

**LICENSE AGREEMENT  
BY AND BETWEEN THE CITY OF KEY WEST AND  
THE UNITED STATES OF AMERICA, ACTING BY AND THROUGH  
THE DEPARTMENT OF THE NAVY**

1. This Facility Access License Agreement (“Agreement”) is entered into this \_\_\_\_ day of July, 2019, by and between the **City of Key West** hereafter referred to as (“LICENSOR”) and the United States of America, Acting by and through the Department of the Navy (“LICENSEE”). The LICENSEE’s contract number for this License Agreement is **N69450-19-RP-00042**.

2. COMPENSATION. LICENSOR agrees to provide this license at no cost.

3. LICENSOR and LICENSEE agree as follows:

a. Purpose. During the term of this Agreement, LICENSEE is granted the non-exclusive right of access in order to conduct certain exercises (“Training Operations”) on LICENSOR’s property and premises located in Monroe County, Florida, and having a street address of 1801 N. Roosevelt Blvd., Key West, Florida and identified by parcel number 00072070-000000 (collectively with any improvements and equipment located thereon, the “**Property**”) and further identified in Exhibit A.

(1). Specifically, the activities of LICENSEE authorized by this Agreement to be conducted on the Property may involve the following:

The use of supporting maritime vessels will typically execute a pre-coordinated infiltration and extraction of as many as twenty-six (26) diving pairs of Combat Swimmers to the Property. Prior to each activity contemplated under this Agreement, the LICENSEE shall obtain LICENSOR's approval regarding the total number of LICENSEE personnel that will participate on the Property. Combat Swimmer Forces will conduct actions on the target to include non-destructive breaching / simulated underwater detonation to pre-approved areas of operations. Combat Swimmer Forces will not enter any structure or space which has not been pre-approved by LICENSEE and coordinated. LICENSOR will be briefed on all safety procedures as well as medical coordination conducted in accordance with all training objectives. No weapons or live ammunition shall be used as part of the exercises under this Agreement. At the conclusion of the Training Event, Naval Special Warfare (NSW) personnel will conduct necessary site cleanup. Expected duration of Property use is 2-6 hours of mission execution with 24 hours of pre-exercise site setup and development. All deviations will be briefed to, and approved by LICENSEE.

(2). Except as provided in this Agreement, no other use of, or activity on the Property by LICENSEE shall be allowed without the prior consent of LICENSOR. This Agreement does not and shall not be deemed to constitute a lease or a conveyance of the Property by LICENSOR to LICENSEE or to confer upon LICENSEE any right, title, estate or interest in or to the Property, and said Agreement shall not be recorded in the official public records of the Monroe County Clerk of

Court. This Agreement grants to LICENSEE only a personal privilege to use the Property for the Term hereof on the terms and conditions set forth herein.

b. Initial Request for Access. At least thirty (30) days prior to any desired Training Operations, LICENSEE shall contact LICENSOR's Primary Point of Contact (POC), David Hawthorne, Marina Manager, at (305) 809-3982 or by email at [dhawthorne@cityofkeywest-fl.gov](mailto:dhawthorne@cityofkeywest-fl.gov). LICENSEE shall provide LICENSOR (a) the desired date(s) of the training exercise(s); (b) the number of LICENSEE personnel to be involved in the training exercise(s); (c) a complete description of the training exercise(s) to be conducted; and, (d) any other information required by LICENSOR to determine whether the proposed training exercise(s) might pose a threat to the safety of any person, the environment, or the Property. During the term of this Agreement, LICENSEE may submit as many requests for access to the Property as is required to meet LICENSEE's mission requirements.

(1). Upon receiving a complete description of each training exercise, as described above, LICENSOR will decide whether it will allow that particular training exercise to occur on the desired date(s). LICENSOR may deny any request by LICENSEE for any reason whatsoever, reasonable or unreasonable, and it is expressly agreed and understood that LICENSOR is under no obligation to grant LICENSEE access to the Property at any time during the term of this Agreement. The LICENSEE's point of contact for 'Initial Request for Access' are listed in Paragraph 3.i.

c. Confirmation of Training Date(s). LICENSEE's intent is to conduct approximately six (6) training evolutions of a duration of approximately one (1) week for each evolution during the term of this license. At least ten (10) days prior to the commencement date of an approved Training Operation, LICENSEE shall again contact LICENSOR's Primary POC to confirm that LICENSEE's use of the Property will not conflict with any of LICENSOR's operations on the Property. If an unexpected event or situation arises, which will cause, in LICENSOR's sole opinion, the Training Operation to interfere with LICENSOR's operations on the Property for that Training Operation, the parties agree to attempt to arrange different date(s) to conduct those Training Operations. If the parties cannot agree on a different date for the Training Operation, the Training Operation will be cancelled.

