

**UNITED STATES OF AMERICA  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
MONTANA AREA OFFICE**

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**CONCESSION CONTRACT**

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**FOR THE DEVELOPMENT, OPERATION, AND MAINTENANCE  
OF A  
CONCESSION OPPORTUNITY AT THE  
YACHT BASIN CONCESSION AREA  
CANYON FERRY RESERVOIR**

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**CANYON FERRY UNIT  
PICK-SLOAN MISSOURI BASIN PROGRAM  
MONTANA**

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**EXHIBITS**

- Exhibit A: Nondiscrimination
- Exhibit B: Site Map and Concession Area
- Exhibit C: Assigned Reclamation Property and Improvements
- Exhibit D: Boat Dock Standards
- Exhibit E: 2005 – 2010 Facility Improvement Plan

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**CONCESSION CONTRACT**

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**FOR THE DEVELOPMENT, OPERATION, AND MAINTENANCE  
OF A  
CONCESSION OPERATION AT THE  
YACHT BASIN CONCESSION AREA  
CANYON FERRY RESERVOIR**

This Concession Contract (Contract) made this 21<sup>st</sup> day of March, 2005, pursuant to the Act of Congress dated June 17, 1902 (32 Stat 388), and acts amendatory thereof, or supplementary thereto, all of which acts are commonly known and referred to as Federal Reclamation Law, is entered into by and between the United States of America, Department of the Interior, Bureau of Reclamation (Reclamation) and Frazier Industries, Inc. dba Yacht Basin Marina.

Corporation:

Frazier Industries, Inc. dba Yacht Basin Marina, a corporation organized and existing under the laws of the State of Montana (hereinafter referred to as the "Concessionaire").

**WITNESSETH THAT:**

**WHEREAS**, Canyon Ferry Reservoir, a unit of the Pick-Sloan Missouri Basin Program, is administered by Reclamation for power generation, flood control, irrigation, municipal and industrial benefits, recreation, and fish and wildlife; and,

**WHEREAS**, Reclamation has determined that concession-provided recreational facilities and services for public use and enjoyment of Canyon Ferry Reservoir are necessary and appropriate; and,

**WHEREAS**, Reclamation desires the concessionaire to operate, maintain, and supply recreation-related facilities and services for public use and enjoyment of Canyon Ferry Reservoir at the Yacht Basin concession area (Area) at reasonable rates and under the general administration and regulations of Reclamation; and

**WHEREAS**, The Concessionaire desires to provide the operation, maintenance, and supply of recreation-related facilities and services for the public use and enjoyment of Canyon Ferry Reservoir, at Yacht Basin Area:

**Now Therefore**, pursuant to the authority contained in Reclamation Law, other pertinent Applicable Laws, P.L. 105-277 as amended, and Executive Orders in effect now or as may be modified or amended in the future, Reclamation and the Concessionaire agree to enter into this Contract in order to provide recreation related facilities and services for the public use and enjoyment of Canyon Ferry Reservoir at the Yacht Basin Area. This contract has been developed within, and is consistent with Reclamation's 2002 Concession's Management Policy, Directives and Standards. The parties hereby agree to adhere to and abide by the terms and conditions set forth in the following Sections:

## **SEC. 1 TERM OF CONTRACT**

This Contract shall be effective from March 21, 2005, until its expiration on December 31, 2025. This Contract shall not be renewed. Should Reclamation determine that continued commercial services at the Yacht Basin Area are necessary and appropriate, such business opportunities shall be advertised for public competition and a new concession contract issued. At the expiration of this Contract, the then-existing concessionaire shall have no preference rights.

## **SEC. 2 DEFINITIONS**

The following terms used in this Contract will have the following meanings, which apply to both the singular and the plural forms of the defined terms:

- 1) "Applicable Laws" means Federal, State, and local laws, orders, ordinances, and rules and regulations, whether now in force or amended, enacted, or promulgated in the future.
- 2) "Area" means the lands and waters of the Yacht Basin concession area to be administered by the Concessionaire under this Contract.
- 3) "Days" shall mean calendar days.
- 4) "Exclusive Use" is any use that excludes other appropriate public recreation use or users for extended periods of time. Exclusive use includes, but is not limited to, privately owned boat docks, cabins, trailers, manufactured or mobile homes, structures, roads, or other amenities that are determined by Reclamation to be exclusive use. Concessionaire owned personal property or improvements which support or are used in the performance of this Contract are not considered private exclusive use.
- 5) "Exhibit" shall mean the various exhibits that are attached to this Contract, each of which is hereby made a part of this Contract.

- 6) "Gross receipts" means the total amount received or realized by, or accruing to, the Concessionaire from all sales for cash or credit, for services, accommodations, materials, other merchandise, and gross receipts earned from electronic media sales, but excluding:
  - (a) Intra-company earnings on account of charges to other departments of the operation (such as laundry)
  - (b) Charges for employees' meals, lodgings, and transportation
  - (c) Cash discounts on purchases
  - (d) Cash discounts on sales
  - (e) Returned sales and allowances
  - (f) Interest on money loaned or in bank accounts
  - (g) Income from investments
  - (h) Income from subsidiary companies outside the Area
  - (i) Sale of property other than that purchased in the regular course of business for the purpose of resale and,
  - (j) Sales and excise taxes that are added as separate charges to sales prices, gasoline taxes, fishing and hunting license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid government agencies.
  - (k) All monies paid into coin-operated devices, except coin-operated telephones, whether provided by the Concessionaire or by others, shall be included in gross receipts. Revenues actually received by the Concessionaire from coin-operated telephones shall be included in gross receipts.
  - (l) All revenues received from charges for in-room telephone or computer access shall be included in gross receipts.
- 7) "MDFWP" or "FWP" refers to the Montana Department of Fish, Wildlife and Parks.
- 8) "Sub-concessionaire" means a third party that has entered into an agreement with a Concessionaire to provide services to the public, whether in consideration of a percentage of revenues or otherwise. Sub-concessionaires are not authorized.
- 9) "Visitor services" means the required and authorized facilities and services the Concessionaire provides under this Contract.
- 10) "Waste stream" means any hazardous waste, hazardous materials, asbestos or used oil. A waste stream includes pumped sewage (e.g. from holding tanks). A waste stream would also include any point source discharges (e.g. outfall from a sewage treatment plant) into Canyon Ferry Reservoir.
- 11) "Feral animal" means any domesticated animals that have returned to a wild state.

## **SEC. 3 SERVICES AND OPERATIONS**

### **A. Visitor Services**

- 1) Required Visitor Services. The Concessionaire is required to provide the following visitor services during the term of this Contract:
  - (a) Gasoline and motor oil sales
  - (b) Boat docks/slips (minimum of 80 and maximum of 200 slips)
  - (c) Groceries, snacks, and sundries appropriate for the types of recreation use occurring at Canyon Ferry Reservoir
  - (d) Non-alcoholic beverage sales
  - (e) Tourist and directional information to the public
  - (f) Fishing tackle and supplies
  - (g) Camping and day use recreation supplies
  - (h) Courtesy boat dock
  - (i) Boat Ramp
  
- 2) Authorized Visitor Services. The Concessionaire is authorized but not required to provide the following visitor services during the term of this Contract:
  - (a) Boat and equipment rentals
  - (b) Photo and film supplies
  - (c) Prepared food
  - (d) Liquor, beer, and wine, subject to Montana state licensing requirements
  - (e) Interpretive materials (e.g. books, postcards, posters, photographs, etc.)
  - (f) Boat launching assistance, for a fee
  - (g) Propane sales
  - (h) Seasonal boat and trailer storage
  - (i) Fishing and hunting licenses, subject to approval of the MDFWP
  - (j) Short-term cabin rentals, day use recreation facilities, and camping
  - (k) Pay phone services
  - (l) Recreation related instructional services (e.g. lessons, etc.)
  - (m) Guided recreation services (e.g. fishing, boat tours, etc.)

### **B. Additional Services**

- 1) Unless this Contract is otherwise amended, the Concessionaire's use of the Area shall be limited to the required and authorized services as provided for in this Contract.
  
- 2) The Concessionaire may request authorization for additional visitor services which it believes may be beneficial to public recreation; however, Reclamation retains the sole right and authority to determine whether those additional visitor services will be provided.



- 3) Reclamation may identify additional visitor services that should be provided, and may expand the size to the Area to include other immediately adjacent (abutting to) Reclamation administered land and water areas at Canyon Ferry Reservoir and assign those opportunities to the Concessionaire, provided the Concessionaire is in agreement. If the Concessionaire declines to offer the additional visitor services as proposed by Reclamation and Reclamation determines the visitor services are necessary and appropriate, another contract for those services may be issued.
- 4) Any and all changes in visitor services provided by the Concessionaire shall be documented in writing and amended to this Contract before such visitor services may be provided.

### C. Operations and Maintenance

- 1) Annual Operating and Maintenance Plan. The Concessionaire shall prepare and annually revise, by March 1 of each year of operation, an operation and maintenance (O&M) plan for Reclamation's review and approval. The O&M plan shall describe, among other things, how and/or when the Concessionaire will conduct maintenance activities including painting and repairs, landscaping and grounds maintenance, and trash pick-up; how the Concessionaire will provide services to the public and proposed hours of operation; how the Concessionaire will protect public health and safety and environmental resources; and emergency plans in the event of fire or hazardous material spills. The O&M plan shall contain sufficient detail to enable Reclamation to monitor operations for compliance.

Reclamation and the concessionaire will meet annually prior to January 1 to review Reclamation's planned activities in the concession area for the upcoming season. This meeting is to ensure the integration of the Concessionaire's and Reclamation's activities to minimize impact to concession operations, and public access/services, and to establish clear time frames for the benefit of both parties.

- 2) Concessionaire Responsibilities.
  - (a) The Concessionaire shall operate and maintain the visitor services described in this Contract and any related support facilities and services, including any Reclamation-provided facilities and improvements, to such an extent and in a manner considered satisfactory by Reclamation. The Concessionaire shall provide the personnel, improvements, equipment, goods, and commodities necessary for providing, operating, and maintaining the visitor services in accordance with this Contract, including but not necessarily limited to the following:
    - (1) All equipment necessary to operate the concession store and fuel distribution system
    - (2) All equipment necessary to construct and maintain docks and rental slips
    - (3) Vehicle and vessel support for the concession operation
    - (4) Tools and maintenance equipment needed for maintenance of facilities

- (5) Residence(s)
  - (b) In the event the existing residence(s) need to be replaced, the Concessionaire must receive prior written approval from Reclamation regarding the type and quality of the mobile residence to be used and its placement. The mobile residence may not be constructed or placed in a permanent manner. It must be maintained in a condition that allows it to be removed from the concession site, at the Concessionaire's sole expense, at the termination or expiration of this Contract, if so required.
  - (c) Concessionaire responsibilities include, but are not limited to, the following:
    - (1) Paying monthly operation fees for the Area telephone system
    - (2) Mowing and watering lawn areas and watering planted trees within the Area
    - (3) Picking up trash and litter within the Area, and disposing of garbage off-site at a Montana approved waste facility site
    - (4) No burning or burying of trash is permitted
    - (5) Paying all utility costs incurred by the Concession, including LP gas and electricity
    - (6) Securing and winterizing buildings and improvements at the end of the recreation season
    - (7) Obtaining all licenses and permits necessary to operate the concession
    - (8) Providing Reclamation a copy of all licenses upon request or during scheduled inspections
    - (9) Placing, anchoring, adjusting, or otherwise operating and maintaining service docks and the boat ramp courtesy dock
    - (10) Maintaining, repairing, or replacing the domestic water system, heating systems, septic system, telephone and electrical systems, gasoline system (including the pump and delivery hoses)
    - (11) Pumping out sewage effluent from the Area's outdoor vault toilets and concession septic tank as needed, and disposing of it off the Federal estate at a State or local approved site
    - (12) Maintaining and repairing the storage area
    - (13) Assisting in the collection of data related to recreation uses occurring within the Area as may be requested by Reclamation
    - (14) Providing potable water within the Area for personal and public use, including any testing and permitting requirements imposed by the Montana Department of Environmental Quality
    - (15) Ensuring that no open burning is to be allowed in the Area with the exception of campfires within designated fire rings and other contained recreational uses.
    - (16) The burning of vegetative materials and salvage docks will be allowed until May 1, 2010 provided all necessary permits are in place.

#### D. Operating Season

The minimum recreation season shall be May 1 through September 30 each year. Services shall be available at a minimum from 9 a.m. to 6 p.m. for a minimum of five (5) days per week which includes weekends and holidays. Dates and times of operation may be shortened with Reclamation's prior written approval.

#### E. Public Access

Except for any restrictions that the Concessionaire and Reclamation agree are necessary to protect the installation and operation of authorized structures, facilities, or services covered by this Contract, the Area shall remain open to the public for all lawful purposes. The Concessionaire shall have no other control over public access to or use of the Reservoir and surrounding Federal lands. The Concessionaire may not interfere with members of the public who purchase merchandise or services elsewhere and bring it for consumption or use within the Area.

#### F. Non-Exclusive Use

The activities authorized by this Contract are not exclusive. Reclamation reserves a continuing right of access to the Area at all times, including a continuing right of physical entry for inspections, monitoring, or any other purpose consistent with any right or obligation of the United States under any law or regulation or for project purposes.

#### G. Visual Identity and Quality Control

- 1) Reclamation reserves the right to review and evaluate the nature, type, and quality of the visitor services or support activities provided by the Concessionaire as permitted by this Contract, including, but not limited to, merchandise, promotional material, interpretive material. If, as may be determined by Reclamation, any merchandise, promotional material, interpretive material, programs, etc., are offensive in any manner, inappropriate, or illegal, Reclamation may require the Concessionaire to remove said merchandise, promotional material, interpretive material, programs, etc., from the Area.
- 2) Any additional visitor services not already authorized by this Contract that may result from the provision of any new interpretive programming or activities must be recognized through prior written amendment of this Contract.
- 3) The Concessionaire will work with Reclamation when constructing or replacing any major site identification signage so that Reclamation can conform to their Visual Identity Program.
- 4) Reclamation reserves the right to furnish and install a sign to identify the area as an authorized concession area. Reclamation will work with Concessionaire to assure appropriate placement and size of any new signage.

## H. Rates

- 1) The Concessionaire is responsible for establishing all prices and rates for merchandise and services charged to the public. Reclamation reserves the right to review and monitor prices and rates of key services as listed in Section 3 H(2) and to conduct comparability studies of the submitted prices and rates. Reclamation reserves the right to approve or adjust the prices and rates if the studies prove those prices and rates are excessive.
- 2) The Concessionaire shall conspicuously post all prices and rates for facilities and services such as boat dock rentals, boat dry storage, launching fees, cabin rentals, boat rentals, camping fees, and group use fees.
- 3) By January 1 of each year, the Concessionaire shall provide a list of prices and rates listed in Section 3 H(2) to Reclamation for the coming year. If Reclamation has not responded to the Concessionaire regarding the list of prices and rates within 30 calendar days of its submittal, such prices and rates shall be considered approved.

## I. Impartiality as to Rates and Services

- 1) The Concessionaire and its employees shall observe a strict impartiality as to rates and services in providing facilities and services. The Concessionaire shall comply with all Applicable Laws relating to nondiscrimination in providing visitor services to the public, including those set forth in Exhibit A.
- 2) The Concessionaire may grant complimentary or reduced rates and charges under such circumstances as are customary in a concession related business. However, Reclamation reserves the right to review and modify the Concessionaire's complimentary or reduced rate and charges policies and practices as part of its rate approval process.
- 3) The Concessionaire will provide Federal employees conducting official business complimentary or reduced rates and charges for concession-provided services in accordance with any guidelines which might be established by Reclamation, but only to the extent that they are equally available to the general public.

## J. Exclusive Use

Concessionaire-owned personal property or improvements which support or are used in the performance of this Contract are not considered private exclusive use. Private exclusive use is not authorized within the Area. Reclamation has determined the definition of private exclusive use and requires its removal upon direction to the Concessionaire.

## K. Seasonal Use of Cabins

- 1) Seasonal use of cabins may be authorized by Reclamation. Such use, when authorized, shall meet the following requirements:

- (a) No permanent or year-round residency by the public is authorized
  - (b) Seasonal permits may not be issued for periods of time greater than one month at a time or beyond the expiration date of this Contract
  - (c) No seasonal permittee-owned improvements, e.g. decks or fencing, are permitted
  - (d) Permittees may not store non-recreation related personal property on the cabin site
  - (e) Current registration must be displayed on all vehicles, boats, trailers, etc., parked in the concession area or at the cabin site
  - (f) At the end of each seasonal permit, the permittee must remove all personal property from the cabin site for a minimum of 2 weeks before the permittee may be issued a new seasonal permit
  - (g) If Concessionaire-provided dry storage area is available, the Concessionaire may provide cabin permittees seasonal or year round opportunities for the storage of travel trailers, boats, boat trailers, or other recreation-related personal property. No such permits may be issued beyond the expiration date of this Contract.
  - (h) The Concessionaire may not issue seasonal permits for more than 50 percent of all cabins. The Concessionaire and Reclamation may periodically revisit the percentage rate and establish a new limit based on occupancy rates and demands.
- 2) Absent the issuance of a seasonal permit, use of cabins and campsites shall be limited to no more than 14 days within any 30 day period.

#### L. Pets and Livestock

- 1) Concessionaire-owned livestock, farm animals, domestic fowl, etc., are prohibited within the Area unless such animals are necessary for the operation of the Concession. Prior written approval from Reclamation shall be obtained regarding the use or placement of such animals within the Area.
- 2) The Concessionaire may provide facilities (e.g. corrals or pens) for short-term boarding of visitor-owned domestic pets or livestock, provided the facilities are adequate, safe, and sanitary. Prior written approval from Reclamation shall be obtained regarding the term of use and the placement of such facilities within the Area. Commercial long-term or seasonal boarding of such domestic pets or livestock is not permitted.
- 3) Dogs, cats, and other pets shall not be allowed free access of the Area and must be restrained at all times when outdoors or in public areas within buildings. Concessionaire shall attempt to control feral animals if they exist within the concession area.

#### M. Safety

The Concessionaire is responsible for providing and ensuring a safe and healthful environment for the recreating public and employees by developing, implementing, and administering health, safety, and educational programs.

## **SEC. 4 CONCESSIONAIRE PERSONNEL**

### **A. Employees**

- 1) The Concessionaire shall comply with all Applicable Laws relating to employment and employment conditions, including those set forth in Exhibit A.
- 2) The Concessionaire and its employees shall be hospitable and exercise courtesy and consideration in their relations with the public. The Concessionaire and its employees who come in direct contact with the public will wear a uniform (e.g. shirt or coat with resort logo, etc.) by which they may be identified and associated with the concession operation.
- 3) The Concessionaire shall maintain a drug free environment within the Area. The Concessionaire shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and in the Area.

### **B. Housing**

- 1) Residency within the Area by the Concessionaire is permitted throughout the year. If requested by the Concessionaire, Reclamation may authorize the Concessionaire to provide a limited number of residency opportunities for its employees. Such residency for the Concessionaire and its employees is not permanent; upon termination of employment or termination or expiration of this Contract, any such residency is immediately terminated.
- 2) Non-immediate family members not employed by the Concessionaire or employees that are terminated may not reside in the Area.
- 3) Only Concessionaire-provided employee housing is permitted for residences unless a Camp Host Program, similar to Reclamation's existing program is proposed by Concessionaire and approved by Reclamation. If housing is rented to an employee, rental fees must be reasonable and based on current local rates.
- 4) The Concessionaire shall provide Reclamation a regularly updated written listing of all residences, including the names and position titles of all persons that may be residing on site.

## **SEC. 5 LEGAL AND REGULATORY COMPLIANCE**

### **A. Legal and Regulatory Compliance**

- 1) The Concessionaire shall comply with all Applicable Laws and Executive Orders now in effect or as may be modified or amended in the future.

- 2) This Contract is revocable and terminable. It is not real property, does not convey any interest in real property, and may not be used as collateral for a loan unless prior written Reclamation approval is granted. If approval is to be granted, Reclamation shall review and approve, in advance, any documents related to such an action.

#### B. Violations

The Concessionaire shall give Reclamation immediate notice of any written violation of Applicable Laws and Executive Orders received from another regulatory agency by the Concessionaire, including its employees, agents, or contractors, and, at its sole cost and expense, must promptly rectify any such violation.

#### C. Addresses and Notification Process

The mailing of any official document, letter, report, etc., by registered or certified mail, return receipt requested, to the mailing address of record shall be sufficient service. Each party shall notify the other party, in writing, of any changes to its mailing address of record or physical address and its official telephone contact number. Until or unless changed, the following constitute the parties' mailing addresses of record, physical addresses, and official telephone contact numbers:

Reclamation's:

Canyon Ferry Field Office, Facility Manager  
7700 Canyon Ferry Road  
Helena, MT 59602

Telephone Number: 406-475-3923

Concessionaire's:

Yacht Basin Marina  
3555 West Shore Drive  
Helena, MT 59602  
Attention: Bill and Kathy Frazier

Telephone Number: 406-475-3440

#### D. Accident Reporting

The Concessionaire shall immediately provide Reclamation and other appropriate State or local officials with an oral report of any event occurring within the concession area, of which the Concessionaire is aware, that results in the death of or serious injury to an employee or member of the general public. If a written report must be submitted to any Federal, State, or local agencies, copies will be sent to Reclamation.

## SEC. 6 ENVIRONMENTAL AND CULTURAL PROTECTION

### A. Environmental Data, Reports, Notifications, and Approvals

- 1) Hazardous Substances and Waste Streams. The Concessionaire shall submit to Reclamation:
  - (a) A Spill Prevention, Control, and Countermeasure (SPCC) Plan prior to storing, dispensing, or selling fuel. The SPCC Plan must be updated and submitted to Reclamation every 5 years or whenever changes are made to the fuel storage/delivery system.
  - (b) An inventory of hazardous substance used and stored in the Area by the Concessionaire will be available to Reclamation upon request or during scheduled inspections.
  - (c) An inventory of all waste streams generated by the Concessionaire will be available to Reclamation upon request or during inspections, including documentation and data, if applicable.

Reclamation may prohibit the use of any hazardous substance by the Concessionaire in its operations under this Contract. The Concessionaire shall obtain Reclamation's approval before using any extremely hazardous substance, as defined in the Emergency Planning and Community Right to Know Act of 1986 and the Pollution Prevention Act of 1990.

- 2) Reports. The Concessionaire shall submit to Reclamation copies of all documents, reports, monitoring data, and manifests relating to environmental topics required under Applicable Laws to be submitted to any regulatory agency.
- 3) Notification of Releases. The Concessionaire shall immediately provide Reclamation and other appropriate agencies oral notification of any un-permitted discharge or release, or threatened release of any hazardous or toxic substance, material, or waste of any kind, including, without limitation, building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product within or in the vicinity of the Area. A written report shall be submitted to Reclamation within 5 calendar days of the event and to any Federal, State, or local agencies that may be required or direct such report.
- 4) Notice of Violation. The Concessionaire shall, within 5 calendar days of its receipt, give Reclamation a copy of any notice of violation or warning from other regulatory agencies of any Applicable Law arising out of the activities of the Concessionaire, its agents, or its employees.
- 5) Communication with Regulatory Agencies. The Concessionaire shall provide timely written advance notice to Reclamation of scheduled communications, including without limitation, meetings, audits, inspections, hearings, and other proceedings between regulatory agencies and the Concessionaire related to compliance with Applicable Environmental Laws concerning its operations under this Contract. The Concessionaire



shall also provide Reclamation any written materials prepared or received by the Concessionaire in advance of or subsequent to any such communications. The Concessionaire shall also provide timely notice to Reclamation following any unplanned communications between environmental regulatory agencies and the Concessionaire.

#### B. Corrective Action

- 1) The Concessionaire, at its sole cost and expense, shall promptly control and contain, and remediate any discharge, release, or threatened release of any hazardous material or waste arising in connection with the Concessionaire's operations under this Contract. Any threatened or actual violation arising in connection with the Concessionaire's operations under this Contract is the sole responsibility of the Concessionaire.
- 2) If the Concessionaire does not promptly control and contain, and remediate any unauthorized discharge or release arising out of the activities of the Concessionaire or its employees, agents, and contractors, Reclamation may, at its sole discretion and after notice to the Concessionaire, take any such action consistent with Applicable Laws. The Concessionaire shall be liable for and shall pay to Reclamation any costs associated with such action upon demand. Nothing in this section shall preclude the Concessionaire from seeking to recover costs from a responsible third party.
- 3) The Concessionaire shall comply with any directives of Reclamation to clean up or remove any materials, product, or by-product used, handled, stored, disposed, or transported onto or into the Area by the Concessionaire to ensure that the Area remains in good condition, even if not specifically required by Applicable Laws.

#### C. Weed and Pest Management

The Concessionaire shall develop an annual Integrated Pest Management Plan for managing weeds, insects, rats, mice, and other pests for all lands and waters assigned to the Concessionaire under this Contract, and all such weed and pest management activities shall be in accordance with Applicable Laws and guidelines as may be established by Reclamation or other regulatory agencies. Chemicals and methods of controlling weeds and pests should also be described in the annual Operation & Maintenance Plan.

#### D. Protection of Cultural and Archaeological Resources

The Concessionaire shall be particularly alert in any construction operations to take all reasonable and necessary precautions to protect and preserve any and all antiquities or other objects of archaeological, paleontological, cultural, historic, or scientific interests on Reclamation lands within the concession site. Objects under consideration include, but are not limited to, historic or prehistoric ruins, human remains, funerary objects, and other artifacts. Should such sites or objects or evidence of sites or objects be discovered, the Concessionaire shall immediately suspend any and all work involving the area in question, make a reasonable effort to protect such discovery, and advise Reclamation of the existence of such discovery. The Concessionaire shall immediately provide an oral notification to Reclamation of the discovery of

human remains on Reclamation lands. The Concessionaire shall forward a written report of its findings to Reclamation within 48 hours by certified mail. The Concessionaire shall cease activity and stabilize and protect such discoveries until authorized to proceed by Reclamation. Protective and mitigative measures specified by Reclamation shall be the responsibility of the Concessionaire. Reclamation shall promptly have the area inspected to determine its historical significance and the appropriate actions to be taken (e.g. salvage, test excavation, etc., or resumption of construction activities). Cost of any salvage work, test excavation, etc., will be borne by the United States. All objects salvaged from public lands are the property of the United States Government and will be turned over to Reclamation for disposition.

## **SEC. 7 CONCESSION FACILITIES USED IN OPERATION**

### **A. Assignment of Concession Area**

Reclamation hereby assigns the Area to the Concessionaire. The Area contains approximately 34.79 acres of land and water and is located in the SW ¼, Section 10, T10N, R1W, as shown and described in Exhibit B, attached hereto, and is commonly known as the Yacht Basin Marina. Reclamation will conduct a survey and mark the boundaries of the Area.

### **B. Area Withdrawals**

Reclamation may withdraw all or portions of the Area at any time during the term of this Contract if:

- (a) The withdrawal is necessary for the purpose of conserving, preserving, or protecting project purposes, resources, or visitor health or safety;
- (b) The concession services using the Area have been terminated or suspended.

### **C. Effect of Withdrawal**

Any permanent withdrawal of lands or waters from the Area that Reclamation and the Concessionaire considers being essential for the Concessionaire's ability to provide the visitor services required by this Contract will be treated as cause for the termination of this Contract pursuant to Section 15.

### **D. Right of Entry**

- 1) The right to remove from the Area material for construction, operation, and maintenance of Federal facilities and to construct, operate, and maintain such facilities thereon is reserved to the United States, its successors, agents, and assigns.
- 2) The right to prospect and carry on developments for oil, gas, coal, and other minerals, within the Area, as provided for under the Act of October 2, 1917 (40 Stat. 297), the Act of February 25, 1920 (41 Stat. 437), and the Act of August 7, 1947 (61 Stat. 913), is reserved to the United States, its successors, agents, and assigns.

- 3) The right to issue easements, rights of way, permits, etc., for use of the Area is reserved to the United States, its successors, agents, and assigns. When issuing such use agreements, Reclamation will make every effort to avoid actions that may be inconsistent with the Concessionaire's rights and privileges expressed under this Contract. Reclamation will consult with all parties prior to the issuance of such use agreements.
- 4) The right of the officers, agents, employees, licensees, and permittees of the United States and designees of public bodies, at all times and places, freely to have ingress to, passage over, and egress from all of said Area, for the purpose of exercising, enforcing, and protecting their rights is reserved to the United States, its successors, agents, and assigns. Reclamation shall provide a minimum of 48 hours notice to the Concessionaire for official health and safety inspections, financial audits, etc., that necessitate the Concessionaire's participation, for more than one (1) hour. Reclamation shall provide longer notice for inspections requiring more of the Concessionaire's time, commensurate with the timing and urgency of the inspection. Reclamation employees shall notify the Concessionaire upon their arrival at the concession area, and exercise courtesy and consideration in their relations with the Concessionaire and the public.

#### E. Condition of Reclamation Property or Improvements

The Concessionaire has inspected any assigned Reclamation property or improvements (Exhibit C), is thoroughly acquainted with their condition, and accepts them "as is."

#### F. Property Identification

Each item of movable Reclamation property provided to the Concessionaire under the terms of this Contract shall be physically identified by Reclamation as Reclamation property.

#### G. Utilities Not Provided by Reclamation

The Concessionaire shall secure necessary utilities at its own expense from sources outside the Area or shall install the utilities within the Area, with the prior written approval of Reclamation and under any requirements that Reclamation prescribes.

#### H. Permissive Water Use

All water obtained directly from the Reservoir is considered project water. Permission is granted to the Concessionaire to pump water from the Reservoir for non-potable purposes, including irrigation of the Area. Such use is permissive only and conveys no water rights to the Concessionaire. It is understood by the Concessionaire that permission to pump project water from the Reservoir does not preclude Reclamation from requiring the Concessionaire to enter into an appropriate water service contract if it is determined to be a requirement of such water use in the future. Any such water service contract so issued shall terminate upon the termination of this Contract or upon the assignment of this Contract to another concessionaire. Reclamation does not warrant the quality of the water and assumes no liability for water used by the

Concessionaire for such purposes. Furthermore, Reclamation is under no obligation to construct or furnish water treatment facilities.

#### I. Reclamation Responsibilities

Reclamation may perform extraordinary maintenance or replacement of Reclamation property or improvements if determined by Reclamation to be necessary and appropriate, provided that the maintenance and replacement of the property or improvements is not covered under the Concessionaire's insurance policy or the actions are not considered routine operations and maintenance activities the Concessionaire must provide. Reclamation reserves the right to remove without replacement, modify, or replace any Reclamation property or improvements requiring extraordinary maintenance. Reclamation will work with and involve the Concessionaire throughout the process (i.e. conceptual, functionality, construction timeframes, etc.).

#### J. Damage to Concessionaire Owned Facilities

Reclamation shall not be held responsible to the Concessionaire for losses, either financial or fixed assets, incurred during the operations of the Canyon Ferry Dam and Reservoir for authorized Project Purposes. Reclamation shall not be held responsible for any damages to the property stored or used in connection therewith resulting from any reservoir fluctuation, blowing, silt, flood, wildfire, or other natural occurrences or from any future modification or repair to the dam, reservoir, or adjoining Reclamation lands.

If Reclamation is negligent in its operation of the Project, the scope and limitations for liability is governed by the Federal Tort Claims Act.

### **SEC. 8 CONSTRUCTION, INSTALLATION, OR REMOVAL**

#### A. Construction or Installation Activities

- 1) The plans for modification of existing improvements and for new improvements or construction activities must be submitted, in writing, to Reclamation for its prior review and written approval. No improvements or construction activities may commence until prior written approval is granted. Reclamation will at all times have the right to determine the appropriate level of planning documents required to evaluate, to its satisfaction, the extent, scope, form, and structural integrity of all improvements or construction activities. All utility line replacements or initial installation shall be placed underground. Improvements or construction activities may require, but may not be limited to, the completion of National Environmental Policy Act (NEPA) reviews and cultural resource compliance. US Army Corps of Engineers and local Conservation District permitting requirements must be met before any improvements or construction activities commence. Depending upon the extent of proposed improvements or construction activities, the Concessionaire must plan activities in advance and provide Reclamation sufficient time to complete its administrative oversight duties as described

above. Reclamation shall respond within 45 days with approval, reason for disapproval, or reason that more time is needed.

- 2) All newly constructed facilities, or existing facilities to be reconstructed will be harmonious in form, line, color, and texture with the surrounding landscapes.
- 3) Concessionaire-provided or constructed improvements that are primarily landscaping or erosion control in nature shall, upon termination or expiration of this Contract, stay with the land and shall become Reclamation property without any compensation to the Concessionaire.
- 4) Boat docks shall meet the minimum standards described in Exhibit D. Dock designs that have been approved by Reclamation in the previous contract are understood to meet current standards. New steel-framed docks added during the term of the contract will be of similar design to those of the previous contract and must be maintained to meet the physical requirements described in the standards, unless waivers are given by Reclamation.

#### B. Removal Activities

- 1) The Concessionaire may not remove, dismantle, or demolish Reclamation owned facilities or improvements without the prior written approval of Reclamation.
- 2) The Concessionaire will give Reclamation reasonable notification before removing, dismantