

Real Estate Assets Department
TERMINATION OF AGREEMENT

R41603
Ⓟ

The following agreement for use of City-owned property will terminate as noted:

LESSEE	US Navy - El Capitan Reservoir
LEASEHOLD ID	K001WR-011-A00
ACTUAL TERMINATION DATE	June 27, 2023
SECURITY DEPOSITS	Yes ☐ No ☒
TERMINATION INSPECTION DATE	
Subtenants?	Yes ☐ No ☐
Date Subtenants vacated property OR Date of new direct agreement with City	

Agent Heide Farst Date June 29, 2023 Supervisor _____ Date _____

*****Lease Billing Use Only*****

Lease Billing Supervisor SK

Date 7/12/23

Data Entry _____

Date _____

Lease Billing Supervisor Termination Checklist:

- ☒ Terminate Lease in RPortfolio
- ☒ If termination is in the middle of billing period, prorate invoice. Check with agent if necessary.
- ☒ If rent paid beyond termination date, process refund.
- ☒ Void any invoices that have been issued for period after termination date.
- ☒ Refund security deposit per agent instructions.
- ☒ Notify agent that termination, proration and refund (if any) are complete.

AR Master Data Request Form

Purpose: To request the creation or modification of customer accounts in the FI-CA module.

Instructions: Existing Business Partner, Contact or Contract Account number must be provided when a request to modify info is submitted. When establishing a new Contact or Contract Account, please provide the related Business Partner number. E-mail the completed form to accounting@sandiego.gov.

☒ Add
 ☐ Modify
 ☐ Delete
☐ Business Partner (ORG)
 ☐ Business Partner (Person)
 ☐ Contact (ORG)
 ☐ Contact (Person)
 ☒ Contract Acct

Business Partner (BP)

Existing Business Partner #

*Name1 *Name2

Care Of *House #/Street

*City *State *Zip

*Phone Tel Ext Fax Fax Ext

Mobile Email

Contact (alternate billing address)

Existing Contact # Related Business Partner #

*Name1 *Name2

Care Of *House #/Street

*City *State *Zip

*Phone Tel Ext Fax Fax Ext

Mobile Email

Contract Account

Contract Account Name (Dept specific info to identify contract acct)

Related BP # *Existing Contract Acct #

*Dunning Procedure *Account Category

Requestor Information

Department Requestor Name Date

Office of City Treasurer Use Only

Contract Acct Notes

Business Partner Contact

City of San Diego

BILLING RECORD # 3

Contract Acct # R41603 Agreement # K001WR 011 A00

Lessee US NAVY/EL CAPITAN RESERVOIR

Billing From 01/01/2022 to \$ Amt \$ 2,220.00 Min

Code / Type FYR Fixed Yearly in Arrears ☐ Manual (auto-billing OFF)

Due Date N01 1st day of month after rent period end month

Penalty N NONE Grace Pd

Uses

Comments

Allocation

Fund	GL Acct	Cost Ctr	Amount	%	Comments
700011	418030	2000000001	\$2,220.00	100.00%	
Totals					
			\$2,220.00	100.00%	

Last Invoice # Prepared

Last Bill Thru 12/31/2022

Next Bill From 01/01/2023

To 12/31/2023

4 Invoice(s) tied to this record

Estimated FY Revenue		
2023	2024	2025
\$2,220	\$2,237	\$2,264
Totals		
\$2,220	\$2,237	\$2,264

Contract Acct # R41603 Lessee US NAVY/EL CAPITAN RESERVOIR Agent Farst, H Agreement Sta

Type	Key Date	Description / Notes	Reminder	Agent Note
Scheduled Termination	12/31/2022	* PAST *		
Repeat		REMAINING	Default Text	Inactive ☒
Rent Review	01/01/2024	RENT REVIEW WHILE ON HOLDOVER		
Repeat 1	Year(s)	178 DAYS REMAINING	Default Text	Inactive ☐

Contract Acct # R41603 Agreement # K001WR 011 A00 Lessee US NAVY/EL CAPITAN RESERVOIR

Contact Type	Company Info	Contact Info
Lessee	Company US NAVY/EL CAPITAN RESERVOIR	Name JASMINE MOORE Phone (619) 705-4474
ID# BP03011	Address 750 PACIFIC HIGHWAY	Title REALTY SPECIALIST Email jasmine.a.moore.civ@us.navy.mil
☐ Payee	City St Zip SAN DIEGO CA 92132-5190	

Last Paid Invoice B155487
1/01/22 to 12/31/22

AGREEMENT INFO

Site K001WR EL CAPITAN RESERVOIR
 Lease # 011 Agreement # A00
 Contract Acct R41603 LIBS Cust #
 Internal Order Job # 271817
 Lessee US NAVY/EL CAPITAN RESERVOIR
 Lessee DBA

☐ Non-Profit Lessee
 Type Permit ☐ City-Occupied
 Rev / Non ☒ Revenue ☐ NonRev
 Agent Farst, H
 READ Group Asset Mgmt
 Manag Dept Real Estate
 Benefit Dept Water Dept

LOCATION INFO

Location EL CAPITAN RESERVOIR Map
 Community Co-East County
 Council Dist
☐ Dist 1 ☐ Dist 5 ☐ Dist 9
☐ Dist 2 ☐ Dist 6 ☐ Various
☐ Dist 3 ☐ Dist 7 ☒ Out
☐ Dist 4 ☐ Dist 8

Thomas Bros
 Prop File Code K001-001
 Possess Int # No P.I. - Governmental
 Overlay ☐ No ☐ Develop Plan

Use Category Water General
 Use Description TESTING SONAR EQUIPMENT

AGREEMENT DATES

Record Created Feb 13, 2020 12:32 PM
 Effective Date Jan 01, 2020
 Rent Commence
 Sched Termination Dec 31, 2022 ☐ Month to Month
 Holdover/Ext Date Jan 01, 2023 (0.52) years left
 Agreement Inactive
 Actual Termination
 Agreement Status Held Over ☒ Active
 Agreement Term 3.00 years = 36 months

Last Assignment
 Last Amendment # Amendments
 Amend Doc #
 # Options Option Term Years

AGREEMENT SIZE

Acres - Land 0.000 Water
 SF - Land 0 Building

ADDITIONAL INFO

Orig Document #
 Orig Reso Ord #
 Lease Drawing #
 Last Audit
 GASB Classification

Notes / Comments

Contract Acct # R41603 Agreement # K001WR 011 A00 Lessee US NAVY/EL CAPITAN RESERVOIR Expires 12/31/22

Security Deposit ☐ Yes ☒ No
 Deposit Amount Deposit Date Deposit Notes
 Depositor

Jobs Insurance
 Insurance Required ? ☒ Yes ☐ No ☐ Self-Insured

#	Coverage Type	Company	City	State	Policy #	Expiration	Required \$	Carried \$
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THE CITY OF SAN DIEGO

M E M O R A N D U M

DATE: June 27, 2023

TO: Penny Maus, Director, Department of Real Estate and Airport Management

FROM: Heide Farst, Property Agent, Department of Real Estate and Airport Management via Lucy Contreras, Deputy Director – Department of Real Estate and Airport Management

Subject: License Agreement – United States Navy – El Capitan Reservoir

Background & Purpose:

Pursuant to that certain City of San Diego Right-of-Entry Permit ("Permit"), the United States Navy ("Permittee") utilizes El Capitan Reservoir ("Property") on Wednesdays and Thursdays for the purpose of testing instruments that measure the speed of sound in water.

This memo is to provide documentation to support the approval of the attached License Agreement. The initial term is for one (1) year with two 1-year options to renew. Their current permit is expired on December 31, 2022.

Discussion:

Original Permit for the Property

Pursuant to that certain City of San Diego Right-of-Entry Permit, the United States Navy ("Permittee") utilizes El Capitan Reservoir when the reservoir is closed to the public on Wednesdays and Thursdays for testing and training on instruments that measure water speed. This permit is on holdover as it expired on December 31, 2022.

New License Agreement for the Property

Attached is a new License Agreement with the United States Navy ("Licensee") for access to El Capitan Reservoir. The proposed term is for one (1) year with two 1-year options to renew with three percent (3%) annual increases.

Insurance

Permittee is a Federal Agency and is self-insured.

Rent Payment History

The Permittee is current on its rent.

License Processing Fee
Payment is forthcoming.

Notice of Right to Appeal
The NORA was posted on January 20, 2023 and removed on January 27, 2023.

City Attorney Approval
The CAO approved the License Agreement on May 30, 2023.

RECOMMENDED FOR APPROVAL:

Heide Farst

Heide Farst
Supervising Property Agent, Lease Administration

Matthew Ostlund

Matt Ostlund
Program Manager, Lease Administration

Attachments: License Agreement
City Attorney Approval
NORA Attachment B

CITY OF SAN DIEGO

LICENSE AGREEMENT

(United States Navy: All or Part of El Capitan Reservoir)

This LICENSE AGREEMENT (this "Agreement") is entered into by and between UNITED STATES OF AMERICA THROUGH THE DEPARTMENT OF THE NAVY ("Licensee"), and THE CITY OF SAN DIEGO, a California municipal corporation ("City"), as of the date this Agreement is approved as to form by the San Diego City Attorney as shown on the signature page to this Agreement ("Effective Date").

IN CONSIDERATION OF THE RESPECTIVE PROMISES OF LICENSEE AND CITY SET FORTH IN THIS AGREEMENT AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE ACKNOWLEDGED, LICENSEE AND CITY AGREE AS FOLLOWS:

1. **PURPOSE.** City owns certain real property located at El Capitan Reservoir, 16850 El Monte Road in the City of Lakeside and more specifically identified in Section 42 of **EXHIBIT A** attached to this Agreement as the "Property." Licensee and City desire to enter into this Agreement to provide Licensee certain limited rights to undertake the Permitted Use at the Specified Times (both defined in Section 37 of **EXHIBIT A** attached to this Agreement) on the License Area (defined in Section 25 of **EXHIBIT A** attached to this Agreement).

2. **DEFINITIONS.** All defined terms or words indicated by initial capitalization in this Agreement and not specifically defined in the main body of this Agreement are defined in **EXHIBIT A** attached to this Agreement.

3. **LICENSE.**

3.1 License Area. Subject to the terms, conditions, and agreements of this Agreement, as of the Effective Date, City licenses, permits, and authorizes Licensee to use the License Area on a non-exclusive basis solely for the Permitted Use.

3.2 Property's Primary Uses. The primary uses of the Property are (a) as an impounding reservoir that is part of the City's municipal water supply system, and (b) for public recreation, including a variety of traditional outdoor activities including fishing, boating, hiking, picnicking, waterfowl hunting, water-skiing, jet skiing and windsurfing (together, "**Primary Uses**"). The Primary Uses are superior to any rights provided under this Agreement. The Permitted Use may not interfere with the Primary Uses. Throughout the Term, subject to the terms and conditions of this Agreement, the License Area shall have the secondary purpose of accommodating the Permitted Use that does not interfere with the Primary Uses, including any disruption of safe access to City facilities or adverse impact on the cost of maintaining City facilities. If City determines that the Permitted Use interferes with the Primary Uses, City shall Notify Licensee, and Licensee shall have forty-eight (48) hours to eliminate the interference with the Primary Uses. Licensee's failure to eliminate the interference with the Primary Uses within these forty-eight (48) hours, will be an Event of Default and, in addition to exercising any other rights or remedies regarding such Event of Default, City may take all action required to eliminate the interference of the Permitted Use with the Primary Uses. If City performs work to eliminate the interference of the Permitted

Use with the Primary Uses, Licensee shall, subject to the availability of appropriated funds authorized by the United States Congress, reimburse City for all costs and expenses reasonably incurred by City in performing such work (including the costs of City's staff time, administrative overhead), within one hundred and twenty (120) days after Notice to Licensee of such costs, which Notice shall include reasonable supporting documentation. Any amount reimbursable to City by Licensee under this Section 3.2 that is not paid within one hundred and twenty (120) days after such Notice to Licensee of such amount, shall accrue Default Interest, to the extent permitted by the Federal Prompt Payment Act (31 U.S.C. § 3901 et. seq.) until paid. Amounts not paid when due are subject to the procedures and late payment interest penalties of the Federal Prompt Payment Act (31 U.S.C. § 3901 et. seq.).

3.3 Personal Rights; No Transfers; Revocable License. The licenses, permits and authorizations provided by this Agreement are personal to Licensee. Licensee shall not have any right to make or allow any Transfer without the prior written consent of City, which may be given or withheld in the City's sole and absolute discretion. Licensee acknowledges and agrees that, under the circumstances that this Agreement is entered into by City and Licensee and the public nature of the Property, the restrictions in this Agreement on Transfers are reasonable. This Agreement is not a lease. It is a license to use City-owned property and may be revoked at will by City subject to the terms of this Agreement. City shall not be obligated for any loss, financial or otherwise, which may be incurred by Licensee as a result of City's lawful revocation or termination of the Agreement. Licensee expressly waives any claim for expense, burden or loss which Licensee might incur as a result of City's lawful revocation or termination of this Agreement.

3.4 No Limitation on Other City Use. Nothing contained in this Agreement is intended to limit, restrict, or prohibit City from entering into future agreements with other Persons regarding use of the Property, as long as such other uses do not materially interfere with the Permitted Use on the License Area.

3.5 Public Use. Licensee shall not wholly or permanently exclude the general public from any portion of the License Area, including, but not limited to, the public restroom on the License Area. Licensee may develop reasonable restrictions for use of the License Area, provided they are consistent with this Agreement and the rights of the general public and designed to allow Licensee to use the License Area for the Permitted Use during the Specified Times.

3.6 No Property Estate or Interest Conveyed. Notwithstanding any provision of this Agreement to the contrary, City and Licensee do not intend to convey any estate, easement, or irrevocable interest in real or personal property between them under this Agreement. Nothing in this Agreement shall be construed or interpreted as a conveyance of any estate, easement, or irrevocable interest in any real or personal property, including trade fixtures, on the License Area. If this Agreement or any provision of this Agreement is finally (after all appeals) construed or interpreted by a court of competent jurisdiction as conveying an estate, easement, or irrevocable interest in real or personal property between City and Licensee, then the provision(s) of this Agreement interpreted as conveying any estate, easement, or irrevocable interest in real or personal property between City and Licensee shall automatically be null and void, without further action by or Notice to City or Licensee.

3.7 Federal Tort Claims Act. If the death or injury to any person, or the loss or damage to any property, is caused by the Licensee in the course of its use of the Permit Area described

herein, the liability, if any, of Licensee therefor shall be determined in accordance with the applicable provisions of the Federal Tort Claims Act (28 U.S.C. §§ 2671-2680).

3.8 Liability. Licensee represents and warrants that it is self-insured with respect to liability for property damage, personal injuries, or accidents caused by its officers, employees, agents, contractors, invitees, and guests in the course of official business, and its employees are covered by the U.S. Department of Labor's Office of Workers Compensation Programs with respect to any injuries suffered in the course of federal employment. To the extent provided in the Federal Tort Claims Act, 28 U.S.C. Sections 1345(b) and 2671-2680, and any other applicable laws, Licensee is liable to the City, its Council, officers, employees, and agents for any and all damages, liabilities, losses, fines, penalties, judgments, demands or actions, and costs and expenses suffered or incurred by the City, or claims or lawsuits against the City, arising out of or resulting from damages of any nature caused directly or indirectly by or arising out of the activities or use of the City's property by the Licensee, its officers, employees, agents, contractors, invitees, and guests.

4. **TERM; TERMINATION.**

4.1 Term. The term ("Term") of this Agreement shall be for one (1) year, commencing on the Effective Date and ending at 11:59 p.m. on the day before the first (1st) anniversary of the Effective Date, unless sooner terminated by either party as set forth in this contract. The Navy may, upon Notice to the City at least thirty (30) but no more than one hundred twenty (120) days before the expiration of the Term or the first extension of the Term, as applicable, extend this contract for two (2) successive one (1) year periods upon the same terms and conditions as during the original term, with adjustments to the License Fee, as provided in this Agreement.

4.2 Termination. The Term shall terminate upon the earliest to occur of the following events ("**Termination Date**"):

4.2.1 Licensee Notice. The ninetieth (90th) day after the date Licensee both gives City Notice of termination of this Agreement for any reason or no reason and performs all Licensee's obligations under Section 16;

4.2.2 City Notice. The ninetieth (90th) day after the date City gives Licensee Notice of termination of this Agreement for any reason or no reason;

4.2.3 Expiration. The expiration of this Agreement at 11:59 p.m. Pacific Time on the last day of the Term;

4.2.4 Eminent Domain. The termination of this Agreement under Section 23;

4.2.5 Event of Default. The occurrence of an Event of Default, City giving Licensee Notice of termination of this Agreement;

4.2.6 Casualty. The termination of this Agreement under Section 11; or

4.2.7 Breach of Warranty. The City's termination of this Agreement under Section 31.

5. **LICENSE FEE.** Licensee shall pay the License Fee, set forth in Section 27 of **EXHIBIT A**, for each year annually, in arrears. In addition, Licensee shall pay an initial processing fee of \$1,050.00 as consideration for the City's entry into this License ("Processing Fee"). The Processing Fee shall be due and payable upon the Effective Date of this Agreement. For example, if the Effective Date of this Agreement is December 1, 2023, then the annual rent for the time period from December 1, 2023 through November 30, 2024 would be due on December 1, 2024. City shall be registered in the System for Award Management (SAM) registration (www.sam.gov) and shall be paid by Electronic Funds Transfer. License Fee for any period less than one (1) year shall be prorated on the basis of a 30-day month.

5.1 **Payment.** License Fees are payable to the City Treasurer in lawful money of the United States of America. If License Fees are sent to City by first-class mail through the United States Postal Service (with all postage pre-paid), Licensee shall address such mail to:

The City of San Diego
Office of the City Treasurer
P.O. Box 129030
San Diego, California 92112-9030

or hand delivered to:

Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

5.2 **Required Payment Information.** Regardless of the form of payment, Licensee shall include City's customer account number for Licensee with each License Fee payment so City can apply the License Fee to Licensee's account. Licensee's failure to include its customer account number may result in Licensee's payment not being timely applied to Licensee's account and the application of late payment charges. Amounts not paid when due are subject to the procedures and late payment interest penalties of the Federal Prompt Payment Act (31 U.S.C. § 3901 et. seq.). Licensee assumes all risk of loss and responsibility for all fees or penalties for its failure to include its customer account number with a License Fee payment. The place of payment may be changed at any time by City upon thirty (30) days prior Notice to Licensee. Payments shall be considered paid on the date the payment is actually received by the City, provided Licensee's customer account number is included with such payment as required in this Section 5.2. Licensee assumes all risk of loss and responsibility for late payment charges if payments are sent by mail.

5.3 **Invoicing Courtesy.** City may invoice Licensee for amounts payable under this Agreement. However, any such invoicing is a courtesy only. Licensee shall make all payments under this Agreement on or before each applicable due date, regardless of whether or not City invoiced the required payment.

5.4 **No Offsets.** Licensee shall pay all License Fees without offset, defense, claim, counterclaim, reduction, or deduction of any kind whatsoever.

5.5 City's Net Return. The License Fees shall give City an absolute "net" return for the Term, free of any expenses or charges for the Property, except as this Agreement expressly provides.

5.6 Delinquent License Fees. License Fees not paid when due are subject to the procedures and late payment interest penalties of the Federal Prompt Payment Act (31 U.S.C. § 3901 et. seq.). Acceptance of late charges or any portion of the late License Fee payment by City shall neither constitute a waiver of Licensee's Default regarding the late payment nor prevent City from exercising any rights or remedies available under this Agreement, at law, or in equity arising from such Default.

6. **PERMITTED USE.**

6.1 Approvals. Licensee shall not undertake the Permitted Use on the License Area without first obtaining all necessary Approvals for the Permitted Use. In obtaining each necessary Approval for the Permitted Use on the License Area, Licensee shall inform the applicable Government in writing that the Property is City-owned. Licensee shall promptly deliver to City documentary evidence of all Approvals obtained by Licensee regarding the Permitted Use.

6.2 [Reserved.]

6.3 No Liens Against Public Property. LICENSEE ACKNOWLEDGES AND AGREES THAT ON THE EFFECTIVE DATE THE PROPERTY IS OWNED BY CITY, WHICH IS A PUBLIC ENTITY, AND THE PROPERTY IS NOT SUBJECT TO THE IMPOSITION OF MECHANIC'S LIENS OR ANY OTHER LIENS IN FAVOR OF PROVIDERS OF SERVICES, LABOR, MATERIAL, OR EQUIPMENT ON OR TO THE PROPERTY. LICENSEE FURTHER AGREES TO INFORM EACH PROVIDER OF SERVICES, LABOR, MATERIAL, OR EQUIPMENT ON OR TO THE PROPERTY OF SUCH FACT AND THAT CITY AND THE PROPERTY ARE NOT RESPONSIBLE FOR PAYMENT OF ANY CLAIMS BY ANY SUCH PROVIDERS OF SERVICES, LABOR, MATERIAL, OR EQUIPMENT.

6.4 Signs. Licensee shall not place any banner, pennant, flag, poster, sign, decoration, marquee, awning, or similar device or advertising (each, a "Sign") on the License Area without City's prior written consent, in each instance, which consent may be given or withheld in City's sole and absolute discretion. All Signs on the License Area will be maintained by Licensee in good, clean, and operating condition during the Term. Licensee will remove all Signs placed by Licensee from the License Area on or before the Termination Date and repair all damage caused by placement, installation, or removal of Signs, all at Licensee's sole cost and expense. Licensee shall comply with all applicable Laws requiring the posting of Signs on the License Area. If any unauthorized Sign is found on the License Area, Licensee shall remove the Sign at Licensee's sole cost and expense within twenty-four (24) hours after Notice from City requesting the removal. If Licensee does not remove an unauthorized Sign within twenty-four (24) hours after Notice from City requesting the removal, City may enter the License Area and remove the Sign at Licensee's sole cost and expense. If City performs work required of Licensee under this Section 6.4, Licensee shall, subject to the availability of appropriated funds authorized by the United States Congress, reimburse City for all costs and expenses reasonably incurred by City in performing such work (including the costs of City's staff time and administrative overhead), within one hundred and twenty (120) days after Notice to Licensee of such costs. All amounts reimbursable to City by

Licensee under this Section 6.4 that are not paid within one hundred and twenty (120) days after Notice to Licensee of the amount shall accrue Default Interest, to the extent permitted by the Federal Prompt Payment Act (31 U.S.C. § 3901 et. seq.) until paid. Amounts not paid when due are subject to the procedures and late payment interest penalties of the Federal Prompt Payment Act (31 U.S.C. § 3901 et. seq.).

6.5 Costs. Licensee shall pay all costs and expenses related to Licensee's Permitted Use of the License Area.

6.6 Security and Safety. Licensee shall be solely responsible for the security and safety of the License Area. Licensee shall be responsible for the cleanup and securing of the License Area disturbed by Licensee, as appropriate, immediately following each day's work to ensure the daily security and safety of the License Area. In conducting the Permitted Use, Licensee shall comply with all applicable Laws, at Licensee's sole cost and expense, with respect to maintaining the License Area in a safe and secure manner during the Term.

6.7 City Work. City reserves the right to perform work on the License Area at any time. If City intends to perform work on the License Area, City shall give Licensee at least forty-eight (48) hours' Notice prior to commencing the work (except in the event of an emergency, in which case, no prior Notice is required). Licensee shall comply with all safety instructions issued by City to ensure the safety of City personnel or contractors performing work on the License Area.

6.8 Inspection. City may, at any time, for any reason or no reason, without any obligation to do so, enter the License Area for the purposes of inspecting the License Area and the Permitted Use conducted on the License Area for compliance with this Agreement. City shall provide 48 hours' advance Notice to Licensee of inspection. Licensee may make a Licensee representative available to be present at any City inspection under this Section 6.8; provided, however, the presence of a Licensee representative is not required for City to exercise its inspection rights under this Section 6.8.

6.9 Utilities. Licensee shall order, obtain, install, and pay for all utilities, including installation and service charges, required or desired for the Permitted Use. Utilities shall be temporary and constructed and located in accordance with plans approved by City, in City's sole and absolute discretion, before any utility construction or installation commences.

6.10 Superior Interests. This Agreement is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases, licenses, permits, easements, or rights-of-way pertaining to the Property existing as of the Effective Date, whether or not of record. Licensee shall obtain all licenses, permits, or agreements required from Third Persons holding a superior interest to allow the Permitted Use on the License Area in compliance with all such superior interests. If the Permitted Use is or becomes inconsistent or incompatible with a preexisting, superior interest, Licensee shall take all action and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.

6.11 Vehicular Traffic. All vehicular traffic shall be confined to concrete, asphalt or decomposed aggregate surfaces unless otherwise approved in writing by City, in City's sole and absolute discretion, prior to the commencement of the Permitted Use.

6.12 Limitation on Construction. Licensee shall not perform any construction on or related to the License Area that is not restoration, repair, or maintenance required to be performed by Licensee under this Agreement.

6.13 Contractors. Licensee shall provide City with a list of all contractors and subcontractors that will perform any of the Permitted Use, including name, address, email, fax, and phone number.

6.14 Noise. Licensee shall not use or permit the use of the License Area in any manner that creates or maintains any noise or sound violating San Diego Municipal Code ("SDMC") Chapter 5, Article 9.5.

6.15 Nuisance. Licensee shall not create or allow a nuisance, as defined by applicable law, or a violation of federal law on the License Area.

7. **MAINTENANCE.**

7.1 Obligation to Maintain. Related to Licensee's use of the License Area, Licensee shall keep and maintain the License Area in good order, condition, and repair, in accordance with the Maintenance Standard, subject to reasonable wear and tear and any other condition this Agreement expressly does not require Licensee to repair or restore. Licensee's obligation to maintain the License Area includes an obligation to make all repairs that the License Area may require under applicable Law. City has no obligation to maintain or repair the License Area during the Term.

7.2 Maintenance Standard. As it relates to Licensee's actual use and activities, Licensee shall, at Licensee's sole cost and expense and to City's satisfaction, maintain the License Area in good order and repair and in a safe, healthy, and sanitary condition at all times during the Term, subject to normal and ordinary wear and tear resulting from the Permitted Use. City shall at no time during the Term be required to make any improvements or repairs to the License Area. Licensee shall keep the License Area free and clear of rubbish, debris, and litter caused by the Permitted Use. Licensee hereby acknowledges that the License Area is a vital public work providing benefit to the public. Licensee hereby agrees that Licensee's use of and activities in the License Area shall not compromise or otherwise interfere with the integrity or function of the License Area or any portion thereof. Licensee's obligation to maintain the License Area as described in this Section 7.2 is collectively referred to in this Agreement as the "**Maintenance Standard.**"

7.3 Maintenance Default. If an adverse condition occurs on the License Area in contravention of the Maintenance Standard (each such occurrence being a "**Maintenance Deficiency**"), then City may Notify Licensee of the Maintenance Deficiency. If Licensee fails to cure or commence and diligently pursue to cure the Maintenance Deficiency within fifteen (15) days following Licensee's receipt of Notice of the Maintenance Deficiency, City shall have the right (but no obligation) to enter the License Area following five (5) days advance Notice and perform all acts necessary to cure the Maintenance Deficiency or to take any other action at law or in equity that may then be available to City to accomplish the abatement of the Maintenance Deficiency. Any amount of money reasonably expended by City for the cure or abatement of a Maintenance Deficiency under this Section 7.2 shall, subject to the availability of appropriated funds authorized by the United States Congress, be reimbursed to City by Licensee within one hundred and twenty (120) days after Notice to Licensee of the work done and the corresponding

amount. Any amount of money expended by City for the cure or abatement of a Maintenance Deficiency under this Section 7.2 that is not reimbursed to City by Licensee within one hundred and twenty (120) days after Notice to Licensee shall accrue Default Interest, to the extent permitted by the Federal Prompt Payment Act (31 U.S.C. § 3901 et. seq.) until paid in full. Amounts not paid when due are subject to the procedures and late payment interest penalties of the Federal Prompt Payment Act (31 U.S.C. § 3901 et. seq.).

7.4 Water Quality -- Best Management Practices. City and Licensee are committed to the implementation of controls ("best management practices" or "BMPs") to manage activities on the License Area in a manner which aids in the protection of the City's precious water resources. It is Licensee's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (SDMC sections 43.0301 to 43.0312). Licensee will, at a minimum, implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs adopted under SDMC section 43.0307(a). It is ultimately Licensee's responsibility to prevent pollutant discharges to the storm drain system. Therefore, Licensee will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

8. **IMPROVEMENTS AND ALTERATIONS.** Licensee shall not install or construct any improvements, additions, structures, trade fixtures, or installations (collectively, "Improvements") on the License Area without City's prior written consent, which consent may be given or withheld in City's sole and absolute discretion. Licensee shall maintain all Improvements on the License Area in good, clean, and operating condition during the Term.

9. **LICENSEE INSURANCE.** Licensee represents and warrants that it is a Federal Agency and is self-insured with respect to liability for property damage, personal injuries, or accidents caused by its officers, employees, agents, contractors, invitees, and guests in the course of official business, and its employees are covered by the U.S. Department of Labor's Office of Workers Compensation Programs with respect to any injuries suffered in the course of federal employment. If requested by City, Licensee shall deliver to City evidence of such insurance in form and content reasonably satisfactory to City. Licensee's self-insurance during the Term shall be deemed to satisfy all of the insurance coverage requirements in **EXHIBIT C** attached to this Agreement.

10. **WASTE OR DAMAGE.** Licensee shall immediately Notify City of any waste, accident, or casualty related to the Licensee's Permitted Use of the License Area that causes property damage or personal injury of which Licensee becomes aware. The Notice should contain all pertinent information including, at a minimum, the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the incident(s), the names and addresses of any witnesses, and photographs or video of the incident(s) (if any). Licensee shall not commit, or allow to be committed, any waste, casualty, or damage to property or injury to Person on or around the License Area or other parts of the Property. If waste, casualty, or damage to the Property arises from the Permitted Use or the action or failure to act by a Licensee Party, at City's election, in City's sole and absolute discretion, Licensee shall, subject to the availability of appropriated funds authorized by the United States Congress, make, or cause to be made, full repair of the waste, casualty, or damage and restore the Property to its condition existing immediately prior to the waste, casualty, or damage. Licensee shall commence preliminary steps toward restoration of the Property as soon as practicable, but no later than thirty (30) days after the date the waste, casualty, or damage occurs. Licensee shall complete all required repairs or restoration within ninety (90)

days after the date the waste, casualty, or damage occurs. Licensee must obtain all Approvals required for repair or restoration of all waste, casualty, or damage to the Property. Following the occurrence of any casualty that materially restricts use of the License Area or access to the License Area for the Permitted Use for more than one hundred eighty (180) days, City or Licensee may terminate this Agreement by seven (7) days' Notice to the other Party. This Section 11 shall survive the Termination Date.

11. ENVIRONMENTAL CONDITIONS. Licensee shall not cause or permit any Environmental Condition. If Licensee discovers or becomes aware of an Environmental Condition, Licensee shall Notify City of such Environmental Condition as soon as possible, but in all cases within twenty-four (24) hours following the Licensee becoming aware of such Environmental Condition.

11.1 Remediation. If an Environmental Condition occurs, Licensee shall remediate the Environmental Condition in accordance with applicable Law to allow all uses of the Property permitted by applicable Law immediately before the Environmental Condition is discovered, at Licensee's sole cost and expense, subject to the availability of appropriated funds authorized by the United States Congress. If Licensee knows or has reasonable cause to believe that an Environmental Condition is an imminent danger to public health and safety, Licensee shall take all actions necessary to alleviate the imminent danger, at Licensee's sole cost and expense, subject to the availability of appropriated funds authorized by the United States Congress.

11.2 Removal. If a Licensee Party stores, utilizes, generates, or otherwise brings Hazardous Substances onto the Property in accordance with applicable Law, Licensee shall remove all such Hazardous Substances from the Property prior to the Termination Date and provide City with documentation demonstrating the removal and disposal of the Hazardous Substances in compliance with and to the extent required by applicable law. Licensee shall be responsible for all costs incurred by City to remove or dispose of any Hazardous Substances not removed from the Property by Licensee in accordance with this Section 11.2 to the extent required by applicable law.

11.3 Reports. Licensee shall deliver a written report describing the circumstances of each Environmental Condition in reasonable detail to City within three (3) days after Notifying City of the Environmental Condition. Licensee shall also submit all required reports relating to the Environmental Condition to other Governments as required by applicable Law.

11.4 Environmental Assessment. Upon reasonable cause to believe that an Environmental Condition has occurred, City may cause an environmental assessment of the Property to be performed by a professional environmental consultant registered with the State as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be performed at Licensee's sole cost and expense. Licensee shall reimburse City for all costs and expenses reasonably incurred and consistent with applicable law by City in performing the environmental assessment within one hundred and twenty (120) days after Notice to Licensee of the amount of such costs and expenses. Any amount reimbursable to City by Licensee under this Section 11.4 that is not paid within one hundred and twenty (120) days after Notice to Licensee of such amount, shall accrue Default Interest, to the extent permitted by the Federal Prompt Payment Act (31 U.S.C. § 3901 et. seq.) until paid. Amounts not paid when due are subject to the procedures and late payment interest penalties of the Federal Prompt Payment Act (31 U.S.C. § 3901 et. seq.).

12. COMPLIANCE WITH LAW.

12.1 General. The Permitted Use shall comply with all applicable Laws, at Licensee's sole cost and expense.

13. **END OF TERM.** Before the Termination Date, Licensee shall remove or cause the removal of all the personal property of the Licensee Parties from the License Area and place the License Area in a condition as close as possible to the condition of the License Area as it existed on the Effective Date, normal wear and tear excepted. Without limiting the obligation of Licensee to remove all the personal property of the Licensee Parties from the License Area before the Termination Date, Licensee agrees that City may dispose of all personal property on the License Area after the Termination Date, at Licensee's sole cost and expense. Licensee shall vacate the License Area by no later than 11:59 p.m. on the Termination Date.

14. **HOLDOVER.** Neither continued use of the License Area by Licensee or receipt or acceptance of License Fees by the City after the Termination Date shall renew or extend the Term of this Agreement or give Licensee any rights in or to the License Area, and all terms and conditions of this Agreement shall apply to such continued use except: (1) City may terminate this Agreement for any reason or no reason on seven (7) days' Notice to Licensee; and (2) the License Fee shall be the fair market value of such use, as determined by City, as of the date of expiration or termination of the Agreement.

15. **CITY CURE RIGHT.** If Licensee fails to take any action this Agreement requires of Licensee, without waiving or releasing Licensee from any obligation, Default, or Event of Default and without waiving City's right to take such action as this Agreement may permit as a result of a Default or Event of Default, City may (but need not) take such action. Licensee shall reimburse City for all reasonable costs and expenses (including the costs of City staff time, administrative overhead) incurred by City in exercising its cure rights under this Section 18 within one hundred and twenty (120) days after Notice to Licensee of such costs. All amounts reimbursable to City by Licensee under this Section 18 that are not paid within one hundred and twenty (120) days after Notice to Licensee of the amount shall accrue Default Interest, to the extent permitted by the Federal Prompt Payment Act (31 U.S.C. § 3901 et. seq.) until paid. Amounts not paid when due are subject to the procedures and late payment interest penalties of the Federal Prompt Payment Act (31 U.S.C. § 3901 et. seq.).

16. **REMEDIES.** Upon the occurrence of an Event of Default by the other Party, the non-defaulting Party shall be entitled to take any or all action authorized by this Agreement upon the occurrence of an Event of Default by the other Party, including legal proceedings to enforce any or all contractual rights or remedies or pursue any or all other remedies or damages relating to such Event of Default available to the non-defaulting Party at law or in equity.

17. **LEGAL ACTIONS.** Either Party may institute legal action, at law or in equity, to enforce or interpret the rights or obligations of the Parties under this Agreement or recover damages.

18. **CUMULATIVE RIGHTS AND REMEDIES.** The rights and remedies of the Parties under this Agreement are cumulative with all other rights or remedies of the Parties under this Agreement, at law, or in equity. The exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or a different time, of any other right or remedy for the same Default or Event of Default by the other Party or the same right or remedy for any other Default or Event of Default by the other Party.

19. CITY'S RESERVATION OF RIGHTS.

19.1 Government Action. By entering into this Agreement, neither City nor the City Council is obligating itself or any other Government regarding any discretionary action relating to the development, occupancy, use, or maintenance of the License Area, including re-zonings, variances, environmental clearances, or any Approval required to conduct the Permitted Use.

19.2 Resources. City reserves all right, title, and interest in all natural resources relating to the Property, including subsurface natural gas, oil, minerals, and water, on or within the Property.

20. EMINENT DOMAIN. If all or part of the License Area or any other part of the Property is taken through eminent domain proceedings or under threat of the exercise of the power of eminent domain by any Person with the power of eminent domain, the interests of City and Licensee shall be as follows:

20.1 Full Taking. If all or substantially all the Property is taken, this Agreement shall terminate on the date of the transfer of title or possession of the Property to the condemning Government, whichever first occurs.

20.2 Partial Taking - Remainder Unusable. If a partial taking of the Property occurs that affects the License Area and, in City's sole and absolute discretion, the remaining part of the License Area is unsuitable for the Permitted Use, this Agreement shall terminate on the date of the transfer of title or possession of the part of the Property taken to the condemning Government, whichever first occurs.

20.3 Partial Taking - Remainder Usable. If a partial taking of the Property occurs that affects the License Area and, in City's sole and absolute discretion, the unaffected part of the License Area is suitable for the Permitted Use, this Agreement shall terminate regarding the part of the Property taken on the date of the transfer of title or possession the part of the Property taken to the condemning Government, whichever first occurs, but shall continue for the part of the Property not taken that is subject to this Agreement.

20.4 Award. Notwithstanding anything to the contrary in this Agreement, in all eminent domain proceedings, settlements, agreements, or other means by which a Government taking of the Property by exercise or threat of exercise of the power of eminent domain is pursued or resolved, all money paid or awarded in such process shall be the sole property of City.

20.5 Transfer. City may transfer its title or interest in the Property in lieu of eminent domain proceedings to any Government entitled to exercise the power of eminent domain.

20.6 No Inverse Condemnation. City's exercise of any right or power under this Agreement shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon City for inverse condemnation.

21. NO DISCRIMINATION OR SEGREGATION. Licensee covenants by and for itself, himself or herself, its, his or her heirs, executors, administrators, and assigns, and all Persons claiming under or through it, him or her, that neither Licensee nor any Person claiming under or through Licensee shall establish or allow any discrimination against or segregation of any Person or group of Persons on account of race, color, religion, gender, gender expression, gender identity,

disability, sexual orientation, marital status, national origin, ancestry, familial status, or source of income in the use of the License Area.

22. **NOTICES.** All Notices submitted by a Party to the other Party under or as required by this Agreement shall be sent by messenger for immediate personal delivery, nationally recognized overnight (one Business Day) delivery service (i.e., United Parcel Service, Federal Express, etc.), or registered or certified first-class mail, postage prepaid, return receipt requested through the United States Postal Service, to the address of the recipient Party designated below in this Section 25. Notices may be sent in the same manner to such other addresses as either Party may from time to time designate by Notice in accordance with this Section 25. Notice shall be considered received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day the Notice is sent by messenger for immediate personal delivery, one (1) Business Day after delivery to a nationally recognized overnight delivery service, or three (3) days after the Notice is deposited with the United States Postal Service in accordance with this Section 25. Any attorney representing a Party may give any Notice on behalf of such Party. The Notice addresses for the Parties, as of the Effective Date, are as follows:

To City: The City of San Diego
 Attention: Director, Department of Real Estate and Airport Management
 1200 Third Avenue, Suite 1700 (MS 51A)
 San Diego, CA 92101
 (619) 236-6020

To Licensee: Naval Facilities Engineering Systems Command Southwest
 Attention: Jasmine A. Moore, Realty Specialist
 750 Pacific Highway
 San Diego, CA 92132-5190
 (619) 705-4480
 Email: jasmine.a.moore.civ@us.navy.mil

23. **CALCULATION OF TIME PERIODS.** Unless otherwise specified, all references to time periods in this Agreement measured in days shall be to consecutive calendar days, all references to time periods in this Agreement measured in months shall be to consecutive calendar months, and all references to time periods in this Agreement measured in years shall be to consecutive calendar years. Any reference to Business Days in this Agreement shall mean consecutive Business Days.

24. **PRINCIPLES OF INTERPRETATION.** No inference in favor of or against any Party shall be drawn from the fact that such Party drafted any part of this Agreement. The Parties participated substantially in the negotiation, drafting, and revision of this Agreement, with advice from legal and other counsel and advisers of their own selection. A word, term, or phrase defined in the singular in this Agreement may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which shall govern all language in this Agreement. The words "include" and "including" in this Agreement shall be construed to be followed by the words: "without limitation." Each collective noun in this Agreement shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to a document, including this Agreement, refers to such document, as modified from time to time (excepting any modification violating this Agreement), and includes all exhibits, schedules, addenda, and riders to such document. The word "or" in this Agreement includes the word "and,"

except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form, or similar Government requirement refers to each such requirement as amended, modified, renumbered, superseded, or succeeded, from time to time.

25. **GOVERNING LAW** This agreement is governed by the Contract Disputes Act of 1978 (41 U.S.C. Secs. 601-613) (the "Contract Act") and shall also be subject to applicable laws of the Federal government of the United States of America, including but not limited to the Federal Torts Claims Act (28 U.S.C. Secs. 2671-2680) and the Anti-Deficiency Act (31 U.S.C. Secs. 1341-1344) (together, the "Federal Acts"). The provisions of the Contract Act and Federal Acts shall supersede any contradictory provisions of this License. If any provision of this License is found invalid or unenforceable under judicial decree or decision, the remaining provisions of this agreement shall remain in full force and effect. To the extent not inconsistent with or superseded by federal law, this Agreement shall be governed by and construed according to the substantive laws of the State of California.

26. **PRIOR AGREEMENT TERMINATION.** As of the Effective Date, all leases, right-of-entry permits, use and occupancy permits, or other agreements between City and Licensee concerning the Permitted Use on the Property, other than this Agreement, are terminated, except as to any rents, fees, rights, or remedies accrued to either Party under those agreements prior to the Effective Date.

27. **RELATIONSHIP OF PARTIES.** The Parties each intend and agree that City and Licensee are independent contracting entities and do not intend by this Agreement to create any partnership, joint venture, or similar business arrangement, relationship, or association between them.

28. **WARRANTY AGAINST PAYMENT OF CONSIDERATION FOR AGREEMENT; CITY EMPLOYEE PARTICIPATION POLICY.** Licensee represents and warrants to City that: (a) Licensee has not employed or retained any Person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees of Licensee; (b) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by Licensee or any of Licensee's agents, employees, or representatives to any elected or appointed official or employee of City in an attempt to secure this Agreement or favorable terms or conditions for this Agreement; and (c) Licensee has not employed any Person who, within the twelve (12) months immediately preceding such employment did, in their capacity as a City officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the City Council related to the approval of this Agreement. Breach of the representations or warranties in this Section 31 shall entitle City to terminate this Agreement immediately. Upon any termination of this Agreement under this Section 31, Licensee shall immediately repay to City all payments made to or on behalf of Licensee by City (if any) under this Agreement prior to the Termination Date.

29. **UNAVOIDABLE DELAY; EXTENSION OF TIME FOR PERFORMANCE.** Performance by either Party under this Agreement shall not be considered to be in Default, where any such Default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay shall Notify the other Party: (a) within twenty (20) days after such Party knows of the Unavoidable Delay; and (b) within twenty (20) days after the Unavoidable Delay ceases to exist. To be effective, any Notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The Party claiming an extension of time to perform due to an Unavoidable

Delay shall exercise commercially reasonable efforts to cure the condition causing the Unavoidable Delay, within a reasonable time. Notwithstanding anything to the contrary in this Agreement, no obligation of Licensee for payment of money under this Agreement may be delayed by the occurrence of an Unavoidable Delay, unless the delay in payment of money is due to an Unavoidable Delay that prevents or materially limits the ability to transfer funds by or between Federal or State chartered financial institutions.

30. **NO OTHER REPRESENTATIONS OR WARRANTIES.** Except as expressly set forth in this Agreement, no Party makes any representation or warranty material to this Agreement to the other Party.

31. **NO THIRD-PARTY BENEFICIARIES; NO AFFILIATION.** Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Person other than the Parties and their respective permitted successors and assigns (if any), nor is anything in this Agreement intended to relieve or discharge any obligation of any Third Person to any Party or give any Third Person any right of subrogation or action over or against any Party. Further, nothing in this Agreement shall be deemed or construed to create a partnership, joint venture, or other affiliation between the City and Licensee or between the City and any other Person, or cause the City to be responsible in any way for the debts or obligations of Licensee to any Third Person.

32. **TIME OF THE ESSENCE.** As to the performance of any obligation under this Agreement of which time is a component, the performance of such obligation within the time specified is of the essence of this Agreement.

33. **WAIVERS AND AMENDMENTS.** Each waiver of a term, provision, covenant, condition, restriction, or agreement contained in this Agreement must be in writing and signed by the authorized representative(s) of the Party making the waiver. Failure to insist upon strict compliance with a term, provision, covenant, condition, restriction, or agreement contained in this Agreement at any time or times shall not constitute a waiver of such term, provision, covenant, condition, restriction, or agreement at any other time, nor shall any waiver or relinquishment of any right or power under this Agreement at any time or times constitute a waiver or relinquishment of such right or power at any other time. Each amendment to this Agreement must be in writing and signed by the authorized representative(s) of both City and Licensee.

34. **ACCESSIBILITY ASSESSMENT.** City discloses to Licensee that the Property has not been inspected by a Certified Access Specialist (CASP). City further states:

A Certified Access Specialist (CASP) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under applicable law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making

any repairs necessary to correct violations of construction-related accessibility standards within the premises.

35. **SURVIVAL OF AGREEMENT.** All the provisions of this Agreement shall be applicable to any dispute between the Parties arising from this Agreement, whether prior to or after the Termination Date, until any such dispute is finally and completely resolved between the Parties, either by written settlement, entry of a non-appealable judgment, or expiration of all applicable statutory limitations periods, and all terms and conditions of this Agreement relating to dispute resolution and remedies shall survive the Termination Date.

36. **INTEGRATION.** This Agreement, including all exhibits (which are incorporated into this Agreement by reference) shall constitute the entire understanding and agreement of the Parties regarding the subject matter of this Agreement and supersede all previous negotiations or agreements between the Parties relating to the subject matter of this Agreement.

37. **TITLES AND HEADINGS FOR REFERENCE ONLY.** The titles and headings of the articles, paragraphs, or sections of this Agreement are for convenience of reference only, are not to be considered a part of this Agreement, and shall not in any way interpret, modify, or restrict the meaning of any term, provision, covenant, condition, restriction, reservation, or agreement in this Agreement.

38. **SEVERABILITY.** If a term, provision, covenant, condition, restriction, or agreement contained in this Agreement or its application to any Person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Agreement, or the application of such a term, provision, covenant, condition, restriction, or agreement to Persons or circumstances other than those as to which the term or provision is invalid or unenforceable, shall not be affected by such invalidity. All remaining terms, provisions, covenants, conditions, restrictions, or agreements contained in this Agreement shall be valid and enforced to the fullest extent Law allows.

39. **COUNTERPARTS.** This Agreement may be signed in multiple counterpart originals, each of which shall be considered an original, and all of which shall constitute one and the same agreement.

40. **AUTHORITY TO CONTRACT.** Each individual executing this Agreement on behalf of a Party represents and warrants that they are authorized to execute and deliver this Agreement on behalf of such Party in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such Party's articles, charter, bylaws, or other written rules of conduct or governing documents, and that this Agreement is binding upon such Party in accordance with its terms. Each Person executing this Agreement on behalf of a Party represents and warrants 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.

41. **ELECTRONIC SIGNATURES.** The Parties agree: (a) to deliver and accept signatures on or under this Agreement by e-mail or electronic means (including digital signatures); and (b) that signatures delivered by e-mail or electronic means (including digital signatures) shall be binding as originals upon the Party so signing and delivering.

42. **EXHIBITS.** All the exhibits attached to this Agreement are described as follows:

EXHIBIT A	Definitions
EXHIBIT B	Property and License Area Description
EXHIBIT C	Insurance Requirements

[Remainder of page intentionally blank. Signatures appear on immediately following page.]

**SIGNATURE PAGE
TO
LICENSE AGREEMENT
(United States Navy: All or Part of El Capital Reservoir)**

Licensee and City sign and enter into this Agreement by and through the signatures of their respective authorized representatives, as follow:

CITY:

The City of San Diego,
a California municipal corporation

By: Penny Maus
Penny Maus (Jun 28, 2023 12:13 PDT)
Penny Maus
Director
Department of Real Estate and Airport
Management

LICENSEE:

United States Navy – Naval Facilities
Engineering Systems Command Southwest

By: SPENCER.KIMBERLY.N.13951931
LY.N.1395193151
Kimberly Spencer
Real Estate Contracting Officer

Approved as to form on
Jun 28, 2023 :

MARA W. ELLIOTT
City Attorney

By: Brian Byun
Brian Byun (Jun 28, 2023 13:53 PDT)
Brian W. Byun
Deputy City Attorney

Navy's LOA: AA 97X4930 NH3P 232 77777 0 050120 2F 000000 A00007194328 \$3,450.00

**EXHIBIT A
TO
LICENSE AGREEMENT
(United States Navy: All or Part of El Capitan Reservoir)**

DEFINITIONS

1. Approval. Excluding this Agreement, all licenses, permits (including building, grading, demolition, alteration, use and special permits), approvals, consents, certificates, rulings, variances, authorizations, conditional use permits, or amendments to any of the foregoing, necessary or appropriate under any applicable Law to commence, perform, or complete the Permitted Use on the License Area.
2. Business Day. Any weekday on which City is open to conduct regular City functions with City personnel.
3. City. Defined in the first paragraph of this Agreement.
4. City Attorney. The City of San Diego City Attorney.
5. City Parties. Collectively, City, the City Council, and all City elected officials, employees, agents, and attorneys.
6. City Party. Individually, City, the City Council, and each City elected official, employee, agent, or attorney.
7. Claim. Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity, or otherwise, or foreseeable or unforeseeable), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature) and any judgment.
8. County. The County of San Diego, California.
9. Default. Any Monetary Default or Non-Monetary Default.
10. Default Interest. The maximum rate allowed by the Prompt Payment Act.
11. Effective Date. Defined in the first paragraph of this Agreement.
12. Environmental Claim. All Claims, directly or indirectly, relating to or arising from any actual or alleged violation of any applicable Environmental Law relating to the Property or the Permitted Use or any Hazardous Substance Discharge.
13. Environmental Condition. Any of the following events relating to the Property and arising from the Permitted Use, any action of a Licensee Party, or any failure to act of a Licensee Party:

(a) an actual or alleged violation of any Environmental Law; or (b) a Hazardous Substance Discharge.

14. Environmental Law. All Federal, State, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any Government, now in effect or enacted after the Effective Date, regulating, relating to, or imposing liability or standards of conduct concerning: (a) any Hazardous Substance; (b) occupational health or industrial hygiene (only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under or about the Property or relating to the Permitted Use); (c) occupational or environmental conditions on, under or about the Property or relating to the Permitted Use; (d) or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use. All Environmental Laws referenced herein are the laws applicable to each party. There is no intent to bind any party to any law that would not otherwise apply to it.

15. Equity Interest. Any equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest, or other interest of an ownership or equity nature) in a Person.

16. Event of Default. The occurrence of any one or more of the following:

16.1 *Monetary Default*. A Monetary Default continuing for seven (7) calendar days after Notice from the non-defaulting Party, specifying in reasonable detail the amount of money not paid, including the nature and calculation of each such amount, or the evidence of insurance not delivered;

16.2 *Sign Removal*. Licensee's failure to remove an unauthorized Sign in accordance with Section 6.4;

16.3 *Licensee Transfer*. The occurrence of a Transfer, whether voluntarily or involuntarily or by operation of Law, in violation of Section 3.3 of the Agreement;

16.4 *Non-Monetary Default*. Any Non-Monetary Default, other than those specifically addressed in Sections 16.2 or 16.3 above, that is not cured within thirty (30) days after Notice to the Party in Default describing the Non-Monetary Default in reasonable detail. In the case of a Non-Monetary Default that cannot with reasonable diligence be cured within thirty (30) days after the date of Notice of the Non-Monetary Default to the Party in Default, the Party in Default shall not be in Default if it does all the following: (a) within thirty (30) days after the date of Notice of such Non-Monetary Default, Notify the other Party of the intention of the Party in Default to take all reasonable steps to cure such Non-Monetary Default; (b) within thirty (30) days after the date of Notice of such Non-Monetary Default, commence curing the Non-Monetary Default; and (c) complete the cure of the Non-Monetary Default within a reasonable time.

17. Federal. Relating or under the authority of the federal government of the United States of America.

18. Government. Every governmental agency, authority, bureau, department, quasi-governmental body, utility, utility service provider, or other entity or instrumentality having or claiming jurisdiction over the Property or the Permitted Use, including the Federal, State, County,

City (in City's governmental capacity) governments and their subdivisions and municipalities, including City, any planning commission, board of standards and appeals, building department, zoning board of appeals, design review board or committee, the California Coastal Commission, and all other applicable governmental agencies, authorities, and subdivisions having or claiming jurisdiction over the Property or any activities on or at the Property.

19. Gross Revenue. The sum of all the following: (a) the gross amount of cash paid, or to be paid; (b) the fair market value of all other estates, interests, or rights transferred or to be transferred; (c) the outstanding amount of Licensee liabilities assumed or to be assumed; (d) the value of any liability forgiveness provided or to be provided to Licensee; or (e) in the case of a Transfer without any of the previously described forms of consideration, the fair market value of the estate, interest, or right in the property transferred. Any fair market value determination shall be as of the date of the subject Transfer.

20. Hazardous Substance. Any flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to the State to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical waste, toxic substance or related material, petroleum, petroleum product or any "hazardous" or "toxic" material, substance, or waste defined by those or similar terms or regulated as such under any applicable Law, any matter, waste, or substance subject to any applicable Law regulating, relating to, or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property, or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor, or any form of energy, from whatever source.

21. Hazardous Substance Discharge. Any deposit, discharge, generation, release, or spill of a Hazardous Substance occurring at, on, under, into, or from the Property, or during transportation of any Hazardous Substance to or from the Property, or arising at any time from activities conducted at, on, under, or from the Property, whether or not caused by a Party.

22. [INTENTIONALLY OMITTED]

23. Law. The term law or applicable law refers only to the laws that apply to each party by its own terms and to the extent allowed by the rights, privileges, and immunities of the party. Nothing herein is intended to extend the legal reach of any law to any party not already subject to the law. Laws include every applicable ordinance, order, proclamation, directive, rule, or regulation of any Government applicable to the Property or the Permitted Use, or otherwise relating to this Agreement, the Permitted Use, or any Party's rights, obligations, or remedies under this Agreement, whether in force on the Effective Date or passed, enacted, modified, amended, or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.

24. Legal Costs. In reference to any Person, all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs) under applicable federal law.

25. License Area. That part of the Property specifically described as the "License Area" in **EXHIBIT B** attached to this Agreement.

26. Licensee. Defined in the first paragraph of this Agreement.
27. License Fee. The following table shows the annual License Fee amount paid annually, in arrears, for each Year (The following annual License Fee table reflects an increase of three percent (3%) above the annual License Fee payable for the immediately preceding Year):
- | | |
|--------|----------------------|
| Year 1 | \$ 2,400.00 per year |
| Year 2 | \$ 2,472.00 per year |
| Year 3 | \$ 2,546.16 per year |
28. Licensee Parties. Collectively, Licensee, its directors, officers, members, partners, employees, agents, contractors, attorneys, and all other Persons whom Licensee authorizes or allows to enter the License Area.
29. Licensee Party. Individually, Licensee, its directors, officers, members, partners, employees, agents, attorneys, or other Person whom Licensee authorizes or allows to enter the License Area.
30. Mayor. The Mayor of City or his or her designee or successor in function.
31. Monetary Default. Any failure by a Party to pay or deposit, when and as this Agreement requires, any amount of money or any evidence of insurance coverage required to be paid or provided under this Agreement, whether to or with a Party or a Third Person.
32. Non-Monetary Default. The occurrence of any of the following events, except to the extent constituting a Monetary Default: (a) the failure of a Party to perform one of its obligations under this Agreement; (b) the failure of a Party to comply with a material restriction or prohibition in this Agreement; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, would constitute a breach of this Agreement.
33. Notice. Any consent, demand, designation, election, notice, or request relating to this Agreement. All Notices must be in writing.
34. Notify. To give a Notice.
35. Parties. Collectively, City and Licensee.
36. Party. Individually, either City or Licensee, as applicable.
37. Permitted Use. Non-exclusive use of the License Area for the purpose of testing instruments that measure the speed of sound in the water. All use under this Agreement shall be limited to the hours between sunrise and sunset on the days of **Wednesdays and Thursdays** of each week during the Term when the general public is not using the facility ("**Specified Times**"). See attached **EXHIBIT B**. Licensee shall notify **City of San Diego's Public Utility Department, Bryan Norris at (619) 668-2014 or BNorris@sandiego.gov** one (1) week prior to using the License Area, in each instance.

38. Person. Any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind.
39. RESERVED.
40. RESERVED.
41. Primary Uses. Defined in Section 3.2.
42. Property. That certain real property owned by City specifically described as El Capitan Reservoir located at 16850 El Monte Road in the City of Lakeside, California 92040.
43. SDMC. Defined in Section 6.14.
44. Sign. Defined in Section 6.4.
45. State. The State of California.
46. Term. Defined in Section 4.1.
47. Termination Date. Defined in Section 4.2.
48. Third Person. Any Person that is not a City Party, a Licensee Party, or an affiliate of a Party.
49. Transfer. Any of the following events, whether occurring by operation of law, voluntarily or involuntarily, or directly or indirectly: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, license, or other transfer, whether direct or indirect, of all or any part of Licensee's legal, beneficial, or equitable interest in this Agreement; (b) any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any direct or indirect Equity Interest(s) in Licensee by the owner(s) of such Equity Interest(s); (c) any transaction described in clause "(b)" affecting any Equity Interest(s) or any owner of Equity Interests (or in any other direct or indirect owner at any higher tier of ownership) through any manner or means whatsoever; or (d) any transaction that is in substance equivalent to any of the transactions described in clauses "(a)" through "(c)" of this Section 49. A transaction affecting Equity Interests, as referred to in clauses "(b)" through "(d)," shall be deemed a Transfer by Licensee even though Licensee is not technically the transferor. A "Transfer" shall not, however, include any transaction (provided that the other Party receives Notice of such transaction at least fifteen (15) days before the transaction is final) relating to any Equity Interest: (a) that constitutes a mere change in form of ownership with no material change in beneficial ownership and constitutes a tax-free transaction under federal income tax law and the State real estate transfer tax; or (b) to any Person that, as of the Effective Date, holds an Equity Interest in, or that is under common control with, the Person whose Equity Interest is being transferred.
50. Unavoidable Delay. A delay in either Party performing any obligation under this Agreement arising from or on account of any cause whatsoever beyond the Party's reasonable control, including strike, labor trouble or other union activity, casualty, war, act of terrorism, riot, litigation, Government action, regional natural disaster, pandemic, or inability to obtain materials.

Unavoidable Delay shall not include delay caused by a Party's financial condition, illiquidity, or insolvency.

51. Year. Each of: (a) the twelve (12) calendar month period beginning on the Effective Date and continuing through the day before the immediately following anniversary of the Effective Date; and (b) every subsequent period of twelve (12) calendar months beginning on each anniversary of the Effective Date and ending on the day before the immediately following anniversary of the Effective Date. Each Year is referred to in this Agreement in consecutive chronological order, starting with "Year 1" and continuing with "Year 2," "Year 3," etc.

**EXHIBIT B
TO
LICENSE AGREEMENT
(United States Navy: All or Part of El Capitan Reservoir)**

LICENSE AREA DESCRIPTION

The License Area is all or part of City-owned real property located at El Capitan Reservoir, 16850 El Monte Road, Lakeside, California 92040, and generally identified in the following map:



EXHIBIT B TO LICENSE AGREEMENT (United States Navy: All or Part of El Capitan Reservoir)

LICENSE AREA RULES



Personal Watercraft

Since personal watercraft are classified as Class A inboard vessels, operators must follow the same rules of operation which govern all boats in any particular waterway. In addition, all local rules and regulations must be observed at all times.

- Reservoir is open for personal watercraft (PWC) in designated area on Friday, Saturday and Sunday (May through October) and Sundays only (November through April).
- PWC which carry three passengers may tow in the ski zone. No towing is allowed in the PWC zone.
- All personal watercraft (PWC) must have the following Coast Guard approved safety equipment in good working condition: All operators and passengers must wear a type I, II or III personal flotation device when operating on the lake. All operators must carry a fully charged type B-1 or equivalent fire extinguisher that is readily accessible.
- All PWC must be properly muffled at all times to meet State and local noise requirements.
- The maximum speed limit is 35 mph restricted to the PWC operating area. Maximum speed limit within 100 feet of shoreline, buoys, docks or other vessels is 5 mph.
- The general direction of all vessels is counterclockwise.
- All operators should be cautious when turning or overtaking another vessel. Looking over a shoulder before turning and taking appropriate precautions while overtaking is strongly recommended.
- All overtaking vessels must yield right-of-way to the vessel being passed.
- The required age for operating a PWC alone is 16 years of age or older. 12 - 15 years of age may operate a PWC only if accompanied by an adult at least 18 years of age.
- All PWC are required to clearly display permanently affixed approved registration numbers on vessel and carry their certificate of number on board.
- California boating law, local rules and common boating courtesy must be observed at all times.
- Operators of PWCs equipped with a lanyard switch must attach the lanyard to his or her person.
- The PWC program was designed to promote safe aquatic activities. Speeding, racing, or reckless operation is strictly prohibited.

It is your responsibility to learn and observe all rules and regulations pertaining to recreational activities at this reservoir. Violators are subject to citation, eviction from premises (without refund) and restrictions from future use of the reservoir.



Boats and Boating

All vessels must possess all required Coast Guard approved safety equipment applicable to each vessel's size and type.

- All vessels using reservoir for boating may come Friday through Tuesday.
- Beginning January 1, 2018, the mandatory boating safety education law goes into effect and will be phased in by age. If you operate any type of motorized vessel on California waterways (including powered sailboats/paddlecrafts), you will be required to pass an approved boating safety examination and carry a lifetime California Boater Card. See staff for more info.
- No person under 16 years of age may solely operate a motorboat of more than 15 HP, including personal watercraft (PWCs).
- Persons 12 - 15 years of age may operate a motorboat of more than 15 HP only if supervised on board by a person at least 18 years of age.
- All boats must have one type I, II, III, or IV (wearable) personal flotation device for each person on board and one type IV (throwable) in each boat. **NOTE:** All PFDs must be easily and readily accessible and be in good working condition.
- All vessels must carry a fully charged type B-1 or equivalent fire extinguisher that is readily accessible.
- All motorboats or motor vessels except open boats, using gasoline as fuel shall have at least two ventilator ducts fitted with cowls or their equivalent.
- Vessels equipped with gasoline engines, except outboards must have a Coast Guard approved backfire flame control device that has a flame tight connection.
- Fuel leaks or spills of any kind are strictly prohibited and are grounds for termination. (Remember this is a drinking water reservoir.)
- All boats must be properly muffled at all times to meet State and local noise requirements. No unmuffled or "dry stack" exhaust systems.
- Boats are prohibited from having any on-board toilets or sinks.
- The maximum speed limit is 35 mph and restricted to the skiing area.
- Maximum speed limit within 100 feet of shoreline is 5 mph.
- Passing a tow line over another boat or skier or towing a skier within 100 feet of another boat, skier or downed skier is prohibited.
- If a boat operator is faced with a potentially unsafe situation (overcrowded turn with many fallen skiers) shut down operation of vessel. The vessel on the right or the vessel you overtake has the right-of-way.
- Absolutely no bow, gunwale or transom riding. All passengers must sit securely in the boat.
- The direction of all vessels (except to pick up a fallen skier) is counterclockwise. All vessels must follow set patterns to assure smooth water and safe boating.
- Boat traffic is permitted to go both directions within 100 feet of shoreline in the 5 mph areas when lake levels permit.**
- California boating law, local rules and common boating courtesy must be observed at all times.

- Operating a vessel while under the influence of alcohol or drugs is strictly prohibited. Violators will be punished to the full extent of the law.
- Children under the age of 13 must wear a U.S. Coast Guard approved PFD while underway in a vessel of any length.
- The recreation programs at El Capitan are designed to promote safe aquatic activities. Speeding, racing or reckless operation is strictly prohibited.
- During adverse weather (wind, lightning, etc.) proceed to nearest shoreline or, if safe, the public dock.
- Anchoring of any type of watercraft on the Restricted Area Buoy line is prohibited.



Water-skiing

- Reservoir is open for water contact activities on Friday, Saturday, and Sunday (May through October) and on Saturday only (November through April).
- Ski, wakeboards, and similar devices are permitted. Inflatable and towed devices may be used in the ski zone. Use of a quick release device is recommended.
- Minimum size PWC for towing anyone is three-person and is permitted in the ski zone only.
- All vessels towing a skier must have an observer 12 years of age or older.
- Coast Guard approved PFDs must be worn by all skiers.
- A **RED OR ORANGE SIGNAL FLAG** must be displayed when a fallen skier or ski rope is in the water.
- Starts and drop-offs must be done in deep water, no shore starts or drops.
- Skiing in or around marker buoys or within 100 feet of other vessels, skiers or hazards is strictly prohibited.
- When one skier falls during a double tow the other skier must immediately let go of the tow rope and both skiers should stay together at all times.
- Please stay out of PWC operating area. It is for personal watercraft only. For information on permits and course rules, contact one of the City Staff personnel.
- To ensure the safety and enjoyment for all patrons, there is a limit of 25 vessels with towable devices per day.



Fishing

- While on the ski course (refer to map) all boats must use proper course direction.
- Watch for downed skiers. A red or orange flag being displayed means a skier is in the water.
- Minimum speed limit on the course is 20 mph. If your craft cannot maintain 20 mph you are required to travel in the 5 mph zone around the perimeter of the reservoir.
- State of California fishing license **AND** lake fishing permit must be in possession at all times while fishing.
- It is each angler's responsibility to verify the regulations for all species prior to fishing in California water.
- No fishing is permitted within 100 feet of the boat dock or the courtesy dock.

There are no fish cleaning stations provided within the City of San Diego's Reservoir and Recreation Program.

City of San Diego



Reservoir Recreation Program

EL CAPITAN

General Rules and Regulations

The following rules and regulations will be in effect for all user groups:

- Reservoir is open for fishing and general boating on Friday through Tuesday.
- Operating hours will be from sunrise to sunset. All boats must be off the water by sunset or when advised by the Reservoir Staff.
- Every person entering reservoir property must purchase a permit. Be advised that only cash and/or checks are accepted.
- Cars parked in trailer spaces may be cited.
- Because of health and safety concerns, swimming, wading, bathing and diving, etc., are absolutely prohibited (except as incidental to skiing).
- Dogs must be kept on a leash and at least 50 feet from the water at all times; **THEY ARE NOT PERMITTED ON THE BOATS.**
- GLASS CONTAINERS ARE PROHIBITED.**
- Because of the severity of a potential fire, only gas barbecues are permitted on shoreline. Charcoal barbecues are permitted in designated areas only.
- Please do not litter! Use trash receptacles or trash bags. Secure trash in your boat before proceeding. See Reservoir Staff for trash bags.
- Report concerns, emergencies or questions to Reservoir staff.
- Remember, this is a domestic water supply reservoir. Do not contaminate it. Use toilets and avoid spills of any kind.
- Use precaution in shoreline areas, rattlesnakes and poison oak are part of the natural environment.
- Please park vehicles within marked stalls, do not obstruct the flow of traffic.
- Refueling your vessel must be done either out of the water or at the dock. A reminder that this reservoir is used for drinking water - positively no spills of any kind.
- Please keep valuables locked up. We are not responsible for lost or stolen items.

EXHIBIT C
TO
LICENSE AGREEMENT
(United States Navy: All or Part of El Capitan Reservoir)

INSURANCE REQUIREMENTS

1. Required Insurance Coverage.

- 1.1. *Automobile Liability Insurance.* Insurance coverage against claims of personal injury (including bodily injury and death), and property damage covering all owned, leased, hired, and non-owned vehicles used by Licensee, with minimum limits for bodily injury and property damage of Two Million Dollars (\$2,000,000). Such insurance shall be provided by a business or commercial vehicle policy and may be provided through a combination of primary and excess or umbrella policies, all of which shall be subject to pre-approval by City, which pre-approval shall not be unreasonably withheld.
- 1.2. *Liability Insurance.* Commercial general liability insurance against claims for bodily injury, personal injury, death, or property damage occurring upon, in or about the License Area or adjoining streets or passageways, at least as broad as Insurance Services Office Occurrence Form CG0001, with a minimum liability limit of Two Million Dollars (\$2,000,000) for any one occurrence and Four Million Dollars (\$4,000,000) aggregate. Commercial general liability insurance coverage may be provided through a combination of primary and excess or umbrella insurance policies. If commercial general liability insurance or other form with a general aggregate limit is used, the general aggregate limit shall apply separately to the License Area.
- 1.3. *Property Insurance.* Insurance providing coverage for the License Area and all improvements on or to the License Area against loss, damage, or destruction by fire or other hazards encompassed under the broadest form of property insurance coverage then customarily used for like properties in the County, in an amount equal to one hundred percent (100%) of the replacement value (without deduction for depreciation) of all improvements (excluding excavations and foundations), and in any event sufficient to avoid co-insurance and with no co-insurance penalty provision, with "ordinance or law" coverage. To the extent customary for like properties in the County at the time, such insurance shall include coverage for explosion of steam and pressure boilers and similar apparatus located in or associated with the License Area, an "increased cost of construction" endorsement and an endorsement covering demolition and cost of debris removal.
- 1.4. *Workers Compensation Insurance.* Workers compensation insurance complying with the provisions of State law and an employer's liability insurance policy or endorsement to a liability insurance policy, with a minimum liability limit of One Million Dollars (\$1,000,000) per accident for bodily injury, or disease, covering all employees of Licensee.

2. **Nature of Insurance.** The contents of this **EXHIBIT C** are sometimes referred to as the “**Insurance Requirements.**” All Liability Insurance, Automobile Liability Insurance, Property Insurance, and Workers Compensation Insurance policies required by these Insurance Requirements shall be issued by carriers that: (a) are listed in the then current “Best’s Key Rating Guide—Property/Casualty—United States & Canada” publication (or its equivalent, if such publication ceases to be published) with a minimum financial strength rating of “A-” and a minimum financial size category of “VII” (exception may be made for the State Compensation Insurance Fund when not specifically rated); and (b) are authorized to do business in the State by the State Department of Insurance. Licensee may provide any insurance under a “blanket” or “umbrella” insurance policy, provided that: (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the License Area, which amount(s) shall equal or exceed the amount(s) required by these Insurance Requirements; and (ii) such policy otherwise complies with the requirements of these Insurance Requirements.
3. **Policy Requirements and Endorsements.** All insurance policies required by these Insurance Requirements shall contain (by endorsement or otherwise) the following provisions:
 - 3.1. *Insured.* Liability Insurance policies shall name the City Parties as “additional insured.” The coverage afforded to the City Parties shall be at least as broad as that afforded to Licensee regarding the License Area and may not contain any terms, conditions, exclusions, or limitations applicable to the City Parties that do not apply to Licensee.
 - 3.2. *Primary Coverage.* Any insurance or self-insurance maintained by the City Parties shall be excess of all insurance required to be maintained by Licensee under these Insurance Requirements and shall not contribute with any insurance required to be maintained by Licensee under these Insurance Requirements.
 - 3.3. *Contractual Liability.* Liability Insurance policies shall contain contractual liability coverage for Licensee’s Indemnity obligations under this Agreement. Licensee’s obtaining or failing to obtain such contractual liability coverage shall not relieve Licensee from nor satisfy any Indemnity obligation of Licensee under this Agreement.
 - 3.4. *Deliveries to City.* Evidence of Licensee’s maintenance of all insurance policies required by these Insurance Requirements shall be delivered to City before the Effective Date. No later than ten (10) days before any insurance required by these Insurance Requirements expires, is cancelled or its liability limits are reduced or exhausted, Licensee shall deliver to City evidence of Licensee’s maintenance of all insurance required by these Insurance Requirements. Each insurance policy required by these Insurance Requirements shall be endorsed to state that coverage shall not be cancelled, suspended, voided, reduced in coverage or in limits, except after thirty (30) days’ advance Notice of such action to City. Phrases such as “endeavor to” and “but failure to mail such notice shall impose no obligation or

liability of any kind upon the company” shall not be included in the cancellation wording of any certificates or policies of insurance applicable to the City Parties under these Insurance Requirements.

- 3.5. *Waiver of Certain Claims.* Licensee shall cause each insurance carrier providing any Liability Insurance, Worker’s Compensation Insurance, or Automobile Liability Insurance coverage under these Insurance Requirements to endorse their applicable policy(ies) with a Waiver of Subrogation (defined below) with respect to the City Parties, if not originally in the policy. To the extent Licensee obtains an insurance policy covering both the Licensee Parties and the City Parties and containing a Waiver of Subrogation, the Parties release each other from any Claims for damage to any Person or property to the extent such Claims are paid by the insurance carrier under such insurance policy. **“Waiver of Subrogation”** means and refers to a provision in, or endorsement to, any insurance policy, under which the carrier agrees to waive rights of recovery by way of subrogation against the City Parties for any loss such insurance policy covers.
- 3.6. *No Representation.* No Party makes any representation that the limits, scope, or forms of insurance coverage required by these Insurance Requirements are adequate or sufficient.
- 3.7. *No Claims Made Coverage.* None of the insurance coverage required by these Insurance Requirements may be written on a claims-made basis.
- 3.8. *Fully Paid and Non-Assessable.* All insurance obtained and maintained by Licensee in satisfaction of these Insurance Requirements shall be fully paid for and non-assessable.
- 3.9. *Separation of Insured.* All Liability Insurance and Automobile Liability Insurance shall provide for separation of insured for Licensee and the City Parties. Insurance policies obtained in satisfaction of these Insurance Requirements may provide a cross-suits exclusion for suits between named insured Persons but shall not exclude suits between named insured Persons and additional insured Persons.
- 3.10. *Deductibles and Self-Insured Retentions.* All deductibles or self-insured retentions under insurance policies required by these Insurance Requirements shall be declared to and approved by City. Licensee shall pay all such deductibles or self-insured retentions regarding the City Parties. Each insurance policy issued in satisfaction of these Insurance Requirements shall provide that, to the extent Licensee fails to pay all or any portion of a self-insured retention under such policy in reference to an otherwise insured loss, City may pay the unpaid portion of such self-insured retention, in City’s sole and absolute discretion. All amounts paid by City toward self-insured retentions regarding insurance policies covering the City Parties under these Insurance Requirements shall be reimbursed to City by Licensee in the same manner that insurance costs are reimbursable to City from Licensee under Section 5 of these Insurance Requirements.

- 3.11. *No Separate Insurance.* Licensee shall not carry separate or additional insurance coverage concurrent in form or contributing in the event of loss with insurance coverage required by these Insurance Requirements unless the City Parties are made additional insured under such insurance coverage.
4. **Insurance Independent of Indemnification.** These Insurance Requirements, are independent of the Parties' Indemnification and other obligations under this Agreement and shall not be construed or interpreted in any way to satisfy, restrict, limit or modify the Parties' Indemnification or other obligations or to limit the Parties' liability under this Agreement, whether within, outside or in excess of such coverage, and regardless of solvency or insolvency of the insurer issuing the coverage, nor shall the provision of such insurance preclude City from taking such other actions as are available to City under any other provision of this Agreement or otherwise at law or in equity.
5. **City Option to Obtain Coverage.** During the continuance of an Event of Default arising from the failure of Licensee to carry any insurance coverage required by these Insurance Requirements, City may, in City's sole and absolute discretion, purchase such required insurance coverage. City shall be entitled to immediate payment from Licensee of all premiums and associated reasonable costs paid by City to obtain such insurance coverage. Each amount becoming due and payable to City under this Section 5 that is not paid within one hundred and twenty (120) days after Notice from City with an explanation of the amounts owed, will accrue Default Interest, to the extent permitted by the Federal Prompt Payment Act (31 U.S.C. § 3901 et. seq.) from the date incurred until paid. Amounts not paid when due are subject to the procedures and late payment interest penalties of the Federal Prompt Payment Act (31 U.S.C. § 3901 et. seq.). Election by City to purchase or not to purchase insurance coverage otherwise required by these Insurance Requirements to be carried by Licensee shall not relieve Licensee of any Default or Event of Default or Licensee's obligation to obtain and maintain any insurance coverage required by these Insurance Requirements.

Farst, Heide

From: Byun, Brian
Sent: Tuesday, May 30, 2023 9:58 AM
To: Farst, Heide
Subject: RE: US Navy License Agreement
Attachments: United States Navy License Agreement (CAO rev 5-30-23).docx

Heide,

The following changes do not make sense to me and so I do not accept them:

- Para. 6.4: replacement of comma and "reimburse" with same comma and "reimburse. Literally no change here.
- Para. 7.2: replacement of "Permitted" with "License". "Permitted Use" is a defined term; "License Use" is not.
- Para. 7.2: deletion of last sentence (definition of "Maintenance Standard"). This defined term is used in paras. 7.1 and 7.3 for the sake of brevity and convenience. Deletion of this sentence would require revision of those paragraphs.

Deletion of extra space in Para. 15 is accepted.

Deletion of extra comma and space in Para. 23 of Ex. A is accepted.

Made one additional typographical change: deleted errant strike-through in Para. 22 of Ex. A.

If the Navy would like to explain its concerns with respect to any of the three bulleted points above, we can see about making further changes. **Otherwise, if they're OK with this version, then we can be done.**

Thanks,

Brian Byun
Deputy City Attorney | Real Property & Public Finance
San Diego City Attorney's Office
1200 Third Avenue, Ste. 1620
San Diego, California 92101
(O): (619) 533-6392
(M): (619) 204-3220

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From: Farst, Heide <HFarst@sandiego.gov>
Sent: Tuesday, May 30, 2023 8:03 AM
To: Byun, Brian <BByun@sandiego.gov>
Subject: RE: US Navy License Agreement

Hi Brian,

1/30/2023

Attachment B

Environmental Determination (NORA)	
Environmental Planner	Zaira Marquez (zmarquez@san Diego.gov)
Project Name	License Agreement with the United States Navy – Naval Facilities Engineering Command Southwest at El Capitan Reservoir
Environmental Determination	This activity is categorically exempt from California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Sections 15301 (Existing Facilities) and 15306 (Information Collection).
Date NORA Posted	01/20/2023
Date NORA Removed	01/27/2023

Document Routing Form

License Agreement - US Navy

Heide Farst

Title of document to be signed

Your Name/Property Agent's Name

Matthew Ostlund

Jun 27, 2023

Program Manager/Supervisor Signature

Date

Print name of City Attorney: Brian Byun

NORA: ☒ Yes Date: 01/20/23
☐ No, see explanation below

Date City Attorney approval: 5/30/2023

Appeal: ☐ Yes ☒ No ☐ N/A

Explanation/Notes:

Attached for your approval is the License Agreement between the City of San Diego ("City") and the United State Navy ("USN") for the purpose of testing instruments that measure the speed of sound in water.

The initial term is for one (1) year with two 1-year options to extend. The USN will utilize the reservoir on Wednesdays and Thursdays only when the reservoir is closed to the general public.

Thank you.

Environmental Determination Notes (if applicable):

The NORA was posted on January 20, 2023 and removed on January 27, 2023.

Deputy Signature: *Lucy Contreras* Date: Jun 27, 2023

Attachments:

License Agreement

City Attorney Approval

NORA Attachment B