# **Attachment B**

Previous License Agreement

# AMENDMENT NO. ONE TO LICENSE AGREEMENT COASTAL OBSERVATION SYSTEM AT THE NEWPORT PIER

This AMENDMENT NO. ONE TO LICENSE AGREEMENT ("Agreement") is entered into between The University of Southern California, a nonprofit public benefit corporation on behalf of its Department of Biological Sciences ("Company"), at 3616 Trousdale Parkway, AHF B30, Los Angeles, California, 90089-0371, and the City of Newport Beach, a California municipal corporation and charter city ("City") on this the 31<sup>st</sup> day of July, 2013 ("Commencement Date"). Company and City are each a "Party" and together the "Parties" to this Agreement.

# **RECITALS**

- A. City is the owner of the Newport Pier, a public ocean pier, located at the end of McFadden Place in the City of Newport Beach, California, which is more fully depicted by the Pier Depiction attached to the Agreement as Exhibit A (the "Pier").
- B. Company is a consortium member of the Southern California Coast Ocean Observations Systems ("SCCOOS"). SCCOOS collects and analyzes ocean current data by transmitting radio waves and reflecting them from the ocean's surface.
- C. On August 1, 2012, City and Consultant entered into a License Agreement ("Agreement") to place a radio wave transmitter on the Pier ("Facilities").
- D. City desires to enter into this Amendment No. One to reflect the City's agreement to provide electrical services for the Facilities.
- E. City and Company mutually desire to amend the Agreement, as provided below.

# NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

#### 1. UTILITIES

Section 11 of the Agreement is hereby amended in its entirety and replaced with the following: "Company shall not do, nor shall it permit anything to be done that may interfere with the accessibility of the License Area. The electrical services to the Facilities shall be provided for by the City."

#### 2. INTEGRATED CONTRACT

Except as expressly modified herein, all other provisions, terms, and covenants set forth in the Agreement shall remain unchanged and shall be in full force and effect.

# [SIGNATURES ON NEXT PAGE]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed in duplicate on the dates indicated below.

APPROVED AS TO FORM: OFFICE OF THE CITY ATTORNEY

Date:

Aaron C. Harp City Attorney

ATTEST:

Date: 9.23.13

Leilani I. Brown

City Clerk

CITY OF NEWPORT BEACH,

A California municipal corporation

Date: < 3 ) 1 | 2

David A. Kiff

City Manager

**COMPANY:** The University of Southern California a nonprofit public benefit corporation on behalf of its Department of

. Biological Scienceş

Date: 11 Septemb 2013

Michael Quick

**Executive Vice President** 



[END OF SIGNATURES]



# LICENSE AGREEMENT COASTAL OBSERVATION SYSTEM AT THE NEWPORT PIER

This LICENSE AGREEMENT ("Agreement") is entered into between The University of Southern California, a nonprofit public benefit corporation on behalf of its Department of Biological Sciences ("Company"), at 3616 Trousdale Parkway, AHF B30, Los Angeles, California, 90089-0371, and the City of Newport Beach, a municipal corporation and charter city ("City") on this the \_/st\_ day of \_fugust 2012 ("Commencement Date"). Company and City are each a "Party" and together the "Parties" to this Agreement.

### **RECITALS**

- A. City is the owner of the Newport Pier, a public ocean pier, located at the end of McFadden Place in the City of Newport Beach, California, which is more fully depicted by the Pier Depiction attached hereto as Exhibit A, which and incorporated herein by this reference (the "Pier").
- B. Company is a consortium member of the Southern California Coast Ocean Observations Systems ("SCCOOS"). SCCOOS collects and analyzes ocean current data by transmitting radio waves and reflecting them from the ocean's surface. SCCOOS desires to place such a radio wave transmitter on the Pier.
- C. Company desires to license from City, on a non-exclusive basis, the right to use that certain portion of the Pier, as further depicted in Exhibit B attached hereto, and incorporated herein by this reference (the "License Area").
- D. Company desires to install, upon the License Area, the radio wave transmitter and its related equipment, as described and depicted in Exhibit C, attached hereto and incorporated herein by this reference (collectively, the "Facilities").
- E. City is willing to make the License Area available to Company, subject to the covenants and conditions set forth in this Agreement, on a non-exclusive basis, to facilitate research efforts for SCCOOS.

## NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

#### 1. License

(a) City grants a non-exclusive license ("License") to Company for the Term of this Agreement, to use the License Area for the uses specified in this Agreement in compliance with the terms of all governmental licenses, permits and approvals required by Federal, State or local governmental agencies, for construction, installation and maintenance of the facilities and utility wires, cables, conduits as necessary to operate the Facilities. All installation and maintenance activities shall be at Company's sole cost and expense, including but not limited to the fees and costs associated with the permits and government approvals described in Section 3, pursuant to plans approved in

advance in writing by the City. The License is subject to the terms, covenants and conditions hereinafter set forth, and Company covenants, as a material part of the consideration for the License, to keep and perform each and every term, covenant and condition of this Agreement.

(b) Company shall be responsible for all maintenance associated with the Facilities, including all associated costs and expenses. Company shall provide twenty-four (24) hour telephone notice to the Harbor Resources Division Manager at (949) 644-3043 prior to performing any Facilities maintenance or repair.

## 2. Uses

- (a) Company shall use the License Area for the sole purpose of constructing, maintaining, securing and operating the Facilities, described in Exhibit C, to transmit and receive radio communication signals on various frequencies (between 24 and 27 MHZ, 150 KHz bandwidth; 900 MHz; WiFi 2.4 GHz or Wireless 3G broadband) to map the ocean surface currents and provide data communications, respectively. The Facilities and its operating frequencies may not be expanded or modified except upon written approval of the Community Development Director, not to be unreasonably withheld, and as may be required by this Agreement. Construction and operation of the Facilities shall be at Company's sole expense. Company shall keep the Facilities free from hazards or risk to the public health, safety or welfare.
- (b) Company shall install, at the License Area, a stainless steel cabinet containing an uninterruptable power supply, transmitter, receiver, computer, network switch, Freewave radio and WIFI radio. The cabinet will be located on the lower platform of the Pier. Adjacent to the light pole located at the northwest corner of the Pier, Company will place a twenty foot (20') stainless steel pole with a six foot (6') (for a total of twenty-six feet (26')) aluminum pole attached at the top. A CODAR combiner box with four radial antennae and one whip antenna will be placed on top of the pole sections. There will also be a sixty-five inch (65") Freewave antenna attached to the stainless steel pole and a GPS antenna mounted on the bracket holding the Freewave antenna. A directional Wi-Fi antenna will be located under the Pier. Cables connecting the radios to the antennae will be placed in conduit running under the Pier. Collectively, the above-described shall be referred to as "Facilities", which are described and depicted more particularly in Exhibit C, attached hereto and incorporated herein by this reference.
- (c) Company represents to City that the Facilities are safe, as reported in the following studies provided by the Company and on file with the City: 1) Department of the Navy Electromagnetic Environmental Effects (E³) Review of the Request for Site Approval for the Installation of a Coastal Ocean Dynamics Application Radar (CODAR) at Naval Base Point Loma, San Diego, CA, Final Report issued November 2002; 2) University of California, Santa Barbara, Marine Science Institute Report regarding SCCOOS SeaSonde emissions issued to the Los Angeles County Fire Department April 24, 2007; and 3) Federal Communications Commission OET Belletin 56, 4<sup>th</sup> Edition, issued August 1999.
- (d) Except as provided under this Agreement, Company shall not paint, install lighting, decorations, signs, lettering or advertising media of any type or any other visual

displays, on or about the License Area without the prior written consent of City. Notwithstanding the foregoing, Company shall place warning signs on or about the Facilities in compliance with any applicable Federal, State or local law.

#### 3. Government Approvals

Company shall obtain all governmental licenses, permits and approvals required by Federal, State or local governmental agencies, enabling Company to construct, operate, repair and remove the Facilities in the License Area, including but not limited to California Coastal Commission approval.

#### 4. Term

The initial Term of the License granted hereunder ("Term") shall commence on the Commencement Date and continue for a period of five (5) years. After the Commencement Date, this License shall not be revoked or terminated except as expressly provided in this Agreement.

#### 5. Fees and Costs

In lieu of a License Fee, as defined below, Company shall provide to City, all information gathered from Company's Facilities, via a web link to a Newport Beach site specific.

