Florida Boater Safety Course; and
  - CPR and First Aid Certification Courses.
4. MIYC will provide Comprehensive Insurance Coverage, endorsed by the US Sailing Association.
  - Coverage for the sailing programs will include a minimum combined single limit of liability of at least \$1,000,000 per occurrence.
  - MIYC will maintain Directors & Officers insurance of at least \$1,000,000 per occurrence.
5. A signed liability waiver will be required to participate in any offered training or recreational program that specifies both the City and MIYC.
6. MIYC will perform general maintenance and cleanup on the site throughout the Term of the Agreement.
7. MIYC shall be responsible to maintain the Property (including the deck structure) in a clean and acceptable operating condition (e.g., smoothing or sanding the wood surfaces to prevent splinters, etc.) The City shall be responsible to otherwise repair the deck structure as such may be caused by hurricane or other significant damage event and provide for such repairs as may be required.
8. The City of Marco Island will help promote the sailing programs.
9. The Parks and Recreation Department will assist with any necessary permits for special events, if required.