

IRVINE LAKE ACCESS AND USE LICENSE

(Shoreline Fishing)

THIS IRVINE LAKE ACCESS AND USE LICENSE ("**License**") is effective the 1st day of July, 2019 ("**Effective Date**") and is among IRVINE RANCH WATER DISTRICT, a California water district organized under and existing pursuant to Sections 34000, *et seq.* of the California Water Code ("**IRWD**"), SERRANO WATER DISTRICT, a special governmental district formed under the Irrigation District Law, California Water Code Sections 20500, *et seq.* ("**SWD**") and the COUNTY OF ORANGE, a political subdivision of the State of California ("**County**"). Each entity may be referred to herein individually as a "**Party**," or collectively as the "**Parties**."

RECITALS

1. SWD and IRWD are the co-owners in fee title to that certain Reservoir facility historically known as "Santiago Reservoir" ("**Santiago Reservoir**" or "**Reservoir**") and its waters ("**Irvine Lake**").
2. The Irvine Company, a Delaware limited liability company and TIC Land Investment LLC, a Delaware limited liability company (collectively, "**TIC**"), and SWD jointly own the recreational rights to the waters of Irvine Lake, which, according to that certain settlement agreement dated April 19, 1929, include "fishing, hunting, boating and such other uses as will not pollute or interfere with the use of said waters by the parties..." ("**Recreational Rights**"). TIC owns 75% of the Recreational Rights and SWD owns 25%. Use of the Recreational Rights by the general public is not authorized without mutual agreement between TIC and SWD. County and TIC have executed a separate agreement by which TIC has permitted the County to utilize its Recreational Rights for the purposes set forth in this License.
3. County received property ("**Donation Property**") in 2014 through an historic donation from TIC, some of which is adjacent to portions of the Reservoir ("**Recreational Parcel**"). Included with this donation, TIC made an Irrevocable Offer of Dedication ("**IOD**") to County that included, among other things, TIC's share of Recreational Rights to the waters of Irvine Lake. The IOD requires satisfying certain conditions precedent prior to the transfer of the Recreational Parcel and TIC's Recreational Rights to the County.
4. Fishing has not occurred at Irvine Lake for several years, and the County has requested that fishing operations be restarted as soon as possible. The Parties are concurrently negotiating a set of long-term agreements related to their joint use of Santiago Reservoir, Irvine Lake, and the surrounding lands. The Licensors intend by this License to provide for limited fishing uses as a short-term accommodation to the County, pending finalization of the long term agreements referenced above.
5. Subject to the terms and conditions set forth below, SWD and IRWD (collectively, "**Licensors**") are willing to exclusively license to the County the right to utilize the Recreational Rights and the Reservoir, and Irvine Lake ("**Premises**") for recreational uses ("**Recreational Activities**") consistent with the Recreational Rights held by TIC and SWD.
6. The Parties recognize that SWD claims that its past use of the Recreation Rights have historically yielded SWD substantial revenue. The Parties further understand that County's payments to SWD are only intended as consideration for the limited purposes of this License.

NOW, THEREFORE, in consideration for the mutual promises, covenants and conditions contained herein, the Parties agree as follows:

I. DEFINITIONS

The following terms provided in this section shall have the specific meanings assigned below and to be used throughout the entirety of this License.

“County” shall mean or refer to the County of Orange, a political subdivision of the State of California.

“Irvine Lake” shall mean or refer to the water located within the Reservoir over which TIC and SWD currently own the Recreational Rights.

“IRWD” shall mean or refer to Irvine Ranch Water District, a California water district organized under and existing pursuant to Section 34000, *et seq.* of the California Water Code.

“License” shall mean or refer to this agreement for the access and use of the Reservoir and the waters of Irvine Lake.

“Licensors” shall mean or refer to SWD and IRWD, collectively.

“Licensors’ Respective Rights” shall mean or refer to all of the following, collectively: (i) SWD’s ownership rights to the Reservoir, the waters of the Reservoir, and its proportional share of the Recreational Rights to the waters of Irvine Lake; (ii) IRWD’s ownership rights to the Reservoir and the waters of the Reservoir.

“Recreational Activities” shall mean or refer to activities, actions, and events consistent with the exercise of the Recreational Rights under this License. For the purposes of this License, the Recreational Activities to be exercised by County shall be limited to shoreline fishing in areas designated on the map attached hereto as Exhibit 1 and those activities reasonably related thereto (e.g. access over the Reservoir, in designated areas, to reach the waters of Irvine Lake). Recreational Activities shall not include boating or other on-water use of Irvine Lake.

“Recreational Rights” shall mean or refer to the rights to use the waters of Irvine Lake, which said rights are currently owned by TIC (75%) and SWD (25%), as stated in a certain agreement dated April 19, 1929 between the predecessors in interest of TIC and SWD, which rights include “fishing, hunting, boating and such other uses as will not pollute or interfere with the use of said waters by the parties[.]”

“Santiago Reservoir” or **“Reservoir”** shall mean or refer to the property (shoreline, lake bed, etc.) in which the water of Irvine Lake is located.

“SWD” shall mean or refer to Serrano Water District, a special governmental district formed under the Irrigation District Law, Sections 20500, *et seq.* California Water Code.

“TIC” shall mean or refer to The Irvine Company, a Delaware limited liability company and TIC Land Investment LLC, a Delaware limited liability company.

II. PREMISES

The premises (“**Premises**”) shall mean or refer to those areas of Santiago Reservoir identified in Exhibit 1 and designated for the Recreational Activities along, in, and over the Reservoir and for access to the waters of Irvine Lake for the purpose of the general public to engage in the Recreational Activities.

III. CONDITION AND INSPECTION OF PREMISES

- A. County acknowledges that the Premises are being licensed on an “as-is” basis, and County’s access to and use of the Premises is done without reliance upon any representation by the Licensors, or any of their respective officers, employees, agents or representatives, or any other person, concerning the Premises, their fitness for County’s intended use or any other particular purpose of use, their income producing history, potential or capabilities, their value, or any other promise, representation or inducement not expressly set forth in this License.
- B. County acknowledges that the Licensors, their respective officers, employees, agents or representatives, have not made any written or oral representation, promise or warranty, expressed or implied, concerning the Premises, its fitness for County’s intended use or any other purpose or use, their income producing history, potential or capabilities, their value, or any other matter not expressly set forth in this License.
- C. County acknowledges that County has had the opportunity to and has inspected the Premises prior to the execution of this License, and that County accepts the Premises in the condition in which the Premises exist as of the date of this License. County shall be responsible for preparing and maintaining the Premises in a manner that is sufficiently safe and appropriate for the Recreational Activities.
- D. The Parties understand that Irvine Lake is first and foremost a water supply reservoir that will be operated to ensure continued performance of that function. Licensors retain the sole discretion to determine how the Reservoir will be operated, to include how it will be filled and drained, and what water quality will be required to ensure continued function as a source of drinking water. Licensors agree to provide information (e.g. water levels and water quality) that Licensors already collect to County to assist County with making adjustments to accommodate the shoreline fishing use of the lake. Further, Licensors will notify County as soon as practicable of any water quality or water level issues that may negatively impact public health and safety (e.g. contamination levels that may impact fish or public’s consumption of fish).

IV. TERM

The term (“**Term**”) of this License and the rights of the County hereunder shall commence on the Effective Date and expire at the end of 12 months (June 30, 2020). This License may be revoked or terminated upon the following:

- A. The abandonment of this License by the County for its convenience as evidenced by a 30 day written notice provided by the County to Licensors¹; or
- B. A written agreement to terminate has been signed by all Parties.
- C. If either Licensor reasonably determines and provides notice to the other Parties that the County has engaged in prohibited activities or uses inconsistent with or beyond the scope of this License.
- D. Action by a regulatory agency that limits or otherwise restrains the ability of the public to consume fish caught in Irvine Lake.

If this License is terminated by Licensors prior to the expiration date of this License, then the County shall only need to pay a pro rata amount of its Fee based on the actual amount of time the License was effective.

V. USE

Consistent with the Licensors' Respective Rights, for and during the term of this License, and any extension or renewal of it, the Licensors hereby grant to the County the following uses of the Premises:

- A. Exclusive use of Recreational Rights to the waters of Irvine Lake as currently owned by TIC and SWD and defined in this License; and
- B. Access rights upon, over, and across the Reservoir, in designated areas, to reach the waters of Irvine Lake for the exclusive purposes of using the Recreational Rights for Recreational Activities; and
- C. Ability to prepare the Premises as necessary for the Recreational Activities, including, but not limited to, brush clearing and grading (subject to Section VI, below); and
- D. The right to engage a County supported concessionaire ("**Concessionaire**") for the purposes of offering the use of the Recreational Rights and access to and from the Reservoir to the general public for the purpose of Recreational Activities.

The County's use of the Premises includes the ability to offer to the general public access and use of the Reservoir and the waters of Irvine Lake for the Recreational Activities as well as access and use of the Premises by County contractors, licensees, employees, the Concessionaire, etc. to effectuate the County and general public's exercise of the Recreational Rights to conduct Recreational Activities.

The rights granted herein are subject to all easements, covenants, conditions, restrictions, reservations, rights, rights-of-way, encumbrances, assessments, leases and other matters of record, apparent or of which County is or should be aware, as such matters now or hereafter affect the Premises.

Licensors retain all of their respective rights in the Premises and the County will not acquire any interest temporary, permanent, irrevocable, possessory or otherwise by reason of this License, or by the exercise of the permission given herein. The County will make no claim to any such interest.

¹ Should the County terminate this License "for cause," to include, among other things, regulatory restrictions that frustrate Recreational Activities, or material breach by one of the Licensors, then County is not required to provide a 30 day written notification prior to terminating this License.

VI. IMPROVEMENTS

County may make improvements to the Premises and perform all necessary repair and maintenance of said improvements in order to engage in the use and benefit of the Recreational Activities. County must submit to Licensors, for prior written approval, complete improvement plans, including grading plans, identifying all proposed improvements. Submittal and response from SWD and IRWD shall be concluded within two (2) weeks prior to County making any improvements to the Premises. The Parties agree to work in good faith to agree on any adjustments or modifications to County's plans for improvements and to work expeditiously on finalizing any such plans. Licensors are not required, at any time, to make any improvements, alterations, changes or additions of any nature whatsoever to the Premises; provided, however, that Licensors shall be responsible to repair damage to any County-installed improvements caused by the active negligence or intentional acts or omissions of Licensors or their respective contractors, agents, employees, or invitees.

VII. MAINTENANCE AND REPAIRS

Except for maintenance or repairs necessary to address damage caused by the negligent or intentional acts or omissions of Licensors or their respective contractors, employees, invitees, etc., County shall perform, at its sole cost and expense, all maintenance and repairs of any improvements installed by County within the Premises. Such maintenance shall be performed in such manner and at such intervals as shall be required to maintain County's improvements within the Premises in good condition and repair, and shall be accomplished without interfering with the use and operation of the Reservoir for water supply purposes by SWD and IRWD.

VIII. FEE

For the County's use of the Recreational Activities, the County shall pay SWD a fee ("Fee") which shall be the greater of: (i) \$4,500 per month or (ii) 25% of the County's net proceeds obtained from its Recreational Activities. Payment of the Fee shall be made on a monthly basis in arrears within forty-five days with supporting documents to verify the Fee paid.

If this License is terminated by County prior to its expiration date for convenience pursuant to Section IV, above, the County shall provide thirty (30) days advance notice and shall pay the full amount otherwise due for any month or portion of month this License is still in effect, with no pro rata calculation applicable for such month.

If this License is terminated by County prior to its expiration date for cause (e.g. material breach, regulatory requirements impose a substantial and negative impact on County's use of the License), the termination shall be effective immediately upon written notice provided by County to the Licensors, and County shall only be responsible for a pro rata difference in the Fee owed for the County's actual use of the Premises.

IX. APPROVALS; COMPLIANCE

The County's use of the Premises hereunder shall be conditioned upon the County, at its sole cost and expense:

- A. Obtaining and/or maintaining all necessary licenses and permits from all appropriate public and/or governmental agencies with respect to such use;

- B. Complying with each and every federal, state (including the California Environmental Quality Act) or local law, regulation, standard, decision of court, ordinance, rule, code, order, decree, directive, guideline, permit or permit condition, together with any agreement, declaration of covenants, conditions and restrictions which have been recorded in any official or public records with respect to the Reservoir or any portion thereof, each as currently existing and as amended, enacted, issued or adopted in the future which are or become applicable to the License Area; and
- C. Reimbursing the Licensors for the actual costs of any increased regulatory compliance arising out of or relating to the County's uses under this License (including but not limited to water quality monitoring and compliance costs related to fishing), subject to (i) prior written notice of any such costs is provided to County by Licensors, or directly to the County by a regulatory agency with proper jurisdiction; (ii) the costs arise from and are directly attributed to the County's use under this License; and (iii) the County retains its right to terminate this License prior to incurring such costs.

X. DAMAGE; LIENS

The County shall repair and restore any damage or casualty to any improvements located within the Premises arising from the County's exercise of this License and/or use of the Premises hereunder. The County shall not permit to exist or otherwise to be enforced against the Premises (or any portion thereof) any mechanics', materialmen's, contractors' or other liens arising out of the acts or omissions of the County hereunder.

XI. HAZARDOUS SUBSTANCES

The County shall not use, store, or allow the use of any hazardous substances on or onto the Premises, except those used in the normal course of business for the Recreational Activities.

XII. INDEMNIFICATION

- A. The County shall hold harmless, defend with counsel (approved by Licensors) and indemnify Licensors, their elected Board members, respective officers, agents and employees, and successors and assigns, from and against all claims, loss, damage, actions, causes of actions, expense and/or liability arising from or related to loss or damage to property, including that of Licensors, or injury to or death of persons, including but not limited to, agents or employees of Licensors and members of the public that visit Irvine Lake per the County's opening of Irvine Lake for recreation, that result in any manner whatsoever, directly or indirectly, by the County's, and by extension, the public's, use of the Premises during the Term of this License.

- B. The Licensors shall hold harmless, defend with counsel (approved by County) and indemnify County, its elected Board members, officers, agents and employees, and successors and assigns, from and against all claims, loss, damage, actions, causes of actions, expense and/or liability arising from or related to loss or damage to property, including that of County, or injury to or death of persons, including employees of County, resulting in any manner whatsoever, directly or indirectly, by the Licensors' use of the Premises during the Term of this License. Licensors shall not incur an indemnification obligation by virtue of adding or removing water from Irvine Lake, or from otherwise maintaining water levels or water quality in Irvine Lake.

XIII. ENTRY AT OWN RISK; NO DUTY TO WARN; RELEASE

The County and any other person entering upon the Premises under the authority or color of this License does so at his/her/its own risk and peril. Licensors shall have no duty to inspect the Premises (or any portion thereof) and no duty to warn any person of any latent or patent defect, condition or risk that might be incurred in the exercise of the rights granted herein. A lake carries the inherent risk of drowning or other injury to persons that access the lake, and the Parties agree that Licensors shall have no obligation to prevent drownings or other injuries to persons that access Irvine Lake per the County's opening of Irvine Lake for recreation. Accordingly, the County hereby agrees to release Licensors from any liability or third party claims that result from Recreational Activities by the public at Irvine Lake, as well as for any claimed injury attributable to water quality in Irvine Lake and/or SWD and/or IRWD filling, or declining to fill, Irvine Lake.

XIV. NOTICE

Unless otherwise expressly identified and authorized in the preceding Sections of this License, any and all notices given or delivered by any Party hereto shall be in writing and delivered in person or by Federal Express or similar private commercial courier for next business day delivery or otherwise deposited in the United States mail in the County of Orange, California, duly certified or registered, postage prepaid, and addressed as set forth below:

<u>County of Orange</u>	<u>Irvine Ranch Water District</u>	<u>Serrano Water District</u>
OC Parks 13042 Old Myford Road Irvine, CA 92602 Attn: OC Parks, Real Estate Division	Irvine Ranch Water District 15600 Sand Canyon Avenue P.O. Box 5700 Irvine, CA 92619-7000 Attn: General Manager	Serrano Water District 18021 East Lincoln St. Villa Park, CA 92861-8700 Attn: General Manager

XV. MISCELLANEOUS

- A. This License shall be binding on the agents, employees, concessionaires, and legal representatives of each of the Parties hereto. The County shall not assign or transfer its interest in this License without the prior written consent of Licensors. Any such assignment without the consent and approval in writing of Licensors shall cause this License to automatically terminate.
- B. This License represents the entire agreement between the Parties hereto regarding the subject matter herein and supersedes all prior negotiations, representations or agreements, either written or oral. Exhibit 1 is attached hereto and is hereby incorporated herein by this reference for all purposes.
- C. This License may be modified only by written instrument executed by all Parties hereto.
- D. Time is of the essence of each provision of this License.
- E. No delay on the part of any Party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any Party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.
- F. This License shall be governed by and construed in accordance with the laws of the State of California.
- G. If any suit or action is brought to enforce or construe any provision of this License, each Party shall be responsible for its own costs and expenses arising out of such litigation, including attorneys' fees and court costs.
- H. Serrano Water District maintains an Aquaculture Permit, Facility Registration #1005950752 ("Aquaculture Permit"), with the California Department of Fish and Wildlife ("CDFW") which authorizes fish stocking in Irvine Lake. The Aquaculture Permit also allows for the public to participate in shoreline fishing of Irvine Lake without a CDFW freshwater fishing license. If authorized by CDFW, and as part of this License, SWD may agree to transfer its maintained and registered Aquaculture Permit to the County for the duration of this License. The County may agree to accept the transfer of the Aquaculture Permit, if authorized by CDFW, for the duration of this License, and if County accepts the transfer, County agrees to transfer the Aquaculture Permit back to SWD at the end of the Term (unless such transfer period is extended by written concurrence of SWD).
- I. This License may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument.

[SIGNATURE PAGE TO FOLLOW]

This License may be executed and delivered in counterparts by facsimile, each of which so executed and delivered counterpart is original, and such counterparts, together, shall constitute but the same instrument. Each of the Parties hereto agrees to additionally execute, and deliver, original copies of this agreement circulated subsequent to its initial execution and delivery by facsimile.

IN WITNESS WHEREOF, the Parties have executed this License as of the Effective Date.

County of Orange



Date 28 June 2019

Thomas A. Miller
Chief Real Estate Officer (Delegated
authority per Resolution 17-003)

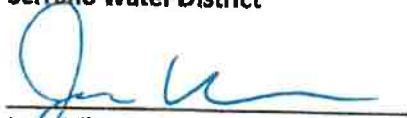
Irvine Ranch Water District



Date 27 June 2019

Paul Cook
General Manager

Serrano Water District



Date 27 June 2019

Jerry Villander
General Manager

EXHIBIT 1 - MAP OF PREMISES