#### 6. Interference with Telecommunications

- (a) Company agrees that its operation of the Facilities shall at all times comply with all Federal Communications Commission ("FCC") requirements and shall not cause any direct or indirect interference with the operation of City's own wireless communications facilities, including but not limited to public safety transmissions, police and fire communications, water or sewer internal or external radio signals and communications, as they now exist or may from time-to-time hereafter exist ("City's Facilities"). Company also agrees that its operation of the Facilities shall not cause any interference with public telecommunications such as cell phone or wireless internet use.
- (b) In the event of any interference with City's Facilities or public telecommunications, Company shall work with the City to correct the interference within two (2) hours of City's written or telephone notice to Company. If it is determined the interference is caused by the Facilities and if Company is unable to correct interference to City's satisfaction, Company shall immediately cease its operation of the Facilities until the cause of the interference is corrected to City's satisfaction. If Company fails to correct any interference, City may, without notice, in addition to and without compromising any other available remedy cut off power to the Facilities in the manner set forth in Section 7 below.
- (c) Prior to making any changes to the frequency or operating conditions, Company shall submit plans for the proposed changes to City for its review and written approval. Company agrees to fund any studies both parties deem necessary to ensure that any contemplated changes will be compatible with the City's Facilities. No frequency or operating condition changes shall occur prior to the City's written approval.

# 7. Emergency

- (a) Company understands that the Facilities are located on a public structure or within public property and emergency situations may develop from time-to-time that require power to the Facilities to be immediately shut off and thereby interfere or temporarily terminate Company's use of the Facilities. Company agrees that if such a situation occurs, and/or there are frequency interferences of any nature between City's Police and Fire Department public safety communications equipment or City's facilities affecting operation of sewer or water service and that of Company in a manner that threatens public health or safety, City shall have the right, without notice, to immediately shut off power to the Facilities and any equipment of Company's located at the License Area for the duration of the emergency. Company agrees not to hold City responsible or liable for and shall protect, defend, indemnify and hold City harmless for any damage, loss, claim or liability of any nature suffered as a result of the loss of the use of the Facilities by the shut off of power.
- (b) Company agrees to install a clearly marked and accessible master power "cut-off" switch on their Facilities for the purpose of assisting City in such an emergency.
- (c) Unless otherwise specifically provided in a notice of termination of this Agreement, City's exercise of the right to shut off any power to the Facilities pursuant to Section 7(a) is not intended to constitute a termination of this Agreement by either party and such event is a risk accepted by the Company. Company and City shall meet after the City determines that an emergency situation has ended to establish the time and manner in which power shall be restored.
- (d) City shall have the right to determine what constitutes an "emergency situation" pursuant to this Section.

# 8. Acceptance of Condition of License Area

Company shall accept use of the License Area in "as is" condition, with no warranty, express or implied from the City as to any latent, patent, foreseeable and unforeseeable condition of the License Area, including its suitability for the use intended by Company. To the best of City's knowledge, the License Area has not been used for generation, storage, treatment or disposal of Hazardous Substances as defined in Section 24. Company has conducted its own appropriate due diligence investigation of the License Area prior to its execution of this Agreement.

# 9. No Interest in Property

Nothing herein shall be deemed to create a lease, or easement of any property right, or to grant any, possessory or other interest in the License Area, or any public right-of-way, other than a real property license to use and access the License Area, revocable and for a term as set forth in this Agreement.

## 10. Reservation of Rights

Company understands, acknowledges and agrees that any and all authorizations granted to Company under this Agreement are non-exclusive and shall remain subject to all prior and continuing regulatory and propriety rights and powers of City to regulate,

govern and use City property, as well as any existing encumbrances, deeds, covenants, restrictions, easements, dedications and other claims of title that may affect City property.

#### 11. Utilities

Company shall not do, nor shall it permit anything to be done that may interfere with the accessibility of the License Area. The Facilities shall be separately metered. Company shall be responsible for the cost of all utility services necessary for the operation of the Facilities, and if required by City, shall have such utilities installed and/or connected if already installed, and maintained at Company's sole cost and expense (along with all ongoing use charges). If required, Company shall obtain an encroachment permit from City's Public Works Department and submit plans for underground construction of any required utility lines to City for its review and approval prior to commencement of construction.

## 12. Inspection

City shall be entitled, at any time, without prior notice, to inspect the Facilities for compliance with the terms of this Agreement, and with all applicable Federal, State, City and local government regulations.