d. Non-interference with LICENSOR Operations. LICENSEE will conduct each Training Operation in a manner that does not materially interfere with LICENSOR's normal and continuous operations on the Property. After the commencement of the Training Operation, in the event of an emergency or should LICENSOR determine, in its sole opinion, that the Training Operation materially interferes with LICENSOR's operations on the Property, LICENSOR shall notify LICENSEE of such emergency or interference and LICENSEE shall immediately terminate the Training Operation and, at the sole discretion of LICENSOR, report to a muster station or leave the Property. The LICENSOR's Primary POC, or the POC's designee, has the full authority to immediately terminate (Stop Work Authority) any activity of the LICENSEE, including Training Operations, for any reason, with or without cause. Such notice of termination of the Training Operation by LICENSOR shall be subsequently confirmed in writing and delivered to LICENSEE in the manner prescribed in Paragraph 3.h below. LICENSOR's

written confirmation of the immediate termination of the Training Operation shall not delay or defer the effective time of such termination.

e. Cost of Operation. LICENSEE will conduct the Training Operation and all associated activities at its sole cost and expense, including, but not limited to, all work necessary for planning, selection of support personnel and equipment, scheduling, management and execution of the Training Operation, and site clean-up; LICENSOR shall bear no cost of the same.

f. Walk-through. A joint inspection of the Property will be conducted prior to the start of the Training Event and LICENSEE will take photographs and/or video of the Property in order to document and establish the general condition of the Property. LICENSOR and LICENSEE agree that these photographs and video will be used as a basis to determine and discuss clean-up and repair issues, if any, subsequent to the Training Event.

g. LICENSEE Liability to LICENSOR or Third Parties. LICENSEE shall be responsible to the LICENSOR for any injury to persons or damage to property proximately caused by the acts or omissions of LICENSEE, its agents, officers, or employees, to the extent allowed by the Federal Tort Claims Act (FTCA), 28 U.S.C. §1346(b), §§2671-2680, or the Military Claims Act (MCA), 10 U.S.C. §2733, as applicable. LICENSEE's liability for all injuries and damages under this clause is subject to and may not exceed appropriations available for such payment and nothing contained in this License may be considered as implying that Congress will at a later date appropriate funds sufficient to meet deficiencies. LICENSEE reserves the right to make repairs to any damaged structures that would return them to the condition that existed at the start of the Training Operation, subject to LICENSOR's oversight and approval. The right to make repairs shall not be construed as a modification of the rights and obligations under the FTCA or MCA. In no case will LICENSEE's liability exceed that allowable under applicable law, including the FTCA and MCA. The provisions of this clause are without prejudice to any rights LICENSOR may have in asserting a claim under the FTCA or the MCA, as applicable, for any and all damages as provided above or for any other damages, injuries, claims, or losses of any kind.

h. Notice of Hazardous Conditions. LICENSOR makes no representation that the Property is suitable for performing Training Operations. LICENSEE's representatives will inspect and evaluate the suitability and safety of the Property prior to each approved Training Operation. LICENSEE acknowledges that the Property may contain hazardous conditions. LICENSEE agrees that in connection with its exercise of rights under or pursuant to this Agreement upon the Property that LICENSEE and its employees, agents, contractors or their representatives, are accepting the condition of the Property and all canals and waterways leading thereto or thereupon on an AS IS basis. LICENSEE hereby acknowledges that it has been afforded the opportunity to inspect the condition of the Property, canals and waterways, and that LICENSOR makes no representations or warranties as to the condition or the suitability of the Property, canals and waterways for the purpose of this Agreement.

i. Notices and Communications. Contacts for Initial Request for Access described in paragraph 3.b and for Event Coordination are as follows:

For City Marina at Garrison Bight:  
David Hawthorne  
Marina Manager  
City Marina at Garrison Bight  
Ph: (305) 809-3982  
[dhawthorne@cityofkeywest-fl.gov](mailto:dhawthorne@cityofkeywest-fl.gov)

For NSWG-2 Exercise Coordinator:  
 Special Warfare Operator Chief Petty Officer  
 Anthony Schottman  
 NSWG-2 TRADET 2  
 Cell: (217)821-7081  
[Anthony.schottman@socom.mil](mailto:Anthony.schottman@socom.mil) or  
 NSWG-2 Quarterdeck - (757) 763-2000

(1) Except for the Initial Request for Access and Event Coordination, all notices and other communications provided for herein shall be delivered to the LICENSEE specified below.

(2) Format of Communications and Notices. All such communication shall be deemed to have been duly given (a) when transmitted if transmitted by telephone, fax, or e-mail before 5:00 p.m. local time (otherwise the next business day); (b) when delivered, if personally delivered; or (c) in the case of a mailed notice, three (3) business days after the date deposited in the U.S. Mail, postage prepaid. Telephone and e-mail communications are encouraged, but modification or termination of this Agreement must be made in writing and delivered by fax, courier, or U.S. Mail to the following addresses. Either party may change its contact information by giving written notice thereof to the other party.

