

CITY OF SAN DIEGO SHORT-TERM RIGHT OF ENTRY PERMIT

THIS CITY OF SAN DIEGO RIGHT OF ENTRY PERMIT ("Permit") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and SONTEK, a Division of YSI, an Ohio Corporation ("PERMITTEE"), to be effective as of February 1, 2018 ("Effective Date") when signed by the parties and approved by the San Diego City Attorney, as follows:

RECITALS

- A. CITY'S Water Department is the owner of certain real property commonly known as El Capitan Reservoir, Miramar Reservoir and Murray Reservoir (collectively the "City Property"). The City Property consists of water supply reservoirs, which are a part of the San Diego region's overall drinking water system.
- B. PERMITTEE desires to enter a portion of the City Property to test underwater instruments manufactured by PERMITTEE.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

- 1. **Definitions:** As used in this Permit, the following terms shall be defined as follows:
 - 1.1 **"CITY Contact"** shall mean the CITY's Real Estate Assets Department Agent or designee. For purposes of this Permit, the CITY Contact is currently Carla Gresham, who can be contacted at (619) 236-6729.
 - 1.2 **"Permit Area"** shall mean portions of the City-owned real property commonly known as El Capitan, Miramar and Murray Reservoirs open to the general public for recreational uses, excluding areas open for water contact activities, as further depicted in **Exhibits A-1, A-2 and A-3**, attached hereto.
 - 1.3 **"Permit Fee"** shall mean a one-time, non-refundable permit processing fee in the amount of Nine Hundred Eighty Dollars (\$980.00).
 - 1.4 **"Permit Use"** shall mean the non-exclusive use of the Permit Area for testing underwater instruments manufactured by PERMITTEE, during Permit Area operating hours.
 - 1.5 **"PERMITTEE's Address for Notices"** shall be: SONTEK
9940 Summers Ridge Road, San Diego, CA 92121. Attn. Jeff Winters.
 - 1.6 **"Rent"** shall mean monetary consideration to the CITY in the amount of:

From 02/1/2018 - 01/31/2019, the amount of \$1,034.15 per month;
From 02/1/2019 - 01/31/2020, the amount of \$1,075.52 per month; and
From 02/1/2020 - 01/31/2021, the amount of \$1,118.54 per month.

PERMITTEE shall pay rent to the CITY upon the execution of this Permit, made payable to the "City Treasurer", and delivered to the CITY OF SAN DIEGO at P.O. Box 129030, San Diego, CA 92112-9030. Rent is due on the first (1st) day of each month.

- 1.7 **"Delinquent Monthly Rent"** shall mean (1) if PERMITTEE fails to pay Monthly Rent when due PERMITTEE shall pay, in addition to the unpaid Monthly Rent, five (5%) percent of the delinquent Monthly Rent; and (2) if the Monthly Rent is unpaid after fifteen (15) days past due, PERMITTEE shall pay an additional five (5%) percent being the total of ten percent (10%), which is agreed upon by the parties to be appropriate to compensate the CITY for the cost of servicing the delinquent account. In no event shall the charge for the late payments of the Monthly Rent be less than Twenty-Five (\$25). Acceptance of the late charge and any portion of the late payment by CITY shall neither constitute of waiver of PERMITTEE'S default with respect to late penalty nor CITY from exercising rights any other rights and remedies available at law or equity.
- 1.8 **"Term"** shall mean month to month commencing upon the execution of this Permit. The Term shall not exceed three (3) years.
2. **Right to Enter.** Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE, its employees, agents, contractors, and invitees to enter upon the Permit Area solely for the Permit Use, and for no other purpose whatsoever.
3. **Use of Permit Area.** PERMITTEE may use the Permit Area on a non-exclusive basis solely for the purposes of the Permit Use. PERMITTEE shall, at its sole cost and expense, obtain any and all required permits and comply with any and all applicable laws, rules and regulations related to the Permit Use, including environmental laws, rules and regulations.
 - 3.1 **Cal/OSHA.** PERMITTEE and its employees, agents, contractors, and invitees shall comply at all times with the health and safety requirements of Title 8 of the California Code of Regulations, as amended from time to time, as such regulations are enforced by the State of California Division of Occupational Safety and Health (also known as Cal/OSHA).
 - 3.2 **Notification and Approval by CITY.** PERMITTEE shall meet with CITY to coordinate the dates, times, and locations on which PERMITTEE may conduct any of the Permit Use, provided that the dates, times, and locations agreed upon by PERMITTEE and CITY must be consistent with the terms and conditions of this Permit. PERMITTEE shall provide at least 24-hours written notice to CITY prior to entrance onto, or any work within, the Permit Area.

- 9.1 Remediation. If PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area results in a release of a hazardous substance, PERMITTEE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws, rules, and regulations of governmental authorities.
- 9.2 Indemnity. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
- 9.3 Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a hazardous substance has been released on or beneath the Permit Area or the City Property, PERMITTEE shall immediately notify CITY and deliver a written report thereof to CITY within three (3) days of receipt of the knowledge or cause for belief. If PERMITTEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, PERMITTEE shall take all actions necessary to alleviate the danger. PERMITTEE shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private suits related to the Permit Area or the Property.
- 9.4 Environmental Assessment. Upon reasonable cause to believe that PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Area or the City Property ("PERMITTEE's Operations"), resulted in any hazardous substance being released on or beneath the Permit Area or the City Property, CITY may cause an environmental assessment of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at PERMITTEE's sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by PERMITTEE's Operations on, in, or under the Permit Area or the City Property, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or removal. PERMITTEE shall cause, or if PERMITTEE fails to do so within a reasonable period of time, CITY may cause, the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and PERMITTEE shall pay all costs and expenses therefor.

10. Unauthorized Activities. PERMITTEE shall not engage in any activity on CITY-owned property other than the pre-approved Permit Use. Any work performed by PERMITTEE that was not previously approved or otherwise authorized by this Permit, shall be removed and the CITY-owned property shall be put back to its condition on the Effective Date at the PERMITTEE's sole cost and expense, subject to the satisfaction of the CITY Contact.
11. Noninterference. PERMITTEE shall not interfere with the use, operations, and activities by CITY on the Permit Area, and PERMITTEE shall use such routes and follow such procedures on the Permit Area as shall result in the least damage and inconvenience to CITY, CITY's tenant(s), and other users of the Permit Area and/or the City Property.
12. Property Damage. PERMITTEE shall pay at its sole cost and expense for any and all damage to the City Property and/or the Permit Area and the personal property of CITY and/or CITY's tenant(s) on the City Property, and the personal property of third parties on the City Property and/or the Permit Area resulting from PERMITTEE'S exercise of the rights granted by this Permit. PERMITTEE shall promptly repair and restore to its original condition all such property.
13. Signs. No signs may be displayed on the Permit Area without CITY's prior written consent.
14. Maintenance of the Permit Area. PERMITTEE shall maintain the Permit Area, at PERMITTEE'S sole cost and expense and to CITY'S satisfaction, in a decent, safe, healthy and sanitary condition.
15. Inspection. CITY may, at any and all times, enter and inspect the Permit Area.
16. Restoration. Immediately upon the expiration or earlier termination of this Permit, PERMITTEE shall promptly remove any and all improvements it installed in, on, under, or above the Permit Area and restore the Permit Area to its original condition, all at PERMITTEE'S sole cost and expense. PERMITTEE shall comply with any and all applicable County and State laws.
17. Indemnification. PERMITTEE shall protect, defend, indemnify, and hold CITY and its elected officials, officers, representatives, agents, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEE'S officers, employees, agents, contractors, affiliates, subsidiaries, and invitees, which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area or the City Property, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that PERMITTEE'S duty to indemnify and hold harmless shall not include any liability arising from the established sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal

counsel in defense of any claim related to this indemnification, PERMITTEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

18. Taxes. PERMITTEE shall pay at its sole cost and expense any and all taxes, charges, and use fees levied by any governmental agency against PERMITTEE or against any of the Permit Area and/or Property as a result of PERMITTEE'S occupancy, use, development, maintenance, or restoration of the Permit Area.
19. Encumbrances. PERMITTEE shall keep the City Property free from all encumbrances and liens of any nature that arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE'S use of the Permit Area. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Permit Area, including without limitation PERMITTEE'S failure or the failure of any contractor or subcontractor hired by PERMITTEE to pay any person or persons entitled to lien or encumber the City Property or Permit Area pursuant to the California Civil Code or other applicable law.
20. PERMITTEE'S Risk. PERMITTEE shall bear any and all risks and liability arising out of or in any manner directly or indirectly connected with PERMITTEE's use of the Permit Area and any damages to the improvements on, under, or in the vicinity of the Permit Area resulting directly or indirectly thereby.
21. Insurance. PERMITTEE shall obtain and maintain at all times during the Term the following insurance and relevant endorsement certificates at its sole cost and expense:
 - 21.1 Insurance. PERMITTEE shall not begin any work under the Permit until it has: (a) obtained, and provided to the CITY, insurance and relevant endorsement certificates reflecting evidence of all insurance required below; however, the CITY reserves the right to request, and PERMITTEE shall submit, copies of any policy upon reasonable request by the CITY; (b) obtained CITY approval of each insurance company or companies; and (c) confirmed that all policies contain the specific provisions required below. PERMITTEE's liabilities, including but not limited to PERMITTEE's indemnity obligations, under this Permit, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Permit and PERMITTEE's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Permit may be treated by CITY as a material breach of Permit. PERMITTEE shall not modify any policy or endorsement thereto which increases the CITY's exposure to loss for the duration of this Permit.
 - 21.2 Types of Insurance. At all times during the term of this Permit, PERMITTEE shall maintain insurance coverage as follows:

- (a) Commercial General Liability (CGL). Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$2 million per occurrence and subject to an annual aggregate of \$4 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
- (b) Commercial Automobile Liability. For all of PERMITTEE's automobiles including owned, hired and non-owned automobiles, PERMITTEE shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).
- (c) Workers' Compensation. For all of PERMITTEE's employees who are subject to this Permit and to the extent required by applicable state or federal law, PERMITTEE shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employers' liability coverage, and PERMITTEE shall provide an endorsement that the insurer waives the right of subrogation against CITY and their respective elected officials, officers, employees, agents and representatives.

21.3 Deductibles. All deductibles on any policy shall be the responsibility of PERMITTEE and shall be disclosed to the CITY at the time the evidence of insurance is provided.

21.4 Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Permit or in the Special General Conditions shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by the CITY.

CITY will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

21.5 Required Endorsements. The following endorsements to the policies of insurance are required to be provided to CITY before any work is initiated under this Permit.

Commercial General Liability Insurance Endorsements

- (a) Additional Insured. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed

pursuant to a separate endorsement [CG2010 (11/85) or equivalent form] to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

- (b) Primary and Non-Contributory Coverage. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of s PERMITTEE's insurance and shall not contribute to it.
- (c) Severability of Interest. The policy or policies must be endorsed to provide that the PERMITTEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

Automobile Liability Insurance Endorsements

- (a) Additional Insured. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and their respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobile owned, leased, hired or borrowed by or on behalf of the PERMITTEE.
- (b) Severability Of Interest. The policy or policies must be endorsed to provide that PERMITTEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

Worker's Compensation Insurance Endorsements

- (a) Waiver Of Subrogation. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against CITY and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for CITY.
- (b) Accident Reports. PERMITTEE shall report to CITY any accident causing any property damage or any serious injury to persons on the Permit Area or on City Property. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witness, and other pertinent information.

- (c) Failure to Comply. If PERMITTEE fails or refuses to obtain and maintain the required insurance, or fails to provide proof of coverage, CITY may obtain the insurance. PERMITTEE shall reimburse CITY for the premiums paid, with interest at the maximum allowable legal rate then in effect in California. CITY shall notify PERMITTEE of such payment of premiums within thirty (30) days of payment stating the amount paid, the name (s) of the insurer (s), and rate of interest. PERMITTEE shall pay such reimbursement and interest on the first (1st) day of the month following CITY's notice. Notwithstanding any other provision of this Permit, if PERMITTEE fails or refuses to obtain or maintain insurance as required by this Permit, or fails to provide proof of insurance, CITY may terminate this Permit immediately upon such breach. Upon such termination, PERMITTEE shall immediately cease its use of the Permit Area and commence and diligently pursue the removal of property from the Permit Area.
22. Compliance with Laws. PERMITTEE shall, at its sole cost and expense, comply with all laws and the requirements of all municipal, state, and federal authorities now in effect or which may hereafter be in effect, which pertain to the Permit Area and PERMITTEE's occupancy, use, development, maintenance, or restoration of the Permit Area or the City Property.
23. No Discrimination. PERMITTEE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, gender identify, gender expression, sexual orientation, medical status, national origin, age, marital status, or physical disability in PERMITTEE's use of the Permit Area, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
24. Waiver. CITY's failure to insist upon the strict performance of any of PERMITTEE's obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Permit Area is publicly-owned and held in trust for the benefit of CITY's citizens. CITY's failure to discover a breach of any obligation of this Permit or to take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.
25. Assignment and Sublicense. PERMITTEE shall not assign or sublicense any rights granted by this Permit or any interest in this Permit without CITY'S prior written consent.
26. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
27. Entire Agreement. This Permit contains the entire agreement between the parties relating to the rights granted hereby and the obligations assumed herein. No modification of this Permit shall be valid unless in writing and signed by the party to be charged.
28. Storm Water Pollution Prevention Program. PERMITTEE shall comply with the CITY's Storm Water Management and Discharge Control provisions codified in Division 3 of

Chapter 4 of the San Diego Municipal Code, as may be amended, and any and all applicable Minimum Best Management Practice requirements, as defined in the City's Jurisdictional Runoff Management Plan, in performing or delivering services at City owned, leased, or managed property, or in performance of services and activities on behalf of CITY regardless of location.

PERMITTEE shall comply with the CITY's Jurisdictional Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within CITY boundaries as adopted by the CITY's City Council on July 1, 2015, via Resolution No. 309791, as may be amended.

PERMITTEE shall comply with each CITY facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.

29. Notices. Any notice, request, payment, demand, or other communication required or permitted to be given under this Permit shall be in writing and deemed received upon personal service, delivery by a reputable overnight service with receipt signature required, or delivery by United States mail, return receipt requested, postage prepaid, and addressed to the parties as follows:

CITY: THE CITY OF SAN DIEGO
Real Estate Assets Department
Attention: Cybele Thompson, Director
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101

PERMITTEE: SONTEK
Jeff Winters
9940 Summers Ridge Road
San Diego, CA 92121

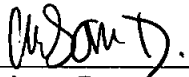
30. Authority. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Permit is binding upon such person or entity in accordance with its terms. Each person executing this Permit on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

31. Exhibits Incorporated. Exhibits A-1, A-2, A-3 and B referenced by said exhibits shall be incorporated as part of this Permit as though fully set forth herein.

IN WITNESS WHEREOF, this Permit is executed to be effective as of the Effective Date.

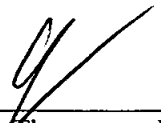
Date: 1/15/2016

SONTEK, a Division of YSI, an Ohio corporation

By: 
Chisom Domnwachukwu
EHS³ Coordinator

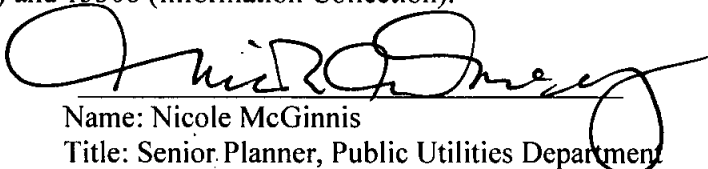
Date: 1/25/18

THE CITY OF SAN DIEGO, a California municipal corporation

By: 
Cybele Thompson, Director
Real Estate Assets Department

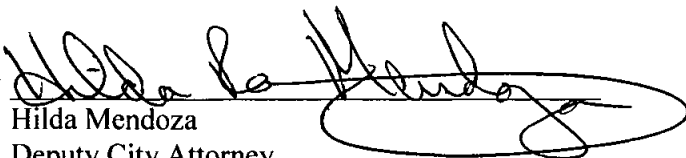
ENVIRONMENTAL CLEARANCE:

This activity has been determined to be categorically exempt from CEQA pursuant to CEQA Sections 15301(Existing facilities) and 15306 (Information Collection).

By: 
Name: Nicole McGinnis
Title: Senior Planner, Public Utilities Department

APPROVED AS TO FORM:

Date: February 15, 2018 MARA W. ELLIOTT, City Attorney

By: 
Hilda Mendoza
Deputy City Attorney

[illegible]

EXHIBIT A-2: PROPERTY Miramar Reservoir



Miramar Reservoir

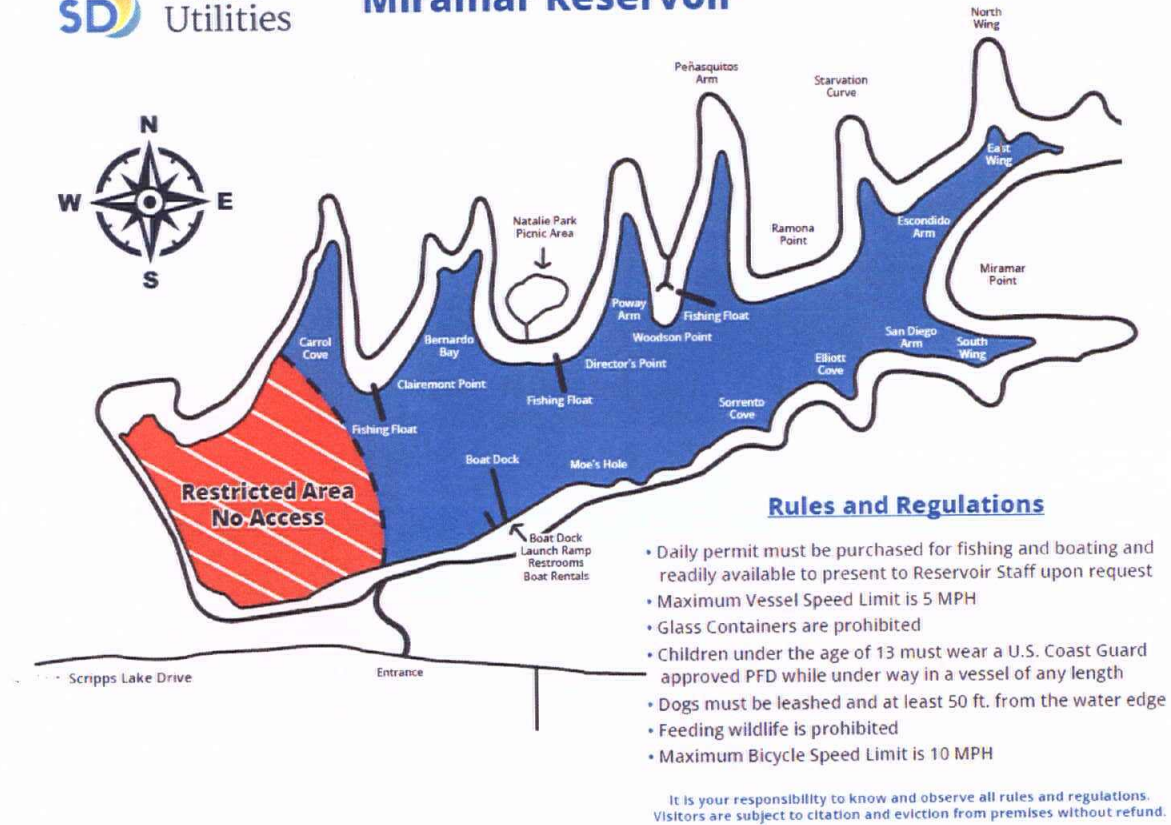
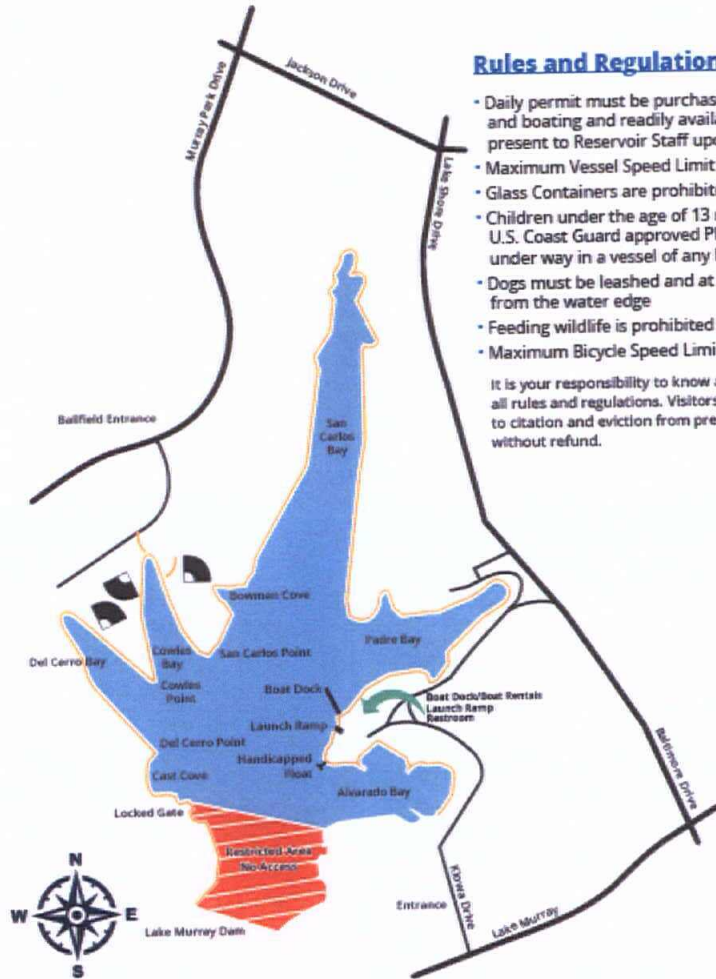


EXHIBIT A-3: PROPERTY Murray Reservoir



Lake Murray Reservoir



Rules and Regulations

- Daily permit must be purchased for fishing and boating and readily available to present to Reservoir Staff upon request
- Maximum Vessel Speed Limit is 5 MPH
- Glass Containers are prohibited
- Children under the age of 13 must wear a U.S. Coast Guard approved PFD while under way in a vessel of any length
- Dogs must be leashed and at least 50 ft. from the water edge
- Feeding wildlife is prohibited
- Maximum Bicycle Speed Limit is 10 MPH

It is your responsibility to know and observe all rules and regulations. Visitors are subject to citation and eviction from premises without refund.

EXHIBIT B: OPERATING DAYS

El Capitan

Monday and Tuesday - Fishing and general boating, no water contact activities.

Friday, Saturday and Sunday - Fishing, general boating and water contact (water-skiing, wakeboarding, jet skiing, etc.)

Wednesday and Thursday – Closed

Miramar

Miramar is open to fishing and private boats, kayaks and float tubes seven days a week.

Murray

Murray is open for shore fishing and private boats, kayaks and float tubes seven days a week.