

# WeatherFlow

## SITE USE AGREEMENT

This Site Use Agreement (the "Agreement") is entered into as of the 28<sup>th</sup> day of March of 2019 by and between City of Huntington Beach ("Host") and WeatherFlow, Inc., a California based corporation ("WeatherFlow").

**WHEREAS**, WeatherFlow desires to install a weather station consisting of non-penetrating mounting hardware, instruments, electronics package, and solar panel on/at Lifeguard Tower Zero, Huntington Beach Pier, 40 Main Street, Huntington Beach, CA 92648.

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### 1. GRANT OF LICENSE TO INSTALL WEATHER STATION

Subject to the requirements, terms, and conditions of this Agreement, WeatherFlow officers, agents, employees, and subcontractors (collectively, the Installers) are hereby granted a license to access The Property at such times as they deem appropriate in order to furnish and install, maintain, test, repair, replace and do work necessary for the complete installation and maintenance of the Weather Station on The Property. Installers shall be given access to The Property for as such times as they deem appropriate with 24 hour notice to Host.

### 2. TERM

The term of this Agreement shall commence as of the date set forth above and shall continue unless terminated by Host or WeatherFlow. Either party may, in its discretion, terminate this agreement by giving the other party notice of such termination at least sixty (60) days prior.

### 3. ACCESS CONSIDERATION; DATA ACCESS

WeatherFlow hereby agrees to provide Host with unfettered access to WeatherFlow data. Host acknowledges and agrees that data provided by WeatherFlow to Host pursuant to this Agreement shall remain the sole and exclusive property of WeatherFlow and may not be republished or redistributed by Host in any other way without the prior written consent of WeatherFlow. The restriction on the republication or redistribution of WeatherFlow data shall not apply in cases of emergency (as determined by Host in its reasonable discretion), in which case Host may republish or redistribute WeatherFlow data, in raw form or otherwise, to others as it deems reasonably appropriate under the circumstances. In all cases of such republication or redistribution of WeatherFlow data, Host will promptly notify WeatherFlow of the circumstances of such republication or redistribution.

### 4. INDEMNIFICATION

WeatherFlow shall pay and be exclusively responsible for any and all obligations for labor and materials for which it has contracted, for its rental of any appliance or equipment, and for any expense it has incurred in connection with the performance of its obligations under this Agreement. WeatherFlow agrees to use and occupy the Property at its own risk, and Host shall bear no

# WeatherFlow

responsibility for any loss or damage to fixtures or other personal property of WeatherFlow, except for such loss or damage as is caused by Host's negligence, willful act or other misconduct.

WeatherFlow shall indemnify Host from any liability for injury, loss, accident, or actual damage to any person or property, and from any claims, actions, proceedings and expenses and costs in connection therewith (including, without limitation reasonable counsel fees, court costs and any costs of expense of litigation) (i) arising from (a) the omission, fault, willful act, negligence or other misconduct of WeatherFlow, (b) any use made by WeatherFlow or thing done by WeatherFlow at the Property not due to the omission, fault, willful act, negligence or other misconduct of Host, or (ii) resulting from the failure of WeatherFlow to perform and discharge its covenants and obligations under this Agreement.

## 5. MODIFICATION, ASSIGNMENT

Except as otherwise provided herein, this Agreement may be amended or modified only by writing signed by both parties. Except as otherwise expressly provided herein, the provisions of this Agreement hereof shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns.

## 6. ENTIRE AGREEMENT

This Agreement constitutes the full and entire understanding and agreement between the parties with regard to the subject matter hereof and no party shall be liable or bound to the other party in any manner by any oral or written representations, warranties, covenants and agreements except as specifically set forth herein. Each party expressly represents and warrants that it is not relying on any oral or written representations, warranties, covenants or agreements outside of this Agreement.

## 7. SEVERABILITY

In the event one or more of the provisions of this Agreement should, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

## 8. LEGAL EFFECT

The rights granted to WeatherFlow under this Agreement shall not constitute an easement, lease, tenancy at will, or other property right, but shall constitute a license to enter the Property and install and maintain the Weather Station.

## 9. ADDITIONAL INSTRUMENTATION

Additional instrumentation, including but not limited to water temperature sensors, may be installed upon mutual consent between parties. WeatherFlow agrees to install said instrumentation and provide needed maintenance during routine maintenance visits. Host agrees to provide additional support for these additional instruments. This includes, but is not limited to, providing needed access and providing needed right-of-way for instrumentation.



# WeatherFlow

## 10. NOTICES

Any and all notices required or permitted to be given either party hereto shall be sufficient if sent by registered or certified mail, return receipt request to:

In the case of Host:

*City of Huntington Beach  
Michael Baumgartner  
2000 Main Street  
Huntington Beach, CA 92648)  
714-536-5489*

In the case of WeatherFlow:

WeatherFlow, Inc.  
Attn: Laurel Robinson  
108 Whispering Pines, Suite 245  
Scotts Valley, CA 95066  
(831) 438-9742

or to such other address as either party may specify to the other by notice as provided herein. Notices as provided for herein shall be complete upon receipt.

## 11. COUNTERPARTS

This Agreement may be executed in any number of counterparts, and delivered by electronic or facsimile transmission, each of which shall be an original or shall be deemed an original, but all of which together shall constitute one instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth in the first paragraph hereof.

### WEATHERFLOW INC.

By: B M Miller

Name: Benjamin M. Miller

Title: Sensor Network Liaison & Chief Operational Meteorologist, Contract Representative

### CITY OF HUNTINGTON BEACH

By: David A. Segura  
Name: David A. Segura  
Title: Fire Chief, City of Huntington Beach

APPROVED AS TO FORM

By: Michael S. Gates  
for MICHAEL S. GATES  
CITY ATTORNEY  
CITY OF HUNTINGTON BEACH

# WeatherFlow

## Exhibit "A"



*PROPOSED WEATHER STATION DESIGN*

WeatherFlow, Inc. 108 Whispering Pines, Suite 245, Scotts Valley, CA 95066  
ph 831-438-9740 fx 831-438-3561 [www.WeatherFlow.com](http://www.WeatherFlow.com)

# WeatherFlow

## Exhibit "B"

The weather station is designed, built, installed, and maintained by WeatherFlow with the aim of maximum collection time in the harsh marine environment. The station itself is small and completely self-contained. There are no cables from the station to ground, and therefore no grounding issues. Power is supplied by a small 10W solar panel measuring 16.5" x 11" and weighing 1.8lbs. Communication from the site to a central repository is accomplished through low power cell transmission.

The station measures wind speed, wind direction, air temperature and barometric pressure. The instruments include an anemometer-vane, mounted on a stainless steel mast fixed to the structure. The anemometer weighs 1.4lbs, and connects to the data logger along with an air temperature sensor and solar panel. The data logger is 10"x11"x7" and weighs about 20 lbs.



**Example of an existing WeatherFlow weather station at Imperial Beach, CA**