## 13. City Retention Rights

Company's right to use the License Area during the term of this Agreement shall be subordinate and junior to the rights of City to use and occupy the License Area for any purpose that does not interfere with Company's use of the License Area as provided herein.

#### 14. Company's Retention of Title

Title to the Facilities placed at the License Area by Company shall be held by Company or its equipment lessors, successors, or assigns. The Facilities shall not be considered fixtures. Company has the right to remove any or all of the Facilities at its sole expense from time-to-time and in all events by the expiration of this License or within thirty (30) days after an early termination of this License.

#### 15. Surrender

Upon expiration or termination of this Agreement, Company at its sole cost and expense, shall within thirty (30) days of written notice from City, remove the Facilities, restore the License Area to its original condition less regular wear and tear or to a condition satisfactory to and approved by City, and vacate the License Area. Should Company fail to restore the License Area to a condition described above, City may perform such work or have such work performed by others and Company shall reimburse City for all direct and indirect costs associated with such work upon receipt of an invoice for such costs.

#### 16. Assignment

This Agreement and the rights and obligations of Company shall not be assigned, transferred, or hypothecated (collectively referred to as "transferred"), in whole or in part without City's prior written approval. Any attempted transfer in violation of this Section shall be null and void.

#### 17. Taxes

Company shall pay all personal interest property taxes, real property taxes, possessory interest tax, fees and assessments which may at any time be imposed or levied by any public entity and attributable to the Facilities. City hereby gives notice to Company, pursuant to Revenue and Tax Code Section 107.6, that this Agreement may create a possessory interest which is the subject of property taxes levied on such interest, the payment of which taxes shall be the sole obligation of Company.

#### 18. Relocation

Company agrees that whenever any City improvements may be required (for example, the replacement or repair of the Pier), the City may require the relocation of the Facilities at the Company's expense, without making any claim against the City for reimbursement or damage therefore. Except in the event of an emergency or other situation requiring immediate relocation of the Facilities, City shall provide Company with not less than sixty (60) days written notice of relocation specifying a date by which the relocation is to take place.

#### 19. Termination

This Agreement may be terminated by either Party with or without cause with thirty (30) days written notice to either Party. Any termination requires Company to comply with the surrender obligations of Section 15 above.

#### 20. Construction

- (a) Company agrees to take all prudent action to protect City Facilities from any damage or injury caused by any work performed by or on behalf of Company regarding the construction, installation, operation, inspection, maintenance, repair, reconstruction, replacement, relocation, or removal of its Facilities or the failure, deterioration or collapse of such Facilities.
- (b) Company shall, at its sole cost and expense, repair any damage to the License Area, to the extent such damage is caused by Company or any of its agents, representatives, employees, contractors, subcontractors, or invitees. Company shall immediately notify the City Manager or his/her designee, and the appropriate public safety agency (e.g. Police and Fire Department) of any damage or injury caused by work authorized pursuant to this Agreement.
- (c) Without limitation of any other remedy available hereunder or at law or in equity, if Company fails to repair or refinish any such damage, City may, at its sole discretion, but not be required to, repair or refinish such damage and Company shall reimburse City of all costs and expenses incurred in such repair or refinishing within thirty (30) days of receipt of invoice from City.

(d) Company, prior to the execution of this Agreement, shall submit to the City and, throughout the Term and each Renewal Term, maintain in effect, a bond, letter of credit or other security, in the principal amount of Five Thousand and 00/100 Dollars (\$5,000.00) ("Security") to ensure and secure faithful compliance with the conditions of this Agreement. The Security shall be in a form acceptable to the City, and shall remain in effect throughout the Term of this Agreement. The purpose of the Security is to provide payment to the City for any and all expenditures incurred by the City under this Agreement, including but not limited to costs of repairs and cost of removal of the Facilities upon expiration or termination of this Agreement should Company fail to do so as required by this Agreement. The Security shall in no way limit the liability or obligations of Company or its insurers under this Agreement. If the funds represented by the Security become exhausted, Company shall immediately provide the City with a new security in the amount necessary to provide full required Security.

#### 21. Maintenance

At its sole cost and expense, Company shall take good care of the Facilities and keep the Facilities neat, clean and free from graffiti, dirt and rubbish at all times.

#### 22. Indemnification

Company shall indemnify, release, defend and hold harmless City, its City Council, boards and commissions, officers, agents, and employees against any and all claim, demand, suit, judgment, loss, liability or expense of any kind, including attorneys' fees and administrative costs, arising out of or resulting from the latent or patent defects in design and construction of the Facilities or any acts or omissions, intentional or negligent, of Company or Company's officers, agents or employees in the performance of their duties and obligations under this Agreement, except to the extent such claims are caused by the negligence, or willful misconduct of City, its officers, agents and employees.

#### 23. Insurance

- (a) <u>Provision of Insurance</u>. Without limiting Company's indemnification of City, and prior to commencement of work, Company shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. Company agrees to provide insurance in accordance with requirements set forth here. If Company uses existing coverage to comply and that coverage does not meet these requirements, Company agrees to amend, supplement or endorse the existing coverage.
- (b) <u>Acceptable Insurers.</u> All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.
  - (c) Coverage Requirements.
    - (i) Workers' Compensation Insurance. Company shall maintain

Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

- (1) Company shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees and volunteers.
- (ii) General Liability Insurance. Company shall maintain commercial general liability insurance, and if necessary umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate. The policy shall cover liability arising from premises, operations, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) with no endorsement or modification limiting the scope of coverage for liability assumed under a contract.
- (iii) <u>Automobile Liability Insurance</u>. Company shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Company arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit each accident.
- (d) Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:
- (i) <u>Waiver of Subrogation</u>. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Company or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Company hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subcontractors.
- (ii) <u>Additional Insured Status</u>. All liability policies including general liability, excess liability, pollution liability, and automobile liability, but not including professional liability, shall provide or be endorsed to provide that City and its officers, officials, employees, and agents shall be included as insureds under such policies.
- (iii) <u>Primary and Non Contributory</u>. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.
- (iv) <u>Notice of Cancellation</u>. All policies shall provide City with thirty (30) days notice of cancellation (except for nonpayment for which ten (10) days notice is required) or nonrenewal of coverage for each required coverage.
  - (e) Additional Agreements Between the Parties. The parties hereby agree to

#### the following:

- (i) Evidence of Insurance. Company shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.
- (ii) <u>City's Right to Revise Requirements</u>. The City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving the Company sixty (60) days advance written notice of such change. If such change results in substantial additional cost to the Company, the City and Company may renegotiate Company's compensation.
- (iii) <u>Enforcement of Agreement Provisions</u>. Company acknowledges and agrees that any actual or alleged failure on the part of the City to inform Company of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.
- (iv) Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.
- (v) <u>Self-insured Retentions</u>. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these requirements unless approved by City.
- (vi) <u>City Remedies for Non Compliance</u> If Company or any subcontractors fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this agreement, or to suspend Company's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Company or reimbursed by Company upon demand.
- (vii) <u>Timely Notice of Claims</u>. Company shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Company's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.
- (viii) <u>Company's Insurance</u>. Company shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.

#### 24. Hazardous Substances

- (a) From the date of execution of this Agreement and throughout the Term, Company shall not use, store, manufacture or maintain at the License Area any Hazardous Substances except (i) in such quantities and types found customary in construction, repair, maintenance and operations of the Facilities approved by this Agreement, (ii) petroleum and petroleum products contained within regularly operated motor vehicles. Company shall handle, store and dispose of all Hazardous Substances it brings onto the Pier and License Area in accordance with applicable laws.
- For purposes of this Agreement, the term "Hazardous Substance" means: (i) any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. ("CERLCA"); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conversation and Recovery Act, 42 U.S.C. Section 6901 et seq. ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seg.; the Clean Water Act. 33 U.S.C. Section 1251 et sea.: the California Hazardous Waste Control Act. Health and Safety Code Section 25100 et seg.; the California Hazardous Substance Account Act, Health and Safety Code Sections 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Sections 25249.5 et seg.; California Health and Safety Code Sections 25280 et seg. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Sections 25170.1 et seq.; California Health and Safety Code Sections 25501 et seg. (Hazardous Materials Response Plans and Inventory); or the Porter-Cologne Water Quality Control Act, Water Code Sections 13000 et seg., all as they, from time-to-time may be amended, (the above-cited statutes are here collectively referred to as "the Hazardous Substances Laws") or any other Federal, State or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect; (ii) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory, including but not limited to negligence, trespass, intentional tort, nuisance, waste or strict liability or under any reported decisions of a state or federal court; (iii) petroleum or crude oil; and (iv) asbestos.
- Notwithstanding any contrary provision of this Agreement, and in addition (c) to the indemnification duties of Company set forth in Section 22, Company agrees to indemnify, defend with counsel acceptable to City, protect, and hold harmless the City, its officials, officers, employees, agents, and assigns from and against any and all losses, fines, penalties, claims, damages, judgments, or liabilities, including, but not limited to, any repair, cleanup, detoxification, or preparation and implementation of any remedial, response, closure or other plan of any kind or nature which the City, its officials, officers, employees, agents, or assigns may sustain or incur or which may be imposed upon them in connection with the use of the License Area provided under this Agreement, arising from or attributable to the storage or deposit of Hazardous Substances on or under the License Area. This Section 24(c) is intended to operate as an agreement pursuant to Section 107(e) of CERCLA, 42 USC Section 9607(e), and California Health and Safety Code Section 25364, to insure, protect, hold harmless, and indemnify City for any claim pursuant to the Hazardous Substance Laws or the common law. This Section shall survive the termination or expiration of this Agreement.

(d) City agrees that City will not, and will not authorize any third party to use, generate, store, or dispose of any Hazardous Substances on, under, about or within the License Area and Pier in violation of any law or regulation. City and Company each agree to defend, indemnify and hold harmless the other and the other's partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs arising from any breach of any representation, warranty or agreement contained in this Section 24. This Section 24 shall survive the termination of this Agreement. Upon expiration or earlier termination of this Agreement, Company shall surrender and vacate the License Area and deliver possession thereof to City on or before the termination date free of any Hazardous Substances released into the environment at, on or under the License Area that are directly attributable to Company.

# 25. Compliance with Laws

Company, at its sole cost, shall observe, perform, and comply with all laws, statutes, ordinances, rules, and regulations promulgated by any governmental agency and applicable to the License Area, or the use thereof, including all RF safety standards, Americans with Disability Act requirements, applicable zoning ordinances, building codes and environmental laws. Company shall not occupy or use the License Area or permit any portion of the License Area to be occupied or used for any use or purpose that is unlawful in part or in whole, or deemed by City to be disreputable in any manner or extra hazardous on account of fire.

# 26. Not Agent of City

Neither anything in this Agreement nor any acts of Company shall authorize Company or any of its employees, agents or contractors to act as agent, contractor, joint venturer or employee of City for any purpose.

## 27. No Third Party-Beneficiaries

City and Company do not intend, by a provision of this Agreement, to create in any third party, any benefit or right owed by one Party, under the terms and conditions of this Agreement, to the other Party.

#### 28. Notices

All notices and other communications required or permitted to be given under this Agreement, including any notice of change of address, shall be in writing and given by personal delivery, or deposited with the United States Postal Service, postage prepaid, addressed to the parties intended to be notified. Notice shall be deemed given as of the date of personal delivery, or if mailed, upon the date of deposit with the United States Postal Service. Notice shall be given as follows:

## (a) To City:

City Manager City of Newport Beach 3300 Newport Boulevard Newport Beach, CA, 92658

# (b) To Company:

Attn: Dr. Burton H. Jones
Department of Biological Sciences
University of Southern California
3616 Trousdale Parkway
Los Angeles, CA 90089-0371
Phone: 213-740-5765 / FAX: 213-740-8123

(c) Company's emergency contact:

Name: Mr. Matthew Ragan

Department: Department of Biological Sciences, USC

24 hour phone number: 949-232-7202

#### 29. Entire Agreement Amendments

(a) The terms and conditions of this Agreement, all exhibits attached, and all documents expressly incorporated by reference, represent the entire Agreement of the parties with respect to the subject matter of this Agreement.

- (b) This written Agreement shall supersede any and all prior agreements, oral or written, regarding the subject matter between the Company and the City.
- (c) No other agreement, promise or statement, written or oral, relating to the subject matter of this Agreement, shall be valid or binding, except by way of a written amendment to this Agreement, approved as to form by the City Attorney.
- (d) The terms and conditions of this Agreement shall not be altered or modified except by a written amendment to this Agreement signed by the Company and City.
- (e) If any conflicts arise between the terms and conditions of this Agreement, and the terms and conditions of the attached exhibits or the documents expressly incorporated by reference, the terms and conditions of this Agreement shall control.
- (f) Any obligation of the Parties relating to monies owed, as well as those provisions relating to limitations on liability and actions, shall survive termination or expiration of this Agreement.

#### 30. Waivers

The waiver by either Party of any breach or violation of any term, covenant or condition of this Agreement, or of any ordinance, law or regulation, shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, law or regulation, or of any subsequent breach or violation of the same or other term, covenant, condition, ordinance, law or regulation. The subsequent acceptance by either Party of any fee, performance, or other consideration which may become due or owing under this Agreement, shall not be deemed to be a waiver of any preceding breach or violation by the other Party of any term, condition, covenant of this Agreement or any applicable

law, ordinance or regulation.

# 31. No Attorneys' Fees

The prevailing Party in any action brought to enforce the terms and conditions of this Agreement, or arising out of the performance of this Agreement, shall <u>not</u> be entitled to recover its attorneys' fees.

#### 32. City Business License

Company shall obtain and maintain during the duration of this Agreement, a City business license as required by the Newport Beach Municipal Code.

# 33. Applicable Law

This Agreement shall be construed in accordance with the laws of the State of California. Any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange.

#### 34. Time is of the Essence

Time is of the essence for this Agreement.

#### 35. Counterparts

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

[SIGNATURES ON NEXT PAGE]

**IN WITNESS WHEREOF,** the parties hereto have caused this Agreement to be executed in duplicate on the dates indicated below.

APPROVED AS TO FORM:	CITY OF NEWPORT BEACH,	
OFFICE OF THE CITY ATTORNEY	A California municipal corporation	
Date: 7/18/12	Date: 4/24/2017	
By: (Car) Aaron C. Harp City Attorney	By: City Manager	
ATTEST: 9-28-12	COMPANY: The University of Southern California a nonprofit public benefit corporation on behalf of its Department of Biological Sciences Date: August 1, 2012	
By: Num of Brown Leilani I. Brown City Clerk	By: Michael Quick Executive Vice Provost	
A STATE OF THE STA	Date: Of August 2012	
CALIFO	By:	

# [END OF SIGNATURES]

Attachments: Exhibit A - Pier Depiction

Exhibit B - License Area Depiction

Exhibit C - Facilities Description and Depiction

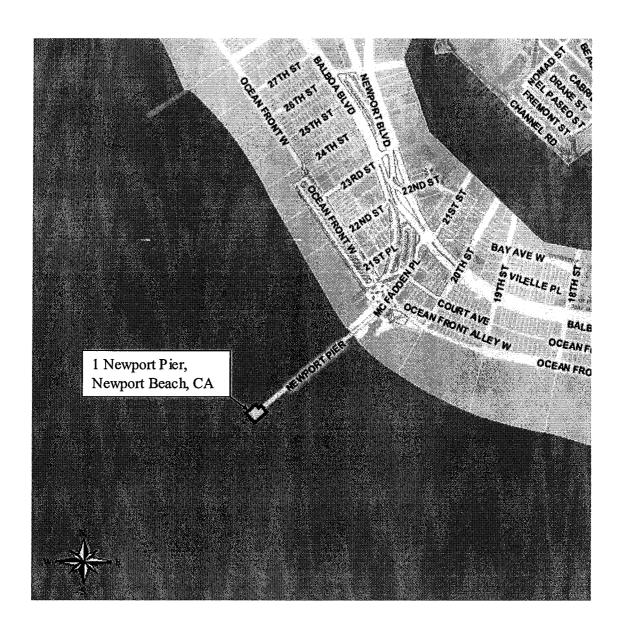
A08-00073/ License Agreement 7.16.12\_Final

## **EXHIBIT "A"**

Pier Depiction

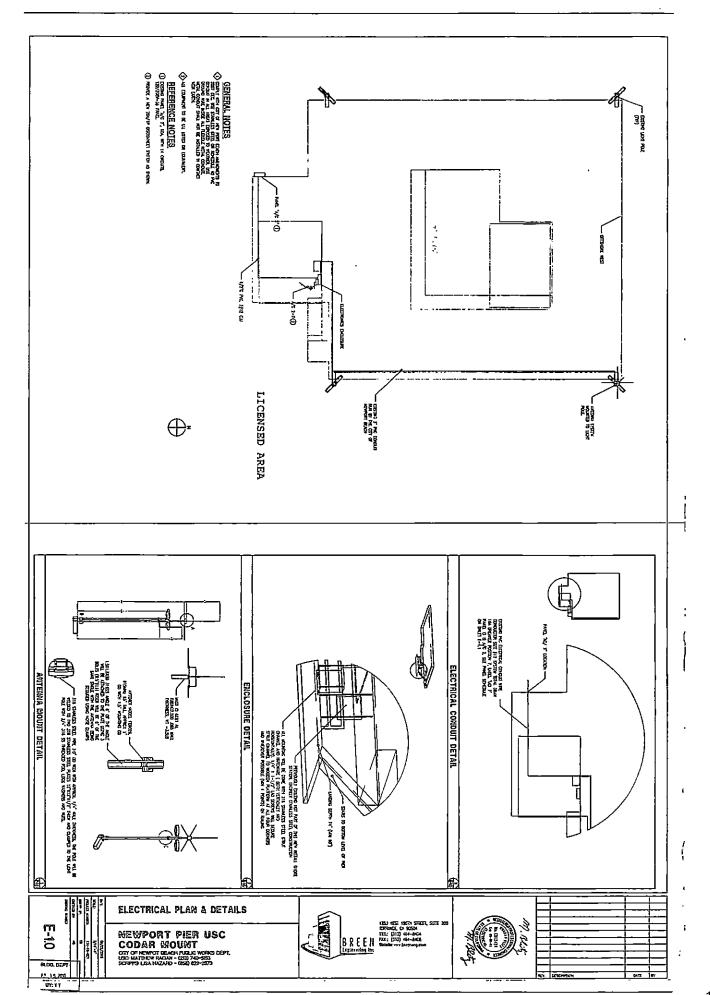
1 Newport Pier Newport Beach, CA 92663-4340

NEWPORT BEACH PIER LOT –LYING ON C.L OF MC FADDEN PL EXTENDED SW LY BEYOND THE HIGH TIDE LINE



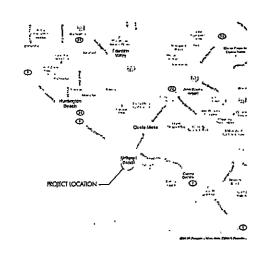
# EXHIBIT "B"

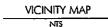
License Area Depiction

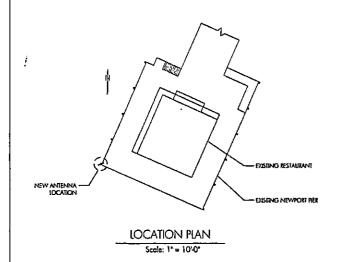


# EXHIBIT "C"

Facilities Description and Depiction









# USC/SCRIPPS INSTITUTION OF OCEANOGRAPHY NEWPORT PIER CODAR ANTENNA MOUNT NEWPORT BEACH, CA

#### PROPERTY OWNER

City of Newpon Beach Public Works Department 3300 Newpot Bird Newpot Beach, CA 92663 Phone: (949) 644-3311 Fax: (949) 644-3318

#### **APPLICANTS**

Scripps Institution of Oceanography
Coastal Observing R&D Center
9500 Génon Dr., M/C 0213
Lajsko, CA 920930213 Phone: (856) 622-2973 Corroct: Usp Hazard, Operations Manage Empit: IhazardQuad edu

University of Southern California Wrigley Institute for Environmental Studies 3616 Trausdala Phyy Les Angeles, CA 90089-0371 Phone: |213)7405153 Contact, Mathew Ropan, Project Manage Email: mrayjan@usr.edu

#### CONSULTANTS

#### Structural Engineer

Watson Structures, Inc. i N. Cafe Cesar Chorez, Sele 210 Sana Borbaro, CA 93103 a: (805) 450 2108 Face (805) 456-1656 Corpora: Alon Wessen, P.E.

#### Electrical Engineer

Breen Engineering, Inc. 1983 West 190th St., Suite 200 Tomance, CA 90504 Phone: [310] 4648404 Fest [310] 4648409 Cortacl: Marray 8thz, P.E.

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E3.1	GENERAL NOTES & PANEL SCHEDULE
Ř1	REFERENCE INFORMATION













NEWPORT PIER USC-SIO CODAR MOUNT TITLE SHEET

