

**REVOCABLE MEMORANDUM OF UNDERSTANDING FOR USE OF CITY  
PROPERTY**

This REVOCABLE MEMORANDUM OF UNDERSTANDING FOR USE OF CITY PROPERTY is made this 31<sup>ST</sup> day of AUGUST, 2018, by and between the City of Key West, Florida, a municipal corporation, whose mailing address is P.O. Box 1409, Key West, Florida, 33041 (hereinafter "CITY") and The Department of Commerce, National Oceanic and Atmospheric Administration, (NOAA) National Ocean Service (NOS) whose mailing address is NOAA/NOS/CO-OPS/FOD 672 Independence Parkway, Chesapeake VA 23320 (hereinafter "NOAA").

WITNESSETH:

WHEREAS, NOAA desires to remove an existing tidal station and relocate a new tidal station within an easement owned by CITY described as "Harborwalk," as described in O. R. Book 2138 page 1983 of the Public Records of Monroe County, Florida; and

WHEREAS, CITY is willing to allow NOAA to relocate the tidal station within the area depicted on Exhibit "A" attached hereto;

NOW, THEREFORE, the parties agree as follows:

1. For the period beginning on the 31<sup>ST</sup> day of AUGUST, 2018, and ending on the 30<sup>TH</sup> day of AUGUST, 2023 the CITY hereby grants to NOAA consent to enter in, on, over, and across the easement area described on Exhibit A, which is attached hereto and incorporated by reference, for use by NOAA, its representatives, agents, contractors and assigns for the purpose of installing and maintaining the tidal station as depicted on Exhibit B, which is attached hereto and incorporated by reference.
2. In consideration for the grant of consent in paragraph 1 herein above, NOAA herein expressly agrees to be solely responsible for all costs of any nature whatsoever associated with the installation and maintenance of the proposed tidal station and the removal of the existing tidal station from its current location.
3. If any action of NOAA's employees or agents in the exercise of this consent results in damage to the property NOAA will immediately repair such damage in a manner acceptable to the CITY.
4. This consent is personal to NOAA and may not be assigned or transferred. CITY shall have the right to terminate this consent with or without cause upon seven (7) days written notice to NOAA at the following address:

NOAA/NOS/CO-OPS/FOD  
672 Independence Parkway  
Chesapeake, Virginia 23320

5. To the fullest extent permitted by law, NOAA expressly agrees to indemnify and hold harmless the City of Key West and their respective officers, directors, agents, and employees (herein called the “indemnitees”) from any and all liability for damages, including, if allowed by law, reasonable attorney’s fees and court costs, such legal expenses to include costs incurred in establishing the indemnification and other rights agreed to in this Paragraph, to persons or property caused in whole or in part by any act, omission, or default by NOAA or its subcontractors, material men, or agents of any tier or their employees, arising out of this Agreement or its performance, including any such damages caused in whole or in part by any act, omission, or default of any indemnitee, but specifically excluding any claims of, or damages against an indemnitee resulting from such indemnitee’s gross negligence, or the willful, wanton or intentional misconduct of such indemnitee or for statutory violation or punitive damages except and to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of NOAA or its subcontractors, material men, or agents of any tier or their respective employees. The provisions of this indemnification provision shall survive the expiration or earlier termination of this License Agreement. Nothing herein is intended to waive the immunity afforded to City pursuant to Florida Law, including section 768.28, Florida Statutes.

6. The City also acknowledge that as a federal agency, the LICENSEE’s indemnification there above may also be subject to the certain applicable and pertinent federal laws such as Federal Tort Claims Act, 28 U.S.C. 2671 et seq, the Federal Employees Compensation Act, 5 U.S.C. 8101 et seq; Federal Acquisition Regulation (FAR) 28.307-2.

7. NOAA shall keep in full force and effect at all times during the effective period of this Agreement, and at their own cost and expense the following insurance in insurance companies authorized in the State of Florida, with an A.M. Best rating of A-VI or higher and shall provide evidence of such insurance to the City. The policies or certificates shall provide thirty (30) days prior to cancellation notices of same shall be given to the City by U.S. Mail for all of the required insurance policies stated below. The City of Key West, all Departments, Agencies, Boards and Commissions, its officers, agents, servants and employees are to be added as “additional insureds” as respects liability arising out of activities performed by or on behalf of NOAA.

**NOAA shall maintain limits no less than those stated below:**

**Commercial General Liability** - with a minimum amount of One Million (\$1,000,000) Dollars per occurrence.

**Worker’s Compensation** – Statutory, in compliance with the Compensation law of the State of Florida. The coverage must include Employer’s Liability with a limit of One Million (\$1,000,000.00) Dollars each accident.