#### Notices.

TO LICENSOR:  
Mr. Doug Bradshaw  
Port Director, City of Key West  
201 William Street  
Key West, FL 33040  
Telephone No.: (305) 809-3790  
Email Address for notices:  
[DBradshaw@cityofkeywest-fl.gov](mailto:DBradshaw@cityofkeywest-fl.gov)

TO LICENSEE:  
COMMANDING OFFICER  
Naval Facilities Engineering Command  
Southeast  
P. O. Box 30, Bldg. 903, AM11  
NAS Jacksonville, FL 32212-0030  
Attention: Real Estate Contracting Officer  
Telephone No.: (904) 542-6982  
Email Address for notices:  
[michael.brooks3@navy.mil](mailto:michael.brooks3@navy.mil)  
[Ferdinand.salomon@navy.mil](mailto:Ferdinand.salomon@navy.mil)

(3) Notwithstanding the foregoing, in the event LICENSOR notifies LICENSEE to immediately terminate a Training Operation as provided in Paragraphs 3.b and 3.d herein, such notice may be conveyed to LICENSEE by an employee of LICENSOR either in person or by telephone and shall be effective immediately.

j. Non-Disclosure. To the extent permitted by law, LICENSOR agrees not to disclose, and to make reasonable efforts to prohibit disclosure by its employees, officers, directors, agents, representatives, joint ventures, or contractors, to any third party, any tactics, techniques, procedures, or any information whatsoever that LICENSOR may gain through this Agreement or through LICENSEE conducting Training Operations on the Property. LICENSEE agrees not to disclose, and to require that its exercise participants and other representatives not disclose, to any third party any information concerning the Property, this Agreement, or LICENSOR's business operations that it may discover during the term of this License, nor any dates, times, or locations of Training Operations or that LICENSEE will be conducting Training Operations on or near the Facilities.

k. Document Execution. The parties hereto, or their duly authorized representatives, may have executed this Agreement in multiple original counterparts and in such case, each counterpart shall be deemed to be an original document for all purposes. Executed copies of this Agreement submitted to a party via electronic means, including, but not limited to, facsimile, PDF, JPEG, TIFF, or other electronic files, shall be completely valid and fully enforceable.

l. Anti-Deficiency Act; LICENSEE's Obligations. Notwithstanding any provision to the contrary, all of LICENSEE's activities under or pursuant to this Agreement are subject to the availability of appropriated funds, and no provisions shall be interpreted to require an obligation or provision of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. Additionally, nothing contained in this Agreement shall be considered to imply that the Congress of the United States of America will, at any later date, appropriate sufficient funds to meet the LICENSEE's obligations under this Agreement or any deficiencies hereunder.

m. Term of Agreement. The term of this Agreement is for a period of five (5) years from the date stated in Paragraph 1 above. This license may be terminated or revoked at any time, by either LICENSOR or LICENSEE, with or without cause, in accordance with the terms hereof. Such termination must be provided in writing in accordance with the notifications and communications provisions specified in Paragraph 3.i.

n. Entire Agreement. This License constitutes the entire agreement between the parties. Any modification and amendment to this License must be in writing and signed by all parties hereto.

4. GOVERNING LAW. The parties hereto expressly agree that the terms and conditions hereof, and the subsequent performance hereunder, shall be construed and controlled in accordance with Federal law.

5. SIGNATORY AUTHORITY. The representatives of the LICENSOR and LICENSEE whose signatures appear below affirm by such signatures that they are acting with their delegated authority and have the power to sign this Agreement and bind their respective organizations thereto. LICENSOR

additionally affirms by its signature below that it is empowered to authorize the activities to be conducted pursuant to this Agreement on the Property.

NOW THEREFORE, the parties hereto have executed this Facility Access License Agreement as of the date and year first written above.

**LICENSOR:**

**City of Key West**

**LICENSEE:**

**The United States of America, Acting by and through the Department of the Navy**

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

Name: James K. Scholl

Title: City Manager  
City of Key West, Florida  
1300 White Street  
Key West, Florida 33041

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

Name: Michael A. Brooks

Title: Real Estate Contracting Officer  
Naval Facilities Engineering Command  
Southeast  
P. O. Box 30, Bldg. 903  
NAS Jacksonville, FL 32212-0030

## Exhibit A

Property information courtesy of Monroe County, Florida Property Appraiser  
 All infrastructure built by and owned by the City of Key West.  
 Legal descriptions provided for display purposes only, not be referred to for legal purposes

### City Marina at Garrison Bight

Owner: City of Key West  
 Address: 1300 White Street, Key West, FL 33040  
 Parcel ID 00072070-000000  
 Property ID 1075868  
 Location Address 1801 N. Roosevelt Blvd, Key West, Florida 33041

Legal Description 33 67 25 KW GARRISON BIGHT G30-330-332 OR354-106/108(II DEED NO 19259-A) OR357-489-490(II DEED NO 19259-B)  
 OR2251-1343/50 OR2727-1031/1056Q/C

