

ANTENNA LICENSE AGREEMENT

THIS ANTENNA LICENSE AGREEMENT, hereinafter referred to as License, is made and entered into this _____ day of _____, 2004, between **THE CITY OF NAPLES, FLORIDA**, a political subdivision of the State of Florida, hereinafter referred to a "City" or "Licensor" and University of South Florida Board of Trustees, a public body corporate, for its College of Marine Science, (a non-profit entity) hereinafter referred to as "USF" or "Licensee".

WITNESSETH

1. PREMISES:

The City lets and licenses to Licensee a tract of land, hereinafter referred to as the Premises as shown on Exhibit "A", for the sole purpose of installing and maintaining two antennas and electronic cabinet, hereinafter referred to as the "Property" are shown on Exhibit "B" .

2. TERM AND RENTAL RATE:

This License Agreement shall be for a period of one (1) year, commencing on the effective date _____ (the date the City Manager executes the Antenna License Agreement). which is hereby acknowledged. The rental rate will be One Dollar (\$1.00) per year, receipt of This License shall stand renewed on an annual basis unless either party gives the other party one hundred twenty (120) days written notice of termination prior to the end of any said term or as indicated in 2(a).

(a) In addition, the CITY may terminate this License at any time, subject to the reason for termination described below in this subparagraph 2(b), by giving USF at least one hundred twenty (120) days written notice of termination prior to the stated date of termination. For the purposes of this subparagraph 2(a), the only reason for termination is when the CITY determines that the land upon which the antennas sit is required to be used for a public purpose, which is

incompatible with USF's use under this License Agreement. By way of example and not limitation, a public purpose use would be the CITY'S need to use the area to make room for capital improvements required to fulfill a governmental purpose.

3. TERMINATION:

This License may be terminated at any time as follows:

A. By either party if the approval of any agency, board, court or other governmental authority necessary for the construction or operation of the Ocean Surface Current Measurement System ("OSCMS") cannot be obtained or is not obtained after due diligence, or is revoked, provided this provision shall not be construed as entitling the County to arbitrarily deny or revoke any such approval for purposes of terminating this License.

B. By either party in the event of a breach of any of the provisions of the License by the other party.

C. By Licensee in the event that any government or public body shall take all or such part of the Licensed Premises or in the event of casualty, damage or destruction thereby making it physically or financially infeasible for the Licensed Premises to be used in the manner as licensed.

D. By Licensee at any time without further liability if Licensee cannot obtain all certificates, permits, licenses, easement or other approvals (collectively, approval) required from any governmental authority to operate and construct the OSCMS cannot be obtained or if any such approval is canceled, expires, lapses, terminates or is withdrawn.

E. By Licensee if CITY fails to have proper ownership of the site and/or authority to enter into this License.

F. By CITY at any time without liability if the Licensee has made intentional misstatements or misrepresentations of any type on any questionnaire or License application.

The party terminating this License shall give written notice of termination to the other party not less than one hundred twenty days (120) in advance of the effective date of termination. Upon termination, neither Party will owe any further obligation under the terms of this License except that Licensee shall be responsible for removing all of its OSCMS and associated equipment from the Licensed Premises and for restoring the areas occupied by Licensee to their original condition as near as practical to the CITY'S satisfaction, save and except for normal wear and tear and acts beyond the 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 CITY may retake possession of the Property, excluding Licensee's OSCMS and electronic cabinet, which Licensee shall retain. Such termination shall be without prejudice to CITY's right to collect from Licensee any and all damages which are suffered by CITY because of Licensee's breach of any covenant under this License.

4. USE:

Licensee shall use the Premises to install two (2) antennas, an equipment cabinet and telephone line necessary for the measurement of nearshore surface currents and direction. The goal of the 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 coastal flooding caused by storm surges. Information gathered such as search and rescue operations, oil spill and red-tide migration predictions, and water quality management data would be made available to the general public, Federal, State, and local emergency management officials through COMPS internet web site.

5. IMPROVEMENTS:

A. ANTENNAS: Licensee at Licensee's expense will provide a detailed site plan and installation information of the OSCMS as shown on "Exhibit "B" (a thirty eight foot (38') antenna approximately ten feet (10') from the northwest corner of the concession pavilion, and a twenty foot (20') antenna approximately twenty feet (20') from the southern park boundary, behind the dune vegetation).

B. ELECTRONIC CABINET: Licensee shall at its own expense, design and construct an air-conditioned electronic cabinet (6' X 3 Y2') for the use of Licensee. The electrical cabinet will be housed in the utility room as indicated on the site plan. Licensee shall be responsible for all costs associated with the installation and wiring of the air-conditioned electrical cabinet and telephone line to the building. USF must protect and not disturb existing underground facilities. The construction plans shall be sealed by a registered engineer and presented to the CITY'S Community Services Department, which will have ten (10) working days for review and comment on the plans.

C. FENCING: Licensee at Licensee's expense shall erect a chain link fence around the perimeter of the licensed property where the antennas, are located, should fencing be deemed necessary in the future, which will allow for adequate secured access to the property by Licensor and Licensee.

D. PLANS AND SPECIFICATIONS:

Plans and specifications for any improvements constructed or utilities installed shall be prepared and sealed by a professional engineer. The professional engineer shall be licensed and registered by the State of Florida and all plans shall be reviewed and approved in writing by CITY'S Community Services Department and other CITY departments, as determined by the Director of Community Services, prior to the start of construction or installation. CITY will provide licensee

with its comments/objections to Licensee's plans and specifications for the construction of improvements or the installation of utilities within ten (10) working days of the receipt by CITY, or CITY will notify Licensee of its need for an extension of time not to exceed five (5) working days. CITY'S failure to respond within the applicable period shall be deemed approval of the plans.

6. OWNERSHIP OF IMPROVEMENTS:

No later than thirty (30) days after the termination expiration of this License, the Licensee shall remove the OSCMS and all associated equipment from the Premises.

7. MAINTENANCE:

Licensee shall provide an annual antenna inspection report and perform all repairs to Licensee's equipment, and facilities, except for any damage caused by the negligence or willful act of CITY, its employees, agents, invitees or Licensees. Licensee shall not be responsible for repair or maintenance of utility room or existing electrical equipment of the CITY unless damages are caused by Licensee, its agents, employees, or invitees at which time it will be the Licensee's responsibility and expense.

8. UTILITIES:

Licensee agrees to reimburse the Community Services Department annually for USF's use of CITY'S utilities. This fixed cost will be determined by comparing past electric bills with the electric bills over the first six (6) months of the License with the difference assumed to be due to USF's use. Once the fixed rate is determined based on the marginal difference, CITY and USF agree to amend this License to add the amount and time of these payments. All utilities installed on the Property shall be installed underground and installation sites thereof shall be clearly marked, unless otherwise specified by CITY.

9. COVENANT AGAINST LIENS:

Licensee shall have no power or authority to create any lien or permit any lien to attach to the estate, reversion or other estate of Licensor in the Premises or on the building or other improvements thereon, and all materialmen, contractors., artisans, mechanics and laborers and other persons contracting with Licensee with respect to the Premises or any part thereof, are hereby charged with notice that they must look to the Licensee to secure payment of any bill for work done or material furnished or for any other purpose during the term of this License.

10. ASSIGNMENT AND SUBLETTING:

Licensee may assign or sublet the Licensed Premises to the extent of their interest or any part thereof without the consent of the CITY if the nature of the use is not changed and the Assignment is made to an affiliate, or subsidiary of Licensee.

11. ACCESS TO THE PREMISES:

The CITY shall allow Licensee's technicians, engineers, or contractors reasonable ingress and egress-24 hours per day, 7 days per week to the Premises. Any damage which might be done to said site by reason of the negligence or willfulness of Licensee, its officers, employees, servants, agents or guests, shall be paid for, corrected or repaired by Licensee.

12. SECURITY:

Licensee's officers, employees, servants, agents and guests shall comply with all security requirements of the Community Services Department. Licensee and the CITY agree to be diligent in keeping the Property secure by observing security measures such as locks on buildings, gates and barriers. CITY is not responsible or liable for damages or destruction of USF's personal property not caused by the negligent or willful acts of the CITY, its employees, agents, invitees or other licensees. The CITY reserves the right to eject and/or refuse entry to anyone not complying with any security measures or tampering with CITY facilities in any way.

The Premises is defined as CITY-owned land and pavilion structure. Property is defined as the antennas and electronic cabinet.

13. PARTIES LIABILITY:

The University of South Florida Board of Trustees, a public body corporate, on behalf of its College of Marine Science ("USF"), and the City of Naples, a political subdivision of the State of Florida, shall each remain liable for their own respective negligence, pursuant to Florida law. Nothing contained herein is intended or shall be construed to waive any immunity from or limitation of liability to which USF and/or the CITY may be entitled under the doctrine of sovereign immunity or Section 768.28, Florida Statutes, as it may be amended from time to time. All property of any kind that may be on the Premises during the continuance of the Licensee shall be at the sole risk of USF except that CITY shall be liable for damage to Property of USF as shall have been directly caused or resulting the sole negligence of CITY.

14. HAZARDOUS SUBSTANCES:

The CITY represents that it has no knowledge of any substance, chemical, or waste (collectively, substance) on the site that is identified as hazardous, toxic or dangerous in any applicable Federal, State or local regulation. Licensee shall not store, treat, or discard any such substance on the site in violation of any applicable law.

15. INSURANCE:

USF shall provide CITY with a letter evidencing that USF is self-insured during the life of this License Agreement. During the life of this License Agreement, Licensee shall require any contractors or subcontractors hired for the construction/installation and maintenance of the antennas, electric and telephone utilities to provide, pay for and maintain the following types of insurance with companies meeting the qualifications below. such policies shall name the CITY as an additional insured. To the extent permitted by law,

A. Comprehensive General Liability Insurance including, but not limited to Independent Contractor, Contractual, Premises/Operations, Products/Completed Operations, Explosion, Collapse and Underground and Personal Injury covering the liability assumed under indemnification provisions of this Agreement, with limits of liability for personal injury and/or bodily injury, including death, of not less than \$500,000, each occurrence; and property damage of not less than \$100,000, each occurrence. (Combined Single Limits of not less than \$500,000, each occurrence, will be acceptable unless otherwise stated). Coverage shall be on an occurrence basis, and the policy shall include Broad Form Property Damage coverage, and Fire Legal Liability of not less than \$50,000, per occurrence, unless otherwise stated by exception herein.

B. Workers Compensation shall be provided at limits no less than those required by law; Employers' Liability Insurance of not less than \$100,000 for each accident. During construction of the Property, Licensee contractor(s) shall continue to maintain the following additional coverages.

C. Automobile Liability Insurance shall be provided in accordance with the laws of the State of Florida as to the ownership, maintenance and use of all owned, non-owned, leased or hired vehicles. The bodily injury and property damage limits shall not be less than \$500,000 combined single limit each accident.

D. Builders Risk Insurance and or Installation Floater shall be provided to insure against loss of or damage to the work by perils insured under an all risk form including, but not limited to, Fire, Lightning, Extended Coverage Perils, Sinkhole and Flood. The amount of coverage shall be the replacement cost of the work as determined by the CITY. Said policy shall show the CITY, Licensee and contractor, as their interests may appear as additional named

insured with any loss payment made payable to the CITY for the benefit of all concerned. Subrogation rights shall be waived. Deductibles shall be the responsibility of Licensee.

E. Any insurance company carrying the required coverages shall have a Best's rating of at least B+VII.

16. TAXES:

Licensee shall be responsible for the payment of any and all sales, use, rental, ad valorem, or other taxes that may be levied and assessed due to any construction undertaken as provided herein or for Licensee's use or occupancy of the Property, or due to this License Agreement or any right arising under this License Agreement, excluding taxes assessed against the real property or improvements other than the one constructed or installed by Licensee.

17. GOVERNING LAW:

This License Agreement and the performance hereof shall be governed, interpreted, construed and regulated by the laws of the State of Florida. Venue shall be in Collier County, Florida.

18. NOTICES:

Official correspondence, notices and other documentation required under this License Agreement shall be forwarded in writing to the CITY by registered or certified mail, return receipt requested unless Licensee is notified otherwise, at the following address:

City of Naples Community Services Department
280 Riverside Circle
Naples FL 34102

Copies to:

City of Naples City Manager
735 Eighth Street South
Naples FL 34102

Official notices, correspondence, and documentation given to the Licensee hereunder shall be forwarded to the following address:

University of South Florida/College of Marine Science
140 Seventh Avenue South, Room 136-M
St. Petersburg, Florida 33701
Attn: Clifford R. Merz, P .E., Coastal Ocean Monitoring and Prediction
System (COMPS) Program Director

by registered or certified mail, return receipt requested unless County is notified otherwise in writing.

19. SEVERABILITY:

If anyone or more of the covenants, agreements or provisions of this License Agreement shall be held contrary to any expressed provisions of law, although not expressly prohibited, contrary to any express provision of public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements or provisions of this License Agreement.

20. COMPLIANCE WITH LAWS:

Licensee shall comply with all laws of the United States of America, the State of Florida, the City of Naples Code of Ordinances and Comprehensive Development Code. Licensee shall obtain all necessary permits and licenses and keep the same in force during the term of this License Agreement and shall not permit or commit any strip or waste of the Property.

21. FISCAL FUNDING:

In the event sufficient funds are not received by USF from the State of Florida, or in the event funds are not budgeted and appropriated by the CITY, for the expenses set forth in this License in any succeeding fiscal year, then this License shall be deemed to terminate at the end

of the fiscal year for which sufficient funds were received or for which the funds were budgeted and appropriated, without penalty or expense to USF or the County.

22. MODIFICATION TO AGREEMENT/ENTIRE AGREEMENT AND BINDING EFFECT:

This License Agreement and the attached exhibits constitute the entire License Agreement between the County and Licensee. No prior written or prior, contemporaneous or subsequent oral promises or representations shall be binding. This License Agreement shall not be amended or changed except by written instrument signed by both parties hereto. Paragraph captions herein are for convenience only, and neither limit nor amplify the provisions of this License Agreement.

23. AUTHORITY:

The City Charter Authorizes the Mayor and City Council to Promulgate Resolutions, Ordinances, and other Documents in Support of Public Projects and to delegate authority to the City Manager.

The provisions of this License Agreement shall be binding upon and inure to the benefit of the heirs, administrators, successors and assigns of the parties.

IN WITNESS WHEREOF, CITY and Licensee have executed this License Agreement as of the date and year first above written.

Licensor:

ATTEST:

By: _____

Print name:

Date executed: _____

WITNESSES:

By: _____
Print name:

By: _____
Print name:

Date Executed:

CITY OF NAPLES, FLORIDA
City Manager

By: _____
Dr. Robert E. Lee
Print Name:

APPROVED AS TO FORM

By: _____
Robert D. Pritt, City Attorney

(SEAL)

Licensee:
UNIVERSITY OF SOUTH FLORIDA

By: _____
Print Name: Dr. Peter Betzer
Title: Dean, University of South Florida/College of Marine Science

By: _____
Print Name: Dr. Judy Genshaft
Title: President, University of South Florida

Date Executed: _____