

DEPARTMENT OF THE ARMY LICENSE

Fort Pierce Harbor
PROJECT/INSTALLATION

St. Lucie County, Florida
COUNTY, STATE

THE SECRETARY OF THE ARMY, hereinafter referred to as the Secretary, under authority of General Administrative Powers, hereby grants to **CITY OF FORT PIERCE, FLORIDA**, hereinafter referred to as the Grantee, a license to install, use, repair and maintain a concrete walkway/maintenance track, low level solar lights, benches and trash receptacles on the South Jetty of the Fort Pierce Harbor Project, hereinafter referred to as the premises, containing to 0.33 acres, more or less, as shown in red on Exhibits "A" attached here and made part hereof, herein referred to as the premises.

THIS LICENSE is granted subject to the following conditions.

1. TERM

This license is granted for a term of five (5) years beginning 14 December 2020 and ending 13 December 2025, but revocable at will by the Secretary and provided further that this license may be renewed at five (5) year intervals upon review and approval by the U. S. Army Corps of Engineers. This license shall terminate and supersede Department of the Army License No. DACW17-3-16-0001.

2. CONSIDERATION

The consideration for this license shall be the construction, operation and maintenance of the premises for the benefit of the general public and the Army in accordance with the terms and conditions herein set forth.

3. NOTICES

All notices and correspondence to be given pursuant to this license shall be addressed, if to the Grantee, City Manager, City of Fort Pierce, City Hall, 100 North U.S. Highway 1, Ft. Pierce, Florida 34954; and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, Post Office Box 4970, Jacksonville, Florida 32232-0019; or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "District Engineer" or "said officer" shall include their duly authorized representatives. Any reference to "Grantee" shall include any duly authorized representatives.

5. SUPERVISION BY THE DISTRICT ENGINEER

The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer hereinafter referred to as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

6. APPLICABLE LAWS AND REGULATIONS

The Grantee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.

7. CONDITIONAL USE BY GRANTEES

The exercise of the privileges herein granted shall be:

- a. without cost or expense to the United States;
- b. subject to the right of the United States to improve, use or maintain the premises;
- c. subject to other outgrants of the United States on the premises;
- d. personal to the Grantee, and this license, or any interest therein, may not be transferred or assigned.

8. CONDITION OF PREMISES

The Grantee acknowledges that they have inspected the premises, know its condition, and understand that the same is licensed without any representations or warranties whatsoever and without any obligation on the part of the United States to make any alterations, repairs, or additions thereto.

9. COST OF UTILITIES

The Grantee shall pay the cost, as determined by the officer having immediate supervision over the premises, of producing and/or supplying any utilities and other services furnished by the Government or through Government-owned facilities for the use of the grantee, including the grantee's proportionate share of the cost of operation and maintenance of the Government-owned facilities by which such utilities or services are produced or supplied. The Government shall be under no obligation to furnish utilities or services. Payment shall be made in the manner prescribed by the officer having such jurisdiction.

10. PROTECTION OF PROPERTY

The Grantee shall keep the premises in good order and in a clean, safe condition by and at the expense of the Grantee. The Grantee shall be responsible for any damage that may be caused to property of the United States by the activities of the Grantee under this license, and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the Grantee incident to the exercise of the privileges herein

granted shall be promptly repaired or replaced by the Grantee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the Grantee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

11. INDEMNITY

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property of the Grantee, or for damages to the property or injuries to the person of the Grantee's officers, agents, or employees or others who may be on the premises at their invitation or the invitation of any one of them, and the Grantee shall hold the United States harmless, to the extent allowed by law, from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

12. RESTORATION

On or before the expiration of this license or its termination by the Grantee, the Grantee shall vacate the premises, remove the property of the Grantee, and restore the premises to a condition satisfactory to said officer. If, however, this license is revoked, the Grantee shall vacate the premises, within such time as the District Engineer may designate. In either event, if the Grantee shall fail or neglect to remove said property and restore the premises, then, at the option of said officer, the property shall either become the property of the United States without compensation therefor, or said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Grantee shall also pay the United States on demand any sum, which may be expended by the United States after the expiration, revocation, or termination of this license in restoring the premises.

13. NON-DISCRIMINATION

The Grantee shall not discriminate against any person or persons or exclude them from participation in the Grantee's operations, programs or activities because of race, color, religion, sex, age, handicap or national origin in the conduct of operations on the premises. The Grantee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

14. SUBJECT TO EASEMENTS

This license is subject to all existing easements, or those subsequently granted as well as established access routes for roadways and utilities located, on the premises.

15. TERMINATION BY THE GRANTEES

This license may be terminated by the Grantee at any time by giving the District Engineer at least thirty (30) days notice in writing provided that no refund by the United States of any consideration previously paid shall be made.

16. TERMINATION BY THE GOVERNMENT

The Government may terminate this license as follows:

a. NON COMPLIANCE. The Government may terminate this license if the Grantee fails to comply with any of the terms and conditions specified herein by the issuance of 30-days written notice provided that the Grantee has not made reasonable and diligent attempts to cure. The Grantee shall have no claim for damages.

b. FEDERAL REQUIREMENT: In the event the property is required for Federal use or if Grantee's use of the property is not consistent with Federal program purposes, the Government may terminate the license upon issuance thirty (30) days written notice to Grantee.

c. SALE OR TRANSFER OF THE PROPERTY: If the property is to be sold or transferred by the Government during the term of this license, the Government may terminate this license by providing thirty (30) days written notice in advance of the actual sale and transfer date.

17. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this license shall protect the premises against pollution of its air, ground and water. The Grantee shall comply with any laws, regulations, conditions, or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by said Environmental Protection Agency, or any Federal, state, interstate or local governmental agency are hereby made a condition of this license. The Grantee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The Grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from the Grantee's activities, the Grantee shall be liable to restore the damaged resources.

c. The Grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

18. HISTORIC PRESERVATION

The Grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the Grantee shall immediately notify said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

19. MODIFICATIONS

This license contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative and this provision shall apply to this condition as well as all other conditions of this license.

20. DISCLAIMER

This license is effective only insofar as the rights of the United States in the premises are concerned; and the Grantee shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the premises. It is understood that the granting of this license does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 U.S.C. 403), and Section 404 of the Clean Waters Act (33 U.S.C. 1344).

THIS LICENSE is not subject to Title 10, United States Code, Section 2662, as amended.

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Army, this _____ day of _____, 2021.

TIMOTHY H. MCQUILLEN
Chief, Real Estate Division
Real Estate Contracting Officer
U.S. Army Engineer District
Jacksonville, Florida

THIS LICENSE is also executed by the Grantee this 16th day of February, 2021.

CITY OF FORT PIERCE, FLORIDA

By: Linda Hudson
Linda Hudson, Mayor

ATTEST:

Linda W. Cox
City Clerk

