

REVOCABLE LICENSE AGREEMENT FOR USE OF CITY PROPERTY

This Antenna License Agreement is made this ____ day of January, 2022, 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 “**Licensor**”) and University of South Florida Board of Trustees, a public body corporate, for its College of Marine Science, hereinafter referred to as “**Licensee**”.

WITNESSETH:

WHEREAS, Licensee desires to occupy a small portion (~25 square feet) of Smathers Beach to install and operate an Ocean Current Monitoring System (OCMS) capable of measuring the speed and direction of the offshore surface current within the Straits of Florida; and

WHEREAS, Licensor owns the property upon which the proposed OCMS is to be operated; and

WHEREAS, pursuant to section 2-939 of the Key West Code of Ordinances, Licensor may grant Licensee a revocable license to use Licensor’s property; and

WHEREAS, the City understands that mariners need to know the speed and direction of currents to safely navigate waters; and that scientists and emergency management personnel use surface currents to better understand ocean transport of water and predict the trajectory of anything on the surface, from harmful algal blooms and oil spills to disabled ships and boats, thereby providing a benefit to residents and visitors,

NOW, THEREFORE, the parties agree as follows:

1. For the period beginning on the __ day of January, 2022, the Licensor hereby grants to the Licensee a revocable and non-assignable license to enter in, on, over, and across the land described on Exhibit “A”, which is attached hereto and incorporated by reference, for use by the Licensee, its representatives, agents, contractors and assigns for the purpose of operating the OCMS, which is incorporated by reference; subject to existing easements for public roads and highways, public utilities, railroads and pipelines; reserving, however, to the Licensor, its successors and assigns, all such right, title, interest and privilege as may be used and enjoyed without interfering with or abridging the rights and right-of-entry hereby acquired.
2. TERM:

This License Agreement shall be for a period of five (5) years, commencing on the date the City of Key West City Manager executes this License Agreement.

This License is personal to Licensee and may not be assigned or transferred. Licensor shall have the right to terminate this License with or without cause upon seven (7) days written notice to Licensee at the address in paragraph 6.
3. In consideration for the grant of license in paragraph 1 herein above, Licensee herein expressly agrees to be solely responsible for all costs of any nature whatsoever associated with the occupancy and operation of the OCMS as herein described.
4. If any action of the Licensee’s employees or agents in the exercise of this License results in damage to the property, including but not limited to the turf, pavement, irrigation, utilities, or improvements the Licensee will immediately repair such damage in a manner acceptable to the Licensor.

5. USE:

Licensee shall use the Premises to install a CODAR long-range seasoned OCMS consisting of a single TX/RX antenna mounted on top of a 16" OD poured in place concrete column and cabled in buried conduit to a climate controlled exterior electronics enclosure secured on top of a 4 x 4 x 1 foot poured in place concrete slab. Electrical power to the electronics enclosure is via a direct connection to a nearby electrical pole.

The goal of USF's COMPS (Coastal Ocean Monitoring and Prediction System) program is to provide real-time data for emergency management use and to improve description and understanding of the relevant physical processes that control shelf circulation, hydrography, and Hurricane/coastal flooding caused by storm surges. The essentially real-time OCMS data will be displayed to the general public via the internet from our COMPS Ocean Circulation Group (OCG) web page (http://ocgweb.marine.usf.edu/hfradar/hfr_index.html), and sent to the IOOS Coastal Observing Research and Development Center (CORDC) (<http://cordc.ucsd.edu/projects/mapping/>), where it is ultimately integrated into ocean models for various uses such as: improved boater safety, supporting U.S Coast Guard Search and Rescue (SAR) operations, and oil spill tracking within the Gulf of Mexico.

6. NOTICES:

Official notices, correspondence, and documentation given to the Licensee hereunder shall be forwarded by registered or certified mail, return receipt requested unless Licensor is notified otherwise in writing to the following address:

University of South Florida/College of Marine Science
140 Seventh Avenue South, Room 136-M
St. Petersburg, Florida 33701
Attn: Dr. Clifford R. Merz, PE, COMPS Program Director

Official notices, correspondence, and documentation given to the Licensor hereunder shall be forwarded by registered or certified mail, return receipt requested unless Licensee is notified otherwise in writing to the following address:

City of Key West
1300 White Street
Key West, FL 33040
Attn: City Manager

7. Solely to the extent permitted by law, Licensee 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, , to persons or property caused in whole or in part by any act, omission, or default by Licensee or its subcontractors, vendors, 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 Licensee or its subcontractors, vendors, 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 the City or Licensee pursuant to Florida Law, including section 768.28, Florida Statutes.

8. Insurance: The University is a self-insured, sovereign entity of the State of Florida, and its self-insurance limitations are provided by law. University is provided with comprehensive general liability insurance through the State Risk Management Trust Fund with limits of coverage up to a maximum of \$200,000 per person and \$300,000 in the aggregate per occurrence, pursuant to the terms and limitations of Sections 768.28, Florida Statutes and Chapter 284, Part II, Florida Statutes, or as amended from time to time. Worker's Compensation insurance is maintained in full compliance with Florida law. University will provide evidence of its self-insured status upon request. The parties agree that this is sufficient in lieu of any other insurance requirements.
9. Licensor does not warrant or represent that the property is safe or suitable for the purpose for which Licensee is permitted to use it, and Licensee assumes all risks in its use.
10. During the term of this Agreement, Licensee shall be permitted to place informational signage recognizing the activities of Licensee as permitted herein. All aspects of the signage, including the number, size, placement, duration of placement and design shall be subject to the approval of Licensor.
11. **TERMINATION**: This License is personal to Licensee and may not be assigned or transferred. Licensor shall have the right to terminate this License with or without cause upon seven (7) days written notice to Licensee at the address in paragraph 6.

Upon termination, neither party will owe any further obligation under the terms of this License except that no later than thirty (30) days after termination or expiration of this license, LICENSEE shall be responsible for removing its OCMS/COMPS site equipment from the Premises and for restoring the areas occupied by LICENSEE to its original condition as near as practical to the LICENSOR'S satisfaction, save and except for normal wear and tear and acts beyond LICENSEE'S control.

Upon termination of this License, the term hereby granted and all rights, title and interest of LICENSEE in the Premises shall end and the LICENSOR may retake possession of the Property, excluding LICENSEE'S OCMS/COMPS site equipment, which LICENSEE shall retain. Such termination shall be without prejudice to LICENSOR'S right to collect from LICENSEE any and all damages which are suffered by LICENSOR because of LICENSEE'S breach of any covenant under this License.

[Signature page to follow]

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

Licensor

CITY OF KEY WEST, FLORIDA, a municipal corporation

By: _____

By: _____

Name: Cheryl Smith
Title: City Clerk

Name: Patti McLauchlin
Title: City Manager

Witness:

By: _____

Name: _____

Date: _____

Licensee

THE UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES, a public body corporate (USF)

By: _____

By: _____

Name: Nick Trivunovich
Title: Vice-President, Business & Finance CFO

Name: Dr. Thomas K. Frazer, Dean
Title: University of South Florida/ College of Marine Science

Witness:

By: _____

Name: _____

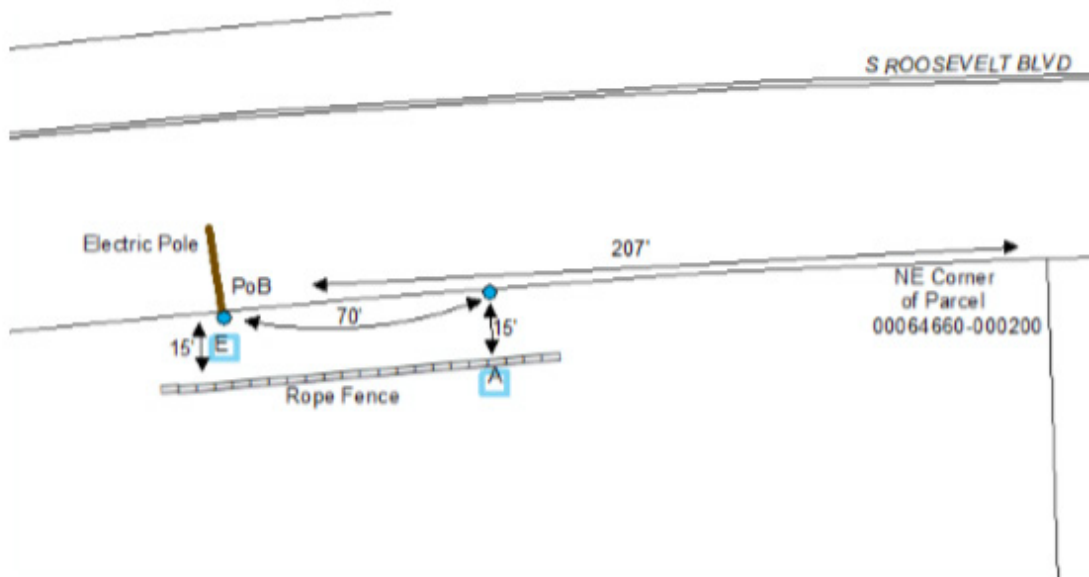
Date: _____

Attachment: Exhibit A – USF OCMS Smathers Beach Layout and Description



DESCRIPTION OF AREA FOR ANTENNA PLACEMENT ON SMATHERS BEACH

Two areas of land located on the eastern part of Smathers Beach within parcel # 00064660-000200. Beginning at the NE corner of said parcel, continue 207' westerly along and parallel to S Roosevelt Blvd, near a concrete utility pole (N1 7R) with a Latitude: 24.55248 and Longitude: -81.76663, being the Point of Beginning. At said point thence S a distance less than 15' shall be an area of 6' x 6' to be utilized for Electric Equipment, labeled "E" in diagram. Also, easterly from the point of beginning parallel to South Roosevelt Blvd 70' to a point, then from said point South a distance of 15' just across a rope fence. Immediately adjacent to this location shall be an area 6' x 6' for the installation of an antenna, labeled "A" in the diagram.



Prepared by GISKW

7/27/2021