

# **Attachment A**

License Agreement

## **LICENSE AGREEMENT COASTAL OBSERVATION SYSTEM AT THE NEWPORT PIER**

This LICENSE AGREEMENT ("Agreement") is entered into between UNIVERSITY OF SOUTHERN CALIFORNIA, a California nonprofit public benefit corporation on behalf of its Department of Biological Sciences ("USC") and the CITY OF NEWPORT BEACH a California municipal corporation and charter city ("City") on this the 9<sup>th</sup> day of September, 2025 ("Effective Date"). USC and City are each a "Party" and together the "Parties" to this Agreement.

### **RECITALS**

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.
- B. City is the owner of the Newport Pier, which extends into and over the water of the Pacific Ocean, at 1 Newport Pier Newport Beach, California 92661 ("Newport Pier"), as further depicted on Exhibit "A," which is attached hereto and incorporated herein by this reference.
- C. USC 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. USC desires to maintain such a radio wave transmitter on the Newport Pier.
- D. On August 1, 2012, City and USC entered into a License Agreement to use that certain portion of the Newport Pier, as further depicted in Exhibit "B" attached hereto and incorporated herein by this reference ("License Area") to allow USC to install a coastal ocean dynamics applications radar ("CODAR") radio wave transmitter and its related equipment, which have been operating since.
- E. On July 31, 2013, City and USC entered into an Amendment No. One to License Agreement ("Amendment No. 1") to reflect the City's agreement to provide electrical utility services to power to its facilities.
- F. USC desires to expand its facilities by installing a new CODAR antenna and related equipment that will serve to automatically calibrate the other two existing, older generation antenna as described and depicted in Exhibit C (collectively, the "Facilities"), attached hereto and incorporated herein by this reference in the License Area.

- G. The installation of the Facilities by USC is to facilitate research efforts for SCCOOS's ongoing ocean observing effort and is indefinite with reference to time. USC intends to operate the Facilities as long as there is adequate funding to support the infrastructure and personnel required to maintain the Facilities.
- H. City and USC desire to enter into this Agreement to memorialize USC's existing use of the License Area and to include in USC's use of the License Area the installation and operation of the Facilities, subject to the covenants and conditions set forth in this Agreement, on a non-exclusive basis, to facilitate additional and ongoing research efforts for SCCOOS.

**NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

**1. LICENSE**

1.1 City grants a non-exclusive license ("License") to USC for the Term of this Agreement, to use the License Area for the purpose specified in this Agreement in compliance with the terms of all governmental licenses, permits and approvals required by Federal, State or local governmental agencies.

1.2 All installation, operation, maintenance, and removal activities shall be at USC'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, such approval not being unreasonably withheld, conditioned, or delayed.

1.3 USC shall at its sole cost and expense, comply with all applicable federal, state and/or local laws and regulations. The License granted herein is subject to the terms, covenants and conditions hereinafter set forth, and USC covenants, as a material part of the consideration for this License, to keep and perform each and every term, covenant and condition of this Agreement.

1.4 Notwithstanding USC's construction and installation of the Facilities, it is the Parties' intention that USC's interest in the License Area and Newport Pier is restricted to this Agreement, and the City retains all rights, title and interest in the License Area and Newport Pier.

**2. PURPOSE OF LICENSE**

2.1 USC shall use the License Area for the sole purpose of constructing, installing, maintaining, securing and operating the Facilities, as further described in Exhibit C.

2.2 Construction, installation, operation, including maintenance and repair, and removal of the Facilities shall be at USC's sole expense. USC shall keep the Facilities free from hazards or risk to the public health, safety or welfare. USC shall provide twenty-four (24) hour telephone notice to the Public Works Department at (949) 270-8159 prior

to performing any maintenance or repair.

2.3 USC shall not make or permit to be made any alterations, additions or improvements to the License Area or Newport Pier, including but not limited to, painting, installation of lighting or decorations, or posting of any signs, lettering or advertising media of any type or any other visual displays, without the prior written consent of City, such consent not to be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, USC shall place warning signs on or about the Facilities in the manner required by federal, state or local law.

2.4 Use in Film, Television, and/or Advertising. USC may use portions of the License Area, Newport Pier, and surrounding areas for film, television production, advertising production, or other media vehicle only upon written approval from the City and in compliance with the Newport Beach Municipal Code.

### **3. TERM**

The term of this Agreement shall commence upon the Effective Date and terminate ten (10) years after the Facilities first begin operation or on June 30, 2035, whichever occurs first ("Term"). Notwithstanding anything to the contrary in this Agreement, the License is for a temporary period of time and does not, and shall not, result in the permanent location of the Facilities on, in or about the License Area.

### **4. LICENSE FEE**

The License is provided at no charge to USC. City is not charging a License Fee comparable to the open market or appraised value of the License Area because City finds that USC's use of the License Area provides an essential or unique service to the public. In lieu of a License Fee, USC shall provide to City as consideration for the License all information gathered from the Facilities, via a web link to a Newport Beach site specifically designated to the operation of the Facilities.

### **5. USE OF THE LICENSE AREA**

5.1. USC shall not do, nor shall it permit anything to be done that may interfere with the accessibility of the License Area.

5.2. USC shall take all prudent action to protect the License Area, Newport Pier, and City equipment and facilities from any damage or injury caused by any activities by or on behalf of USC under this License or by the failure, deterioration, or collapse of the Facilities.

5.3. USC shall, at its sole cost and expense, continually maintain the Facilities in a first-class manner and keep the License Area neat, clean and free from graffiti, dirt and rubbish at all times. USC shall use an anti-graffiti coating on the Interpretive Signs, if any. Graffiti shall immediately be called in to the City's Graffiti Hotline at (949) 644-3333 for removal.

5.4. USC shall repair any damage to the License Area, to the extent such damage is caused by USC or USC Permittees. USC shall immediately notify City and the appropriate public safety agency (e.g., police and fire department) of any damage or injury caused by work under this License.

5.5. If USC fails to commence required maintenance or repairs of the License Area within three (3) business days after receipt of notice to do so, City may perform such work or have such work performed by others and USC shall reimburse City for all costs and expenses associated with such work within thirty (30) calendar days of receipt of invoice from City. With respect to the Interpretive Signs, if USC does not adequately maintain the Interpretive Sign(s) to City's satisfaction, USC shall remove the Interpretive Sign(s) upon written notice by City.

## **6. UTILITIES**

6.1 If required by City, USC shall be responsible for the cost of all utility services necessary for the operation of the Facilities, and shall have such utilities installed and/or connected if already installed, and maintained at USC's sole cost and expense (along with all ongoing use charges). If required, USC 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.

6.2 USC shall obtain electricity for the Facilities through a separate electrical meter with Southern California Edison, or USC may obtain electricity by tapping into City's power source at the Newport Pier at the License Area.

6.3 If required by City and USC uses City's power, USC shall pay to City a monthly fixed fee ("Utility Use Fee"), which shall initially be One Hundred Dollars (\$100.00). City, upon not less than thirty (30) days' notice to USC, may increase or decrease the Utility Use Fee commensurate with costs incurred by City for USC's use of City provided utilities, which shall be determined in City's sole and absolute discretion. Licensee agrees not to dispute the Utility Use Fee, either during the Term of the Agreement or at any time thereafter, however the increase or decrease in the Utility Use Fee shall not exceed the cost(s) actually incurred by City for Licensee's use of City provided power.

6.4 In the event that City redevelops the Newport Pier pursuant to Section 11, USC is aware that such redevelopment may interfere with the service of utilities to the License Area, and City shall not be responsible or liable for any lack of functionality or damages caused to the Facilities or their inability to collect data.

## **7. INTERFERENCE WITH CITY TELECOMMUNICATIONS**

7.1 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 (a) 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 Equipment") or (b) public telecommunications such as cell phone or wireless internet use.

7.2 In the event of any interference with City's police and fire communications, USC shall work with the affected City Department to correct the interference within two (2) hours of City's written or telephone notice to USC. In the event of any interference with City Equipment other than police or fire communications, USC shall work with City to correct the interference within twenty-four (24) hours of City's written or telephone notice. If it is determined the interference is caused by the Facilities and if USC is unable to correct the interference to City's satisfaction, USC shall immediately cease operation of the Facilities until the cause of the interference is corrected to City's satisfaction.

7.3 Prior to making any changes to the frequency or operating conditions, USC shall submit plans for the proposed changes to City for its review and written approval. USC agrees to fund any studies either of the Parties deem necessary to ensure that any contemplated changes will be compatible with City Equipment. No frequency or operating condition changes shall occur prior to the City's written approval.

## **8. EMERGENCY SHUT OFF OF POWER**

8.1 Emergency situations may require power to the Facilities to be immediately shut off, which may interfere with or temporarily terminate USC's use of the Facilities ("Emergency Situation"). City shall have the sole right to determine what constitutes an Emergency Situation. In case of an Emergency Situation and/or a case of frequency interference of any nature between City Equipment and the Facilities 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 other USC equipment located at the License Area for the duration of the Emergency Situation or frequency interference that threatens public health or safety. City shall not be responsible or liable for any damage, loss, claim or liability of any nature suffered as a result of any loss in use of the Facilities because of the power shut off due to an Emergency Situation and USC shall protect, defend, indemnify and hold City harmless for any such resulting damage, loss, claim or liability.

8.2 USC shall install a clearly marked and accessible master power "cut-off" switch on the Facilities.

8.3 Any power shut off by City pursuant to this Section is not intended to and shall not constitute a termination of this Agreement by either party, unless otherwise specifically stated in a notice of termination and USC accepts the risk of such power shut off. USC 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.

## **9. ACCEPTANCE OF CONDITION OF LICENSE AREA**

USC has conducted its own appropriate due diligence investigation of the License Area prior to its execution of this Agreement and accepts use of the License Area in an "AS IS" condition, with no warranty or representation, express or implied from the City as

to the physical condition of the License Area and/or any latent, patent, foreseeable and unforeseeable condition of the License Area, including its suitability for the use intended by USC. All persons entering the License Area under this Agreement do so at their own risk. USC expressly assumes all responsibility for the protection and security of the License Area, USC, USC's employees, volunteers, contractors, subcontractors, invitees, agents, or representatives (collectively, "USC Permittees"), and USC's property and equipment from any and all acts of any third party. 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 this Agreement.

## **10. GOVERNMENT APPROVALS**

10.1 USC shall, at its sole cost and expense, obtain a Building Permit from the City's Community Development Department, Building Division, and an Encroachment Permit from the City's Public Works Department.

10.2 USC shall obtain all other licenses, permits and approvals required by federal, state or local governmental agencies necessary for USC to construct, operate, repair and remove the Facilities in the License Area, including but not limited to California Coastal Commission approval, at USC's sole cost and expense. Prior to installation of the Facilities, if required by federal, state or local government agencies, USC must obtain a valid Coastal Development Permit or De Minimis Waiver. USC may not install the Facilities until a valid coastal development permit or other authorization has been issued by the California Coastal Commission, if required by such agency.

## **11. REDEVELOPMENT OF PROPERTY**

If City's redevelopment of the Newport Pier or the License Area during the Term will materially interfere with USC's use of the License Area, then the Parties agree to terminate this Agreement. City shall provide USC with written notice of termination of this Agreement at least ninety (90) calendar days prior to the start of construction activity. City will make all best efforts to include space for Licensee to continue to operate the Facilities at the Newport Pier but cannot guarantee that space will be available.

## **12. RELOCATION**

When requested by City, USC shall relocate the Facilities at its expense and shall have no right or claim for reimbursement or damages. Except in the event of an emergency or other situation requiring immediate relocation of the Facilities, City shall provide USC with not less than ninety (90) calendar days written notice of relocation specifying a date by which the relocation is to take place.

## **13. INSPECTION**

City shall have the right to inspect the Facilities for compliance with the terms of this Agreement and with all applicable federal, state, City and local government regulations, at any time and without prior notice.

#### **14. NO INTEREST IN PROPERTY**

Nothing herein shall be deemed to create or to grant any lease, easement, or 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 the Term.

#### **15. CITY RETENTION RIGHTS; RESERVATION OF RIGHTS**

15.1 USC's right to use the License Area during the Term 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 USC's use of the License Area as provided herein.

15.2 USC understands, acknowledges and agrees that any and all authorizations granted to USC 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 the License Area and City property.

#### **16. USC'S RETENTION OF TITLE**

Title to the Facilities placed at the License Area by USC shall be held by USC or its equipment lessors, successors, or assigns. The Facilities shall not constitute or be considered fixtures. USC has the right to remove any or all of the Facilities at its sole expense at any time.

#### **17. DEFAULT; REMEDIES**

USC's failure to observe or perform any of the covenants, conditions, or terms of this Agreement, where such failure continues for a period of thirty (30) calendar days after City has provided written notice to USC, shall constitute a default and material breach of this Agreement. If more than thirty (30) days are required to perform any of the covenants, conditions, or terms of this Agreement, then USC shall not be in default or material breach of this Agreement if USC has commenced to cure such prospective default within the thirty (30) day period and diligently proceeds to completion. City may terminate this Agreement and USC's use of the License Area upon USC's failure to cure the default or breach. Such termination shall be effective upon City's providing written notice to USC.

#### **18. ASSIGNMENT**

All of the terms and provisions of this Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns. This Agreement and the rights and obligations of USC is personal to USC and shall not be assigned, transferred, or hypothecated (collectively referred to as "transferred"), in whole or in part, without the prior written consent of the City, which consent may be withheld in City's sole and absolute discretion for any reason or no reason at all. Any transfer of this Agreement or the License granted hereunder, voluntarily or by operation of law, shall



automatically terminate this Agreement, unless USC has obtained the prior written consent of City.

## **19. TAXES**

USC shall pay any and all personal interest property taxes, real property taxes, possessory interest taxes, fees and assessments, or similar charges which may at any time be imposed or levied by any public entity and attributable to the License authorized herein. City hereby gives notice to USC, pursuant to Section 107.6 of the California Revenue and Taxation Code that this Agreement may create a possessory interest in and to the property of City, a tax-exempt public entity, the payment of which taxes shall be the sole obligation of USC.

## **20. SURRENDER**

Upon expiration or termination of this Agreement, USC at its sole cost and expense shall within thirty (30) calendar days of written notice from City remove the Facilities, restore the License Area to the condition it was received in, less regular wear and tear, or to a condition satisfactory to and approved by City, and vacate the License Area. USC shall also leave the License Area free of Hazardous Substances, as required by Section 24. Should USC fail to restore the License Area to a condition described above, City may perform such work or have such work performed by others and USC shall reimburse City for all direct costs associated with such work upon receipt of an invoice for such costs. Any property USC fails to remove or abandons shall, at City's election, become City's property at expiration or termination. City shall owe no compensation to USC for any property it abandons, leaves behind, or fails to remove.

## **21. TERMINATION**

This Agreement may be terminated by either Party, at any time, for any reason, with or without cause, by giving thirty (30) calendar days written notice to the other Party. Upon termination, USC shall comply with the surrender obligations of Section 20 above.

## **22. INDEMNIFICATION**

22.1 Irrespective of any insurance carried by USC for the benefit of City, and to the fullest extent permitted by law, USC shall indemnify, defend, and hold harmless City, its elected or appointed officers, agents, officials, employees, and volunteers (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, California Coastal Commission enforcement actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a "Claim" and, collectively, "Claims"), but only in proportion to and to the extent such Claims are caused by or arises from USC's operations conducted under this Agreement or the implementation hereof and for any damages to property or injuries to persons, including accidental death, which may be

caused by any of USC's activities under this Agreement, whether such activities or performance thereof be (i) by USC, or (ii) USC's Permittees or agents and whether such damage shall accrue or be discovered before or after termination of this Agreement. This indemnification obligation exists on in proportion and to the extent that the Claims result from the negligent or intentional acts or omissions of USC and USC's officers, employees, invitees, guests, and/or agents.

22.2 Notwithstanding the foregoing, nothing herein shall be construed to require USC to indemnify the Indemnified Parties from any Claim arising from the negligence or willful misconduct of the Indemnified Parties or by City's failure to comply with the terms and conditions of this Agreement. Nothing in this indemnity shall be construed as authorizing any award of attorney's fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by USC. This indemnity Section shall survive the termination or expiration of this Agreement.

## **23. INSURANCE**

Without limiting USC's indemnification of City, and prior to undertaking any activity pursuant to the License, USC shall obtain, provide and maintain at its own expense during the Term policies of insurance of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit "D" and incorporated herein by reference.

## **24. HAZARDOUS SUBSTANCES**

24.1 From the date of execution of this Agreement throughout the Term, USC shall not use, store, manufacture or maintain in, on, under, about or within the License Area or anywhere on the Newport Pier any Hazardous Substances except (i) in such quantities and types found customary in construction, repair, maintenance and operations of the Facilities, and (ii) petroleum and petroleum products contained within regularly operated motor vehicles. USC shall handle, store and dispose of all Hazardous Substances it brings onto the License Area or Newport Pier in accordance with applicable laws.

24.2 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. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Section 25100 et seq.; 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 seq.; California

Health and Safety Code Sections 25280 et seq. (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 seq. (Hazardous Materials Response Plans and Inventory); or the Porter-Cologne Water Quality Control Act, Water Code Sections 13000 et seq., 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.

24.3 Notwithstanding any contrary provision of this Agreement, and in addition to the indemnification duties of USC set forth in this Agreement, USC agrees to indemnify, defend with counsel reasonably acceptable to City, protect, and hold harmless the City, its elected or appointed officers, agents, officials, employees, volunteers 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 elected or appointed officers, agents, officials, employees, volunteers, 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 by USC, caused by or arising from the storage or deposit of Hazardous Substances on or under the License Area by USC. This Section 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.

24.4 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 in violation of any law or regulation. City and USC 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. This Section shall survive the termination of this Agreement. Upon expiration or earlier termination of this Agreement, USC 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 USC.

## **25. COMPLIANCE WITH LAWS**

USC, at its sole cost and expense, shall observe, perform, and comply with all laws, statutes, ordinances, rules, and regulations promulgated by any governmental agency and applicable to the Facilities and the License Area, or the use thereof, including all Americans with Disability Act requirements, applicable zoning ordinances, building codes and environmental laws. USC shall not occupy or use the Facilities and License Area or permit any portion of the Facilities and 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 USC shall authorize USC or any of its employees, agents or contractors to act as agent, contractor, joint venture or employee of City for any purpose.

## **27. NO THIRD PARTY BENEFICIARIES**

City and USC 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 of Newport Beach  
Attn: Real Property Administrator  
100 Civic Center Drive  
P.O. Box: 1768  
Newport Beach, CA 92660

(b) To USC:

Attn: Matthew Ragan  
University of Southern California  
3616 Trousdale Pkwy  
AHF 107  
Los Angeles, CA 90089-0371

Phone: (213) 740-5153

(c) USC's emergency contacts:

Name:	Matthew Ragan
Title:	Project Manager
24 hour phone number:	(949) 232-7202
Email:	mragan@usc.edu

## **29. CITY BUSINESS LICENSE**

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

## **30. NO DAMAGES**

USC acknowledges that City would not enter into this Agreement if it were to be liable for damages (including, but not limited to, actual damages, economic damages, consequential damages, lost profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use) under, or relating to, this Agreement or any of the matters referred to in this Agreement, including, without limitation, any and all plans, permits, licenses or regulatory approvals, and CEQA documents. Accordingly, USC covenants and agrees on behalf of itself and its successors and assigns, not to sue City (either in its capacity as licensor in this Agreement or in its capacity as the City of Newport Beach) for damages (including, but not limited to, actual damages, economic damages, consequential damages, lost profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use) or monetary relief for any breach of this Agreement by City or for any dispute, controversy, or issue between City and USC arising out of or connected with this Agreement or any of the matters referred to in this Agreement, including, without limitation, any and all plans, permits, licenses or regulatory approvals, CEQA documents, or any future amendments or enactments thereto, the Parties agreeing that declaratory relief, injunctive relief, mandate and specific performance shall be USC's sole and exclusive judicial remedies.

## **31. STANDARD PROVISIONS**

31.1 Waiver. 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.

31.2 Integrated Agreement. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the Parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No oral agreement or implied covenant shall be held to vary the provisions herein.

31.3 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement or any other attachments attached hereto, the terms of this Agreement shall govern.

31.4 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

31.5 Amendments. This Agreement may be modified or amended only by a written document executed by both USC and City and approved as to form by the City Attorney.

31.6 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

31.7 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange.

31.8 Equal Opportunity Employment. USC represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age.

31.9 No Attorney's Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing Party shall not be entitled to attorney's fees.

31.10 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 (1) and the same instrument.

31.11 Time is of the essence for this Agreement.

**[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 ATTORNEY'S OFFICE**

Date: 8/15/25

By: Jose Montoya for  
Aaron C. Harp  
City Attorney

**ATTEST:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Molly Perry  
Interim City Clerk

**CITY OF NEWPORT BEACH,**  
A California municipal corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Grace K. Leung  
City Manager

**USC: UNIVERSITY OF SOUTHERN  
CALIFORNIA, a California nonprofit  
public benefit corporation**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Dr. Mark K. Todd  
Vice Provost for Academic Operations

**[END OF SIGNATURES]**

Attachments:      Exhibit A – Newport Pier Depiction  
                         Exhibit B – License Area and Facilities Description and Depiction  
                         Exhibit C – New Facilities Description and Depiction  
                         Exhibit D – Insurance Requirements



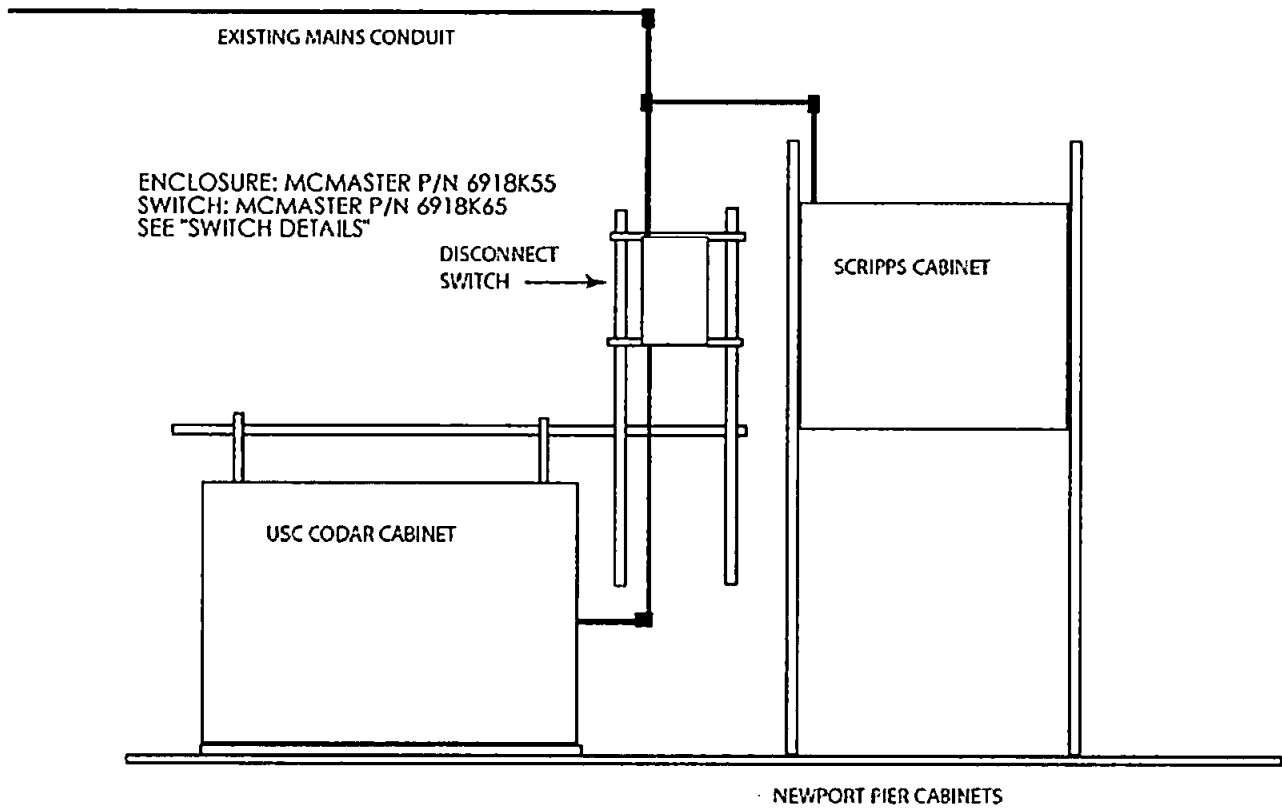
EXHIBIT A  
NEWPORT PIER DEPICTION







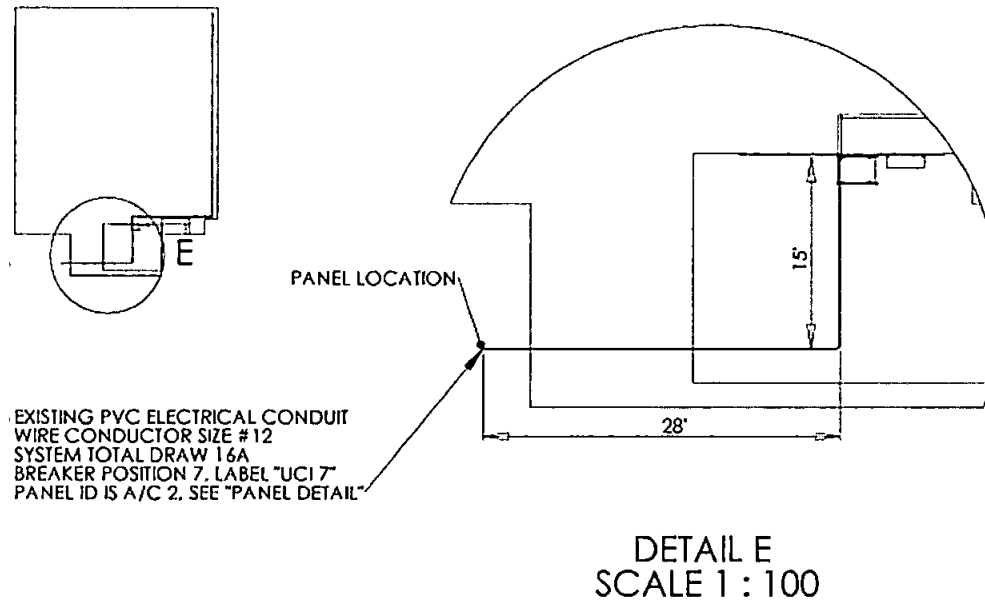
Drawing depicting the License Area from below the Newport Pier:





2. Drawing detailing the location of the electrical panel and conduit which runs under the Newport Pier (above the boat ramp) to the License Area:

**ELECTRICAL CONDUIT DETAIL**

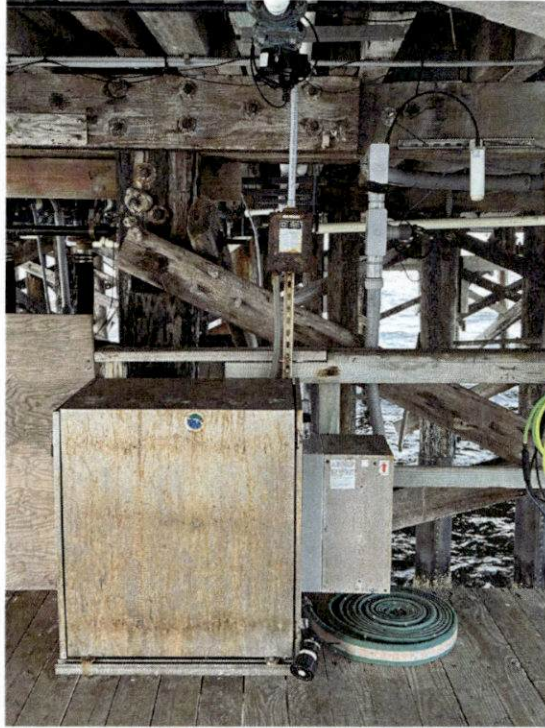


Conduit runs from the corner of the Newport Pier where the antennae are located to the stainless-steel enclosure which contain the cables to the antennae.

Conduit runs from the utility closet to the stainless-steel enclosure above the boat ramp under the pier, which contains the power to the system.

Cables run from the location of the small antennae behind the utility closet to the stainless-steel enclosure, which are for GPS and cell phone communication for data transmission. USC will add one (1) additional antenna that will be used for auto calibrating the antennae.

3. Photograph depicting current Facilities under the Newport Pier:

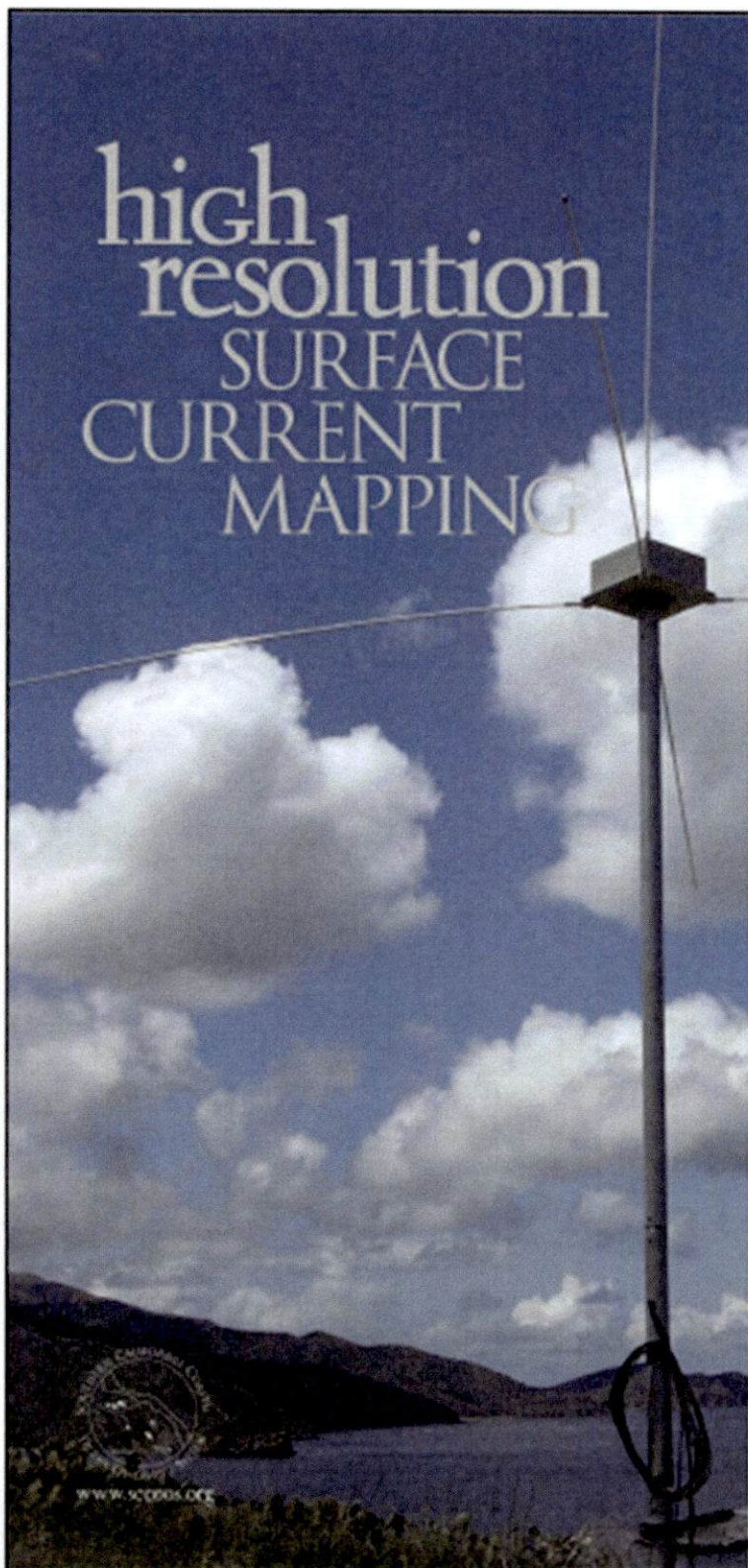


4. Photograph from the side of the Newport Pier behind the utility closet, showing two (2) currently installed small antennae where USC plans to add a third (3<sup>rd</sup>) additional antenna:





5. Facility specifications for CODAR antennae:



high  
resolution  
SURFACE  
CURRENT  
MAPPING

radio antenna specifications  
*(quantity 1 antenna)*

transmit/receive antenna

- One 8' vertical element located at 12'
- Four 4' radial elements located at 12'
- 12' high
- Antenna mast support via guy wires

weather-proof enclosure

- Typical footprint: 36" h x 24" w x 38" d
- Requires ~1000 watts AC
- Network connection desirable

ideal installation conditions

- Close to ocean  
less than 500 feet from water's edge
- Wide field of view (180° up to 360°)
- Area relatively clear of obstructions  
power lines, antennas, large metal objects
- AC power available

signal specifications

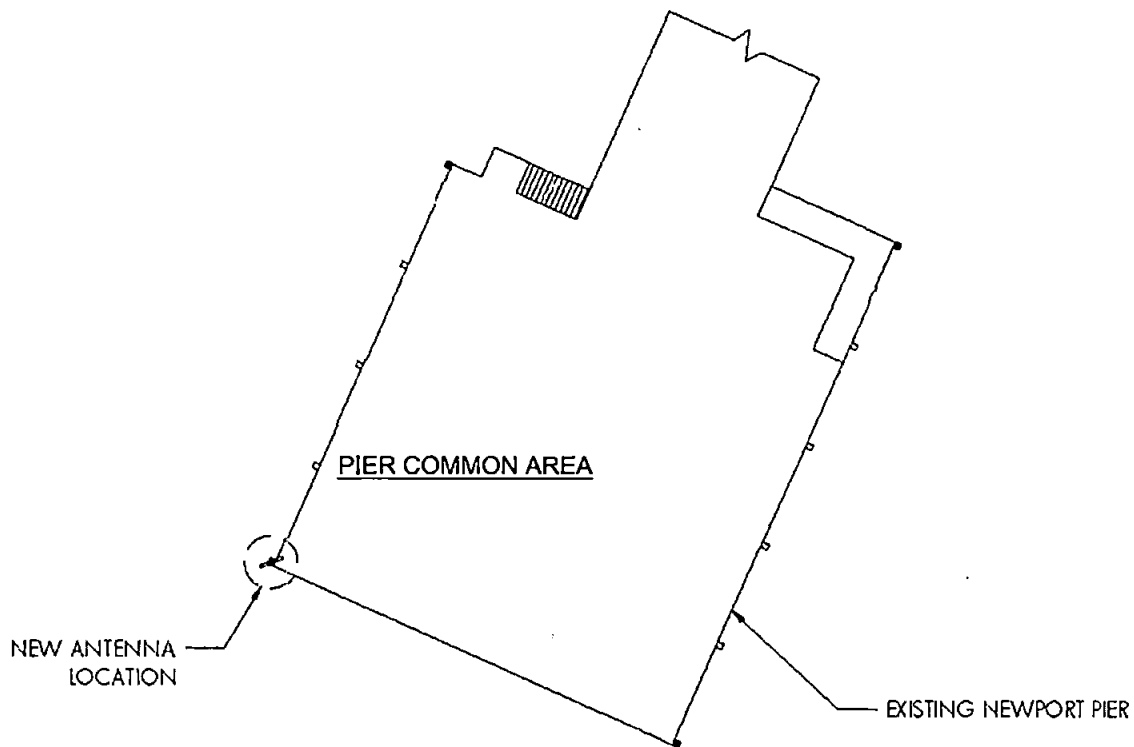
- Output Transmit Power: 80W peak,  
40W average
- Operating Frequency: 24-27 MHz
- Modulation Format:  
Pulsed Sweep Frequency: CW
- Pulse Repetition Frequency: 4-8 kHz
- Duty Factor: 50%
- Sweep Width: 150-500 kHz (typical)
- Total Signal Bandwidth: 160-510 kHz  
(at -20dB level)
- Polarization: Vertical
- Coverage Angle: 360°

USC COMBUSTION COLLEGE  
WWW.USC0006.COE

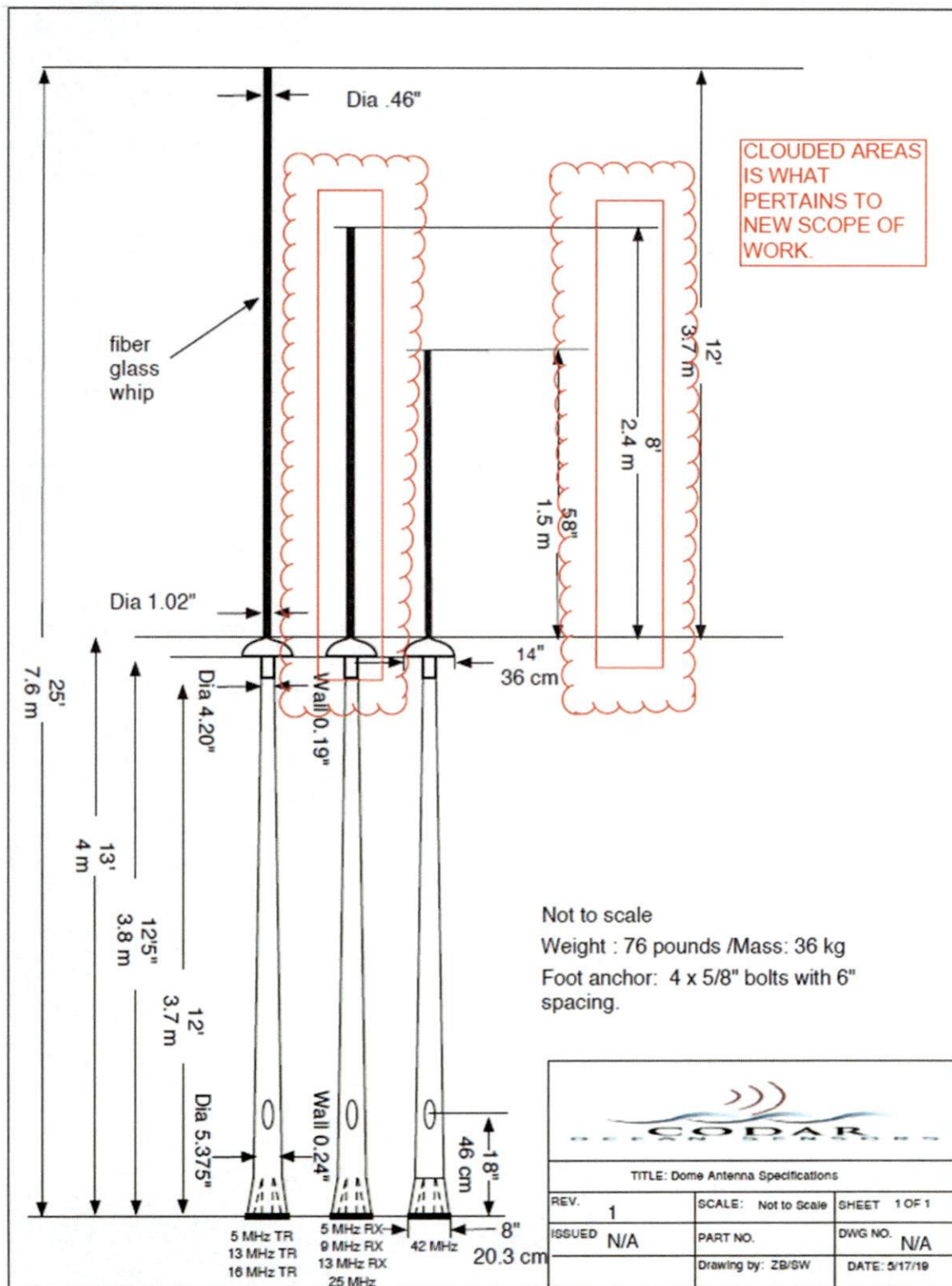
**EXHIBIT C**  
**NEW FACILITIES DESCRIPTION AND DEPICTION**

**NEW FACILITIES:**

USC's New Facilities at the Newport Pier will consist of a new generation "CODAR" antenna that will serve to automatically calibrate the two (2) currently existing older generation CODAR antenna that is structurally supported by an existing wooder light pole post as was previously permitted and approved by City. The new CODAR antenna's profile and loading conditions, electrical and structural, to the existing structurally retrofitted light pole post will be similar and lighter in weight.



Drawings of New Facilities at License Area:



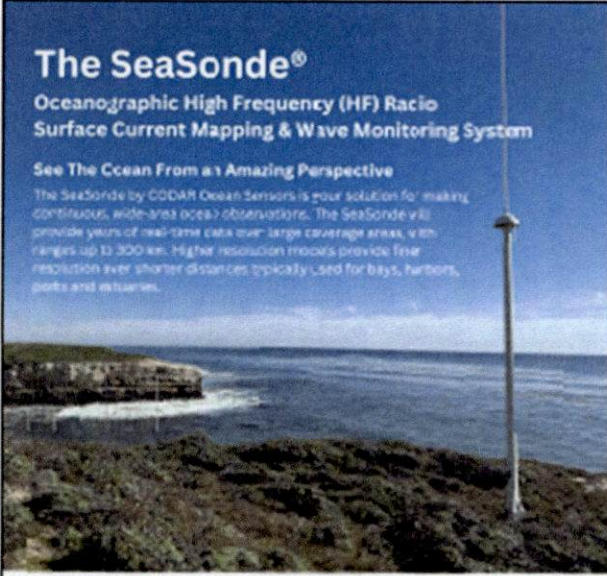



## SPECIFICATIONS OF NEW FACILITIES:

**The SeaSonde®**  
Oceanographic High Frequency (HF) Radio  
Surface Current Mapping & Wave Monitoring System

**See The Ocean From an Amazing Perspective**

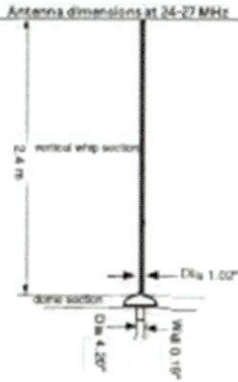
The SeaSonde by CODAR Ocean Sensors is your solution for making continuous, wide-area ocean observations. The SeaSonde will provide years of real-time data over large coverage areas, with ranges up to 300 km. Higher resolution modes provide finer resolution over shorter distances typically used for bays, harbors, ports and estuaries.

**The SeaSonde®**

**Radio Antenna Specifications**

**Antenna dimensions at 24-27 MHz**



**transmit/receive antenna**

- Single mast, vertical
- 6.4 m total height
- Fiberglass outer construction

**weather-proof enclosure**

- Typical footprint: 36" x 24" x 35" d
- Rated for >1000 watts AC
- Network connection desirable

**ideal installation conditions**

- Close to open
- Less than 500 feet from water's edge
- Wide field of view (90-360 degrees)
- Area relatively clear of obstructions (power lines, cranes, etc., large metal objects)
- AC power available

**signal specifications**

- Output Transmitt Power: 80W peak, 40W average
- Operating Frequency: 24-27 MHz
- Modulation Format: Pulse Spread Frequency CW
- Pulse Repetition Frequency: 4-8 kHz
- Duty Factor: 50%
- Sweep Width: 250-500 kHz (typical)
- Total Signal Bandwidth: 160-570 kHz (20-20 dB level)
- Polarization: Vertical
- Coverage Angle: 360 degrees

## **Utilities**

The utilities required for operation of the high-frequency radar is an outlet inside the stainless-steel waterproof enclosure. There is also an emergency cutoff switch located next to the enclosure. No new outlets or other utilities are required for the New Facilities or continued operation of the Facilities.

## **Maintenance**

Maintenance of the high frequency radar equipment is performed by USC on quarterly basis or as needed. The high frequency radar infrastructure is fairly robust and most maintenance is to verify site integrity.

## **Management and Access to Facilities**

Matthew Ragan is the Principal Investigator for the Facilities and New Facilities on the Newport Pier. He, along with colleagues in the lab, perform the routine maintenance and any repairs if needed.

## **EXHIBIT D INSURANCE REQUIREMENTS**

1. **Provision of Insurance.** Without limiting USC's indemnification of City, and prior to commencement of work, USC shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance or self-insurance of the type and amounts described below and in a form reasonably satisfactory to City. USC agrees to provide insurance in accordance with requirements set forth here. If USC uses existing coverage to comply and that coverage does not meet these requirements, USC agrees to amend, supplement or endorse the existing coverage.
2. **Acceptable Insurers.** Absent self-insurance, all insurance policies shall be issued by an insurance company currently authorized by the State of California, or otherwise be allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law. All insurance policies shall have 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.
3. **Coverage Requirements.**
  - A. **Workers' Compensation Insurance.** USC shall maintain Workers' Compensation Insurance or self-insurance providing statutory benefits and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each employee for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California. In addition, USC shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with California law for all of the subcontractor's employees.
  - B. **Commercial General Liability Insurance.** USC shall maintain commercial general liability insurance or self-insurance including products completed operations, in an amount not less than three million dollars (\$3,000,000) per occurrence, and five million dollars (\$5,000,000) general aggregate. USC shall procure and submit to City evidence of completed operations coverage for five (5) years from the time all work under this Agreement is completed.
  - C. **Automobile Liability Insurance.** USC shall maintain automobile insurance or self-insurance at least as broad as Insurance Services Office form CA 00 01 covering owned, hired, and non-owned autos bodily injury and property damage for all activities of USC arising from work to be performed under this Agreement, in an amount not less than one million dollars (\$1,000,000) combined single limit for each accident.

- D. **Pollution Legal Liability and/or Professional Liability.** USC shall maintain insurance for all operations to include onsite and offsite coverage for bodily injury (including death and mental anguish), property damage, non-owned disposal site liability, defense costs, cleanup costs, and pollution conditions that arise from or in connection with the transportation (including loading and unloading) by or on behalf USC, and any waste or waste materials off or away from the project site. Coverage shall be provided for both sudden and accidental and gradual and continuous pollution events with limits no less than two million dollars (\$2,000,000) each loss and four million dollars (\$4,000,000) in the aggregate. The policy shall not exclude any hazardous materials for which there is an exposure.
- E. **Excess/Umbrella Liability.** If any Excess or Umbrella Liability policies are used to meet the limits of liability required by this Agreement, then said policies shall be "following form" of the underlying policy coverage, terms, conditions, and provisions and shall meet all of the insurance requirements stated in this Agreement, including, but not limited to, the additional insured and primary and noncontributory insurance requirements stated herein. No insurance policies maintained by the City, whether primary or excess, and which also apply to a loss covered hereunder, shall be call upon to contribute to a loss until USC's primary and all excess liability policies are exhausted.
4. **Other Insurance Requirements.** The policies are to contain, or be endorsed to contain, the following provisions:
- A. **Waiver of Subrogation.** All insurance coverages maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its City Council, boards and commissions, officers, agents, volunteers, employees, and any person or entity owning or otherwise in legal control of the property upon which USC performs the Project and/or Services contemplated by this Agreement or shall specifically allow USC or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. USC hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subcontractors.
- B. **Additional Insured Status.** All liability policies including general liability, excess/umbrella liability, and automobile liability, if required, but not including professional liability, shall provide or be endorsed to provide that City, its City Council, boards and commissions, officers, agents, volunteers, employees, and any person or entity owning or otherwise in legal control of the property upon which USC performs the Project and/or Services contemplated by this Agreement, shall be included as additional insureds under such policies.

- C. **Primary and Non Contributory**. All liability policies including commercial general liability, excess/umbrella liability, pollution liability, and automobile liability shall provide or be endorsed to be primary and noncontributory with respect to City, its City Council, boards and commissions, officers, agents, volunteers, and any person or entity owning or otherwise in legal control of the property upon which USC performs the Project and/or Services contemplated by this Agreement. Any insurance or self-insurance maintained by City shall be excess of USC's insurance and shall not contribute with it.
  - D. **Notice of Cancellation**. USC shall provide City with thirty (30) calendar days' notice of cancellation or nonrenewal of coverage (except for nonpayment for which ten (10) calendar days' notice is required) for each required coverage.
5. **Additional Agreements Between the Parties**. The parties hereby agree to the following:
- A. **Evidence of Insurance**. USC shall provide certificates of self-insurance to City as evidence of the insurance coverage required herein. All of the executed documents referenced in this Agreement must be returned to City within ten (10) regular City business days after the Agreement is fully executed. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of work. 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.
  - B. **City's Right to Revise Requirements**. 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 USC ninety (90) calendar days' advance written notice of such change.
  - C. **Right to Review Subcontracts**. USC agrees that upon request, all agreements with subcontractors or others with whom USC enters into agreements with on behalf of City for research work occurring in the License Area will be submitted to City for review. Failure of City to request copies of such agreements will not impose any liability on City, or its employees. USC shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and USC shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13.

- D. **Enforcement of Agreement Provisions.** USC acknowledges and agrees that any actual or alleged failure on the part of City to inform USC of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.
- E. **Requirements not Limiting.** Requirements of specific coverage features or limits contained in this Exhibit 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. If USC maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for higher limits maintained by USC. Any available proceeds in excess of specified minimum limits of insurance and coverage shall be available to the City.
- F. **Self-Insured Retentions.** If USC's existing coverage includes a self-insured retention, the self-insured retention must be declared to City. City may review options with USC, which may include reduction or elimination of the self-insured retention, substitution of other coverage, or other solutions. USC agrees to be responsible for payment of any deductibles on their policies.
- G. **City Remedies for Non-Compliance.** If USC or any subcontractor fails to provide and maintain insurance or self-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 USC'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 USC or reimbursed by USC upon demand.
- H. **Timely Notice of Claims.** USC shall give City prompt and timely notice of claims made or suits instituted that are caused by or arise out of USC's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.
- I. **Coverage not Limited.** All insurance coverage and limits provided by USC and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to City or its operations limits the application of such insurance coverage.

- J. **Coverage Renewal.** USC will maintain the coverage required here as long as USC continues to provide any work under this Agreement. USC shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage.