

LICENSE AGREEMENT

This License Agreement (License Agreement) is made and entered into by and between the City of Key West, Florida, a municipal corporation, having an address of P.O. Box 1409, Key West Florida, 33041 hereinafter ("Licensor"), and the Florida Department of Environmental Protection, (FDEP), a government agency of the State of Florida, having an address of Marjory Stoneman Douglas Building, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399 hereinafter (Licensee), collectively referred to hereinafter as the "Parties".

WITNESSETH

WHEREAS, Licensor is the fee simple owner of certain lands situated in the City of Key West, Monroe County, Florida in what is known as the White Street Pier, more specifically described in Exhibit A, attached hereto and incorporated herein by reference (License Area); and

WHEREAS, the Licensor owns, operates, and maintains the White Street Pier for the public's use that extends to the southeast into the Florida Straits and;

WHEREAS, Licensee has been authorized to install and continues to own , operate and maintain a tide gauge, that is accessed from the pier to collect water level data to determine and publish tidal datums on behalf of the State of Florida in partnership with the National Oceanic and Atmospheric Administration; and

WHEREAS, the Parties desire to enter into a License agreement to authorize the Licensee to continue to own, operate, and maintain the tide gauge located on the pier.

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions set forth herein, Licensor and Licensee hereby agree as follows:

1. Licensor hereby grants to Licensee, its employees, agents, and subcontractors a license to use and enter upon, over and across the License Area, during regular public pier hours or by appointment with City staff, for the purpose of operating, maintaining, repairing, or replacing instruments located on the pier. Upon advanced approval by City staff, additional uses may include ingress and egress for workers, machinery, and vehicles, and the posting of signage on the pier proximate to the tide gauge. The size and location of any signage shall be submitted to City staff for review and approval. The number of workers, and the type of machinery and vehicles shall be the minimum reasonably necessary to effectuate the purpose of this License Agreement. Machinery and vehicles must not leave the parking areas without written permission from City staff. The License Area is depicted on the image attached hereto and incorporated herein as Exhibit "A". Licensee shall repair or replace, to the same or better condition, any part of the pier or License Area damaged by Licensee, or its employees, agents, and subcontractors. Licensee acknowledges there is currently a structural assessment being performed on White Street pier and the area of installation may vary in the event there are nearby structural issues that would interfere with repairs.
2. Access to the tide gauge is strictly reserved for the FDEP, its agents, employees, and officers. Licensor agrees that it will not interfere with the instruments. Licensor reserves

the right to use the License Area in any manner not inconsistent with this License Agreement. Licensee also agrees to share data produced by its equipment with Licensor.

3. Licensee shall access the pier at Licensee's own risk.
4. Licensee agrees that it will not create or cause to be imposed, claimed, or filed any lien, charge, or encumbrance upon any portion of the License Area or the Licensor's interest therein.
5. This License Agreement may not be assigned, in whole or in part, by Licensee without the written consent of Licensor, which consent may be withheld by Licensor in its sole discretion.
6. The waiver by either party of a breach of any provision of this License Agreement will not operate or be construed as a waiver of any subsequent breach thereof or the waiver of any breach of any other provision of this License Agreement.
7. Each party is responsible for its own negligence and that of its employees and agents, subject to any limitations on liability established by law, including the provisions of Section 768.28, Florida Statutes. Nothing contained herein shall not be deemed a waiver of any immunity or limitations of liability either party may have under the provisions of Section 768.28, Florida Statutes, as it is amended from time to time.
8. If any covenant or provision of this License Agreement is determined to be invalid, illegal, or incapable of being enforced, all other covenants and provisions of the License Agreement will remain in full force and effect, and no covenant or provision will be dependent upon any other covenant or provision unless so expressed herein.
9. This License Agreement may only be amended by an instrument in writing signed by both parties hereto.
10. This License Agreement will be construed in accordance to the laws of the State of Florida and venue of any legal proceedings shall be in Monroe County, Florida, if the action is commenced in state court. Nothing contained herein shall constitute the waiver of either party's sovereign immunity.
11. Except as otherwise specified herein, each party will be responsible for its own legal and attorney's fees, costs, and expenses incurred in connection with any dispute or any litigation arising out of, or relating to this License Agreement, including attorneys' fees, costs, and expenses incurred for any appellate or bankruptcy proceedings.
12. This License Agreement will remain in force until terminated and may be terminated without cause by either party upon thirty (30) days written notice of that party's intent to terminate.
13. Within ten (10) days of this License Agreement's termination, Licensee will remove the instruments and will restore the License Area to a safe and aesthetic condition as existed prior to the instrument's installation.

14. Licensor will provide Licensee at least ten (10) days written notice by which Licensee may correct any failure of performance of its obligations under this License Agreement. If Licensee fails to timely correct the deficiency, Licensor may immediately terminate the License Agreement.
15. Each of the undersigned warrants and represents that he or she is authorized to execute this License Agreement on behalf of the entity identified.

IN WITNESS WHEREOF, the parties have executed this License Agreement effective on the day and year last written below.

LICENSEE:

Florida Department of Environmental Protection

By: _____

Title:

Date: _____

LICENSOR:

City of Key West
A Municipal Corporation

ATTEST:

Keri O'Brien, City Clerk

Brian L. Barroso, City Manager

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EXHIBIT A
White Street Pier Tidal Gauge Location Map