**Business Automobile Liability** Insurance with a minimum limit of liability per occurrence of One Million (\$1,000,000.00) Dollars Combined Single Limit. The City of Key West must be named as an Additional Insured. This insurance shall include for bodily injury and property damage the following coverage:

- Owned automobiles
- Hired automobiles
- Non-owned automobiles

**Excess/Umbrella Liability** shall have a minimum limit of One Million (\$1,000,000.00) per occurrence with an annual aggregate of One Million (\$1,000,000.00.) This coverage is to be on a form acceptable to CITY and include the Commercial General Liability and Automobile Liability Policies.

**Scope of Insurance and Special Hazards**

The insurance required under Section 6 hereof is a minimum to provide adequate protection for NOAA, respectively, against damage claims which may arise from operations under this Agreement, whether such operation be by the insured or by anyone directly or indirectly employed by the insured and, also against any of the special hazards which may be encountered in the entities' operation under this Agreement. The insurance required herein and approval of NOAA's insurance by the CITY shall not relieve or decrease the liability of NOAA hereunder.

**Waiver of Subrogation**

The insurance required under Section 6 hereof shall contain a "waiver of subrogation" provision whereas NOAA's insurer waives any claim against the City of Key West.

**Certificates of Insurance**

Certificates of Insurance shall be filed and maintained throughout the life of this Agreement with the City Clerk evidencing the minimum limits of insurance cited above. All policies shall provide they may not be terminated or modified without insurer providing the City of Key West at least thirty (30) days advance notice. Additionally, NOAA shall immediately notify the City of any cancellation of such insurance.

The insurance requirements of this section may be waived by CITY upon receipt of NOAA's written request accompanied by correspondence addressed to CITY in the form of that sample letter attached hereto as exhibit "C" in favor of the City of Key West dated July 6, 2018.

8. CITY does not warrant or represent that the property is safe or suitable for the purpose for which NOAA is permitted to use it, and NOAA assumes all risks in its use.

9. NOAA shall pay for all utilities and telecommunications required to service the tidal station.


10. On termination of this consent NOAA shall remove any instruments or hardware it has placed on the premises. Any costs of removal pursuant to this paragraph shall be borne by NOAA.

IN WITNESS WHEREOF, the parties have executed this License Agreement on the date above written.

CITY: CITY OF KEY WEST,  
FLORIDA

ATTEST:

\_\_\_\_\_  
Cheryl Smith, City Clerk

By:   
\_\_\_\_\_  
James K. Scholl, City Manager

NOAA: NATIONAL OCEAN SERVICE

**BOURGERIE.RICHARD.WILLIAM.1365** Digitally signed by  
**BOURGERIE.RICHARD.WILLIAM.1365** 1365838670  
Date: 2018.08.08 16:03:05  
-04'00'

By: **838670**  
\_\_\_\_\_  
Richard Bourgerie  
National Ocean Service  
Deputy Chief, Field Operations  
Division  
Center for Operational  
Oceanographic Products & Services

WITNESS

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

## Lewis K. Howell

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**From:** George Wallace  
**Sent:** Thursday, August 30, 2018 9:15 AM  
**To:** Lewis K. Howell  
**Cc:** James K. Scholl; James Bouquet  
**Subject:** RE: NOAA tidal station - Key West

acknowledged

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**From:** Lewis K. Howell  
**Sent:** Thursday, August 30, 2018 8:56 AM  
**To:** George Wallace <gwallace@cityofkeywest-fl.gov>  
**Cc:** James K. Scholl <jscholl@cityofkeywest-fl.gov>; James Bouquet <jbouquet@cityofkeywest-fl.gov>  
**Subject:** FW: NOAA tidal station - Key West

George, Jim needs to know that you've reviewed this prior to signing. Will you acknowledge please sir?

L. Creed Howell  
Sr. Construction Manager  
Engineering Services  
City of Key West  
Office: 305-809-3963  
Mobile: 850-890-9354



**From:** Richard Bourgerie <richard.bourgerie@noaa.gov>  
**Sent:** Wednesday, August 29, 2018 9:34 AM  
**To:** Lewis K. Howell <lhowell@cityofkeywest-fl.gov>  
**Cc:** George Wallace <gwallace@cityofkeywest-fl.gov>  
**Subject:** Re: NOAA tidal station - Key West

I sent you a PDF signed by us on Aug 8.



Here it is again

Rich Bourgerie  
Deputy Chief, Field Operations Division  
NOAA, NOS, CO-OPS  
672 Independence Parkway  
Chesapeake, VA 23320  
757-842-4428 (desk); 301-938-5183 (cell)  
[FOD Google Site](#)

On Wed, Aug 29, 2018 at 9:16 AM, Lewis K. Howell <lhowell@cityofkeywest-fl.gov> wrote: