

FLORIDA DEPARTMENT OF Environmental Protection

Southwest District Office 13051 North Telecom Parkway #101 Temple Terrace, Florida 33637-0926 Ron DeSantis Governor

Jeanette Nuñez Lt. Governor

Shawn Hamilton Secretary

May 30, 2024

City of Clearwater c/o Jennifer Poirrier, City Manager 600 Cleveland St., Suite 600 Clearwater, FL 33755 Jennifer.poirrier@myclearwater.com

Re: Proposed Temporary Use Agreement

City of Clearwater – Seminole Docks 302 Seminole St., Clearwater, FL 33755 Site No. 449065/BOT No. 520369673

Dear Mr. Slaughter:

Enclosed is the Temporary Use Agreement (TUA) to provide temporary authorization for existing structures and mooring areas on state-owned submerged lands adjacent to your riparian upland property referenced above. Please sign and return the TUA to this office within 10 days of receipt of this letter. Please leave the date on the first page blank.

If you have any questions regarding this matter, please contact Anthony Vixayo by email at Anthony.vixayo@floridadep.gov or by phone at 813-470-5757. Your continued cooperation in this matter is appreciated.

Sincerely,

Ms. Kell y M. Boatwright Southwest District Director

Florida Department of Environmental Protection

Enclosures:

TUA for signature

Survey

cc:

Pamala Vazquez, FDEP-SWD, Pamala. Vazquez@floridadep.gov

Anthony Vixayo, FDEP-SWD, Anthony.vixayo@floridadep.gov

Hannah Westervelt, FDEP-SWD, <u>Hannah.Westervelt@FloridaDEP.gov</u>
Daniel Slaughter, City of Clearwater, daniel.slaughter@myclearwater.com

TEMPORARY USE AGREEMENT BOT. No. 520369673

This Temporary Use Agreement (hereinafter referred to as the "Agreement") is entered into this 30th day of May, 2024, by and between the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (hereinafter referred to as the "Board") and City of Clearwater, hereinafter referred to as the "Applicant".

RECITALS:

- A. The Applicant desires to enter into this Agreement for the sovereign lands (hereinafter referred to as "lands") and water column adjacent to the Applicant's upland real property located at 302 Seminole St Clearwater, FL 33755, Pinellas County, Florida.
- B. Public docking structures, boat ramp, and City facility are operating on these lands adjacent to Applicant's upland real property without the Board's approval or authorization.
- C. Applicant desires to obtain the consent of the Board to maintain and use the structures maintain the performance of the activities located on these lands.
- D. The parties acknowledge that the application, approval and issuance of a sovereign lands lease may require a time period of several months.
- E. The Applicant desires to have the temporary use of the structures [performance of the activities] located on these lands during the processing and review of the Applicant's sovereign lands lease application or other sovereign use application.

NOW, THEREFORE, for and in consideration of the mutual agreements and covenants set forth herein, the Applicant agrees as follows:

- 1. The Applicant acknowledges and understands that the grant of this Agreement and the payment of the amount herein does not guarantee that the Board will grant the Applicant a lease or that the Department of Environmental Protection will recommend that a lease be granted.
- 2. The Applicant is hereby granted the temporary exclusive use of the structures performance of the activities located on these lands as depicted in Exhibit "A", consisting of approximately 283,339 square feet, waterward of Applicant's upland real property described above. This temporary exclusive use is for a term not to exceed one year from the date of execution of this Agreement through May 30, 2025, or until the date of execution of a sovereign lands lease between the Board and the Applicant, whichever occurs first. The Applicant shall make no claim of title to or interest in the sovereign lands identified in Exhibit "A" solely by reason of occupancy or use thereof under this Agreement.
- 3. The existing structures can only be utilized, and activities can only be performed as they were on the date of execution of this Agreement, which was as May 30, 2024. In the event any part of any of these structures and Activities is determined by a final adjudication issued by a court of competent jurisdiction to encroach or interfere with riparian rights of the adjacent upland riparian owner, Applicant agrees to either obtain written consent for the offending structure or use from the affected adjacent upland riparian owner or remove the interference or encroachment within 60 days from the date of the adjudication. Failure to comply with this paragraph shall constitute a material breach of this Agreement and be grounds for immediate termination of this Agreement at the sole option of the Board.
- 4. The consideration paid for this Agreement includes the lease fees due for these lands from 2024 through 2025 plus interest payable on past due lease fees. This consideration is not refundable, notwithstanding the denial of a sovereign lands lease by the Board.

- 5. The Applicant acknowledges that the lease fees assessed in this agreement after March 1, 2025 are an estimate created using the base rate per square foot fee from the 2024-2025 billing cycle times the approximate square footage of the lands preempted by the structures and performance of the activities. A supplemental invoice will be generated and issued to the applicant at the time of lease execution that accounts for any difference in lease fees owed for the new per square foot fee established on March 1, 2025 which is based on changes in the consumer price index, pursuant to Rule 18-21.011(1)(b.), Florida Administrative Code, and changes in the square footage of the preempted area based on a survey supplied by the Applicant pursuant to Applicant's sovereign lands lease application, and the Applicant hereby agrees to pay the full amount any additional lease fees owed to the Board due to these changes within 30 days of the receipt of the supplemental invoice.
- 6. In the event that a sovereign lands lease application is not approved by the Board and executed by both parties prior to the expiration or sooner termination of this Agreement, and either the Applicant fails to timely submit the information concerning title as required herein, or the Board denies the Applicant's claim of title and the Applicant has not commenced an action to quiet title as specified herein, the Applicant shall remove all structures and cease all activities referenced herein from and on the sovereign lands at the Applicant's sole expense. The complete removal of the structures shall be accomplished within 360 days. The complete cessation of the activities shall occur immediately following the expiration or termination of this Agreement, whichever occurs first.
- 7. If the Applicant asserts title to the sovereign lands identified in Exhibit "A", the Applicant must submit an application, accompanied by all evidence upon which Applicant relies for the assertion of title, to the Division of State Lands ("DSL"), Department of Environmental Protection, within 90 days after the execution of this Agreement. DSL will review the application and accompanying evidence and give a response to Applicant as to whether the Board will assert title to the sovereign lands described in Exhibit "A". If DSL responds that the Board will assert title to said sovereign lands, the Applicant must file an appropriate action in circuit court within 90 days of DSL's response to obtain a legal determination of title to the sovereign lands. If DSL, after consultation with the Board, responds that the Board does not assert title to the sovereign lands, then the Applicant shall not have to apply for a sovereign lands lease, and that portion of the consideration representing lease fees and interest shall be refunded. If DSL, after it's review, responds that the Board does not assert title to a portion of the sovereign lands, any consideration for that portion representing lease fees and interest will be refunded. Failure to submit the initial application and evidence within 90 days after execution of this Agreement, or failure to file the appropriate court action within 90 days after DSL's response, shall constitute a waiver by the Applicant of all of its claim of title to the sovereign lands and an acknowledgment that the Board owns the sovereign lands.
- 8. Applicant shall make initial application for a sovereign lands lease (modification) to the Board within 30 days of the execution of this Agreement and complete the application by no later than 180 days of the execution of this Agreement for the lands identified in Exhibit "A".
- 9.. This Agreement is temporary in nature and may not be extended or modified except upon the express written agreement of the Board. No request for an extension of the Agreement shall be considered by the Board except upon a demonstration by the Applicant that the Applicant is in full compliance with the terms and conditions of this Agreement and has exercised due diligence in its efforts to procure a sovereign lands lease from the Board.
- 10. Applicant shall save and hold harmless and indemnify the Board, Department of Environmental Protection, and the State of Florida against any and all liability, claims, judgments or costs of whatsoever kind and nature for injury to, or death of, any person or persons and for loss or damage to any property arising out of or connected with Applicant's occupation and use of these lands and the structures or activities located thereon. By execution of this Agreement, applicant waives any claim it may have against the Department of Environmental Protection concerning the submerged lands described on Exhibit "A" except as described in Paragraph 6 above.
- 11. Applicant agrees that any litigation arising from matters relating to this Agreement between the Board and the Applicant shall be initiated and maintained only in Leon County, Florida.
- 12. This Agreement, and any rights and privileges contained herein, are for the sole benefit and use of the Applicant and shall not be assigned or transferred by the Applicant to any other party without the prior written consent of the Board, which consent shall not be unreasonably withheld.

13. The terms of this Agreement may be enforced by the Board notwithstanding that the authorization granted hereunder has expired.
Executed on the date first written above.

Countersigned:	CITY OF CLEARWATER, FLORIDA
Bruce Rector Mayor	By: Jennifer Poirrier City Manager
Approved as to form:	Attest:
Jerrod Simpson Assistant City Attorney	Rosemarie Call City Clerk
online notarization, this day of	ed before me by means of \square physical presence or \square , 2024, by as as tho is \square personally known to me or who \square has fication.
	Notary name:

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA

WITNESSES:		
	By: Kelley M. Boatwright	
Original Signature	Director of District Management,	
	Department of Environmental Protection, as	
Printed/Typed Name	agent for and on behalf of the Board of Trustees of the Internal Improvement Trust	
Timed Typed Name	Fund of the State of Florida	
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Original Signature		
Printed/Typed Name		
STATE OF FLORIDA COUNTY OF		
	owledged before me this day of, 20,	by
	rector of District Management, Southwest District, Department of	
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	Notary Public, State of Florida	
	Printed, Typed or Stamped Name	
	My Commission Expires:	
	Commission/Serial No.:	

Exhibit A

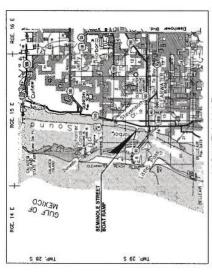


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SECTION 9, TOWISHIP 29 SOUTH, RANGE 15 EAST,
CITY OF CLEARWATER, PINELLAS COUNTY, FLORIDA



 Acrial imagery shown heron was provided by the Handa Department of Environmental Protection (FDEPT) and is shown for informational purposes. The imagery was from in December 2010. The continues system utilized heren in relative to the Honds State Rane Coordinate system, West Zone, Nord American Dation of 1982, 2011 Equipment is established using Mid-Interferented College Prositioning System (TRI APP). The recent of the Continues of the Continues of Transportation's Interference Protection Continues of Transportation's Interference Relation Continues of Transportation's Interference Relation of Transportation's Interference Relation of Transportation of Tran

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This Boundary Sunky map and report or the copies thereof are not valid without the signature and the resed seal of a florida licensed surveyor and mapper.

 Additions or deletions to Survey maps or reports by a written consent of the signing party or parties. Copyright © 2014 by MacSurvey, Inc.

This is a Boundary Survey as defined by Chapter 5)-17.050(10)(b) of the Florida Administrative Code

The survey date is March 4, 2014 (last date of fieldwork).

SURVEYOR'S REPORT

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10. The Title Search reports that it found no recorded convergences in the Official Recents to WCMD. According the general content for WCMD, the District developed to loave the stringle interest is any back shown on this survey, however the extent of its perspective assemble finited is not class on the filled western end of the perhits (fig. which 750 for all the presental widness) contents in the perhits.

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Christopher P. McLaughlin Professional Surveyor & Mapper #6614 For the firm MacSurvey, Inc. Licensed Survey Business #7929

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This Boundary Survey is certified to the following parties: Duke Energy of Fordia, LLC Vey of Clearwater West Coast Inland Asseption District

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NOTE: THE SCALE OF THIS SURVEY MAY HAVE CHANGED DUE TO REPRODUCTION

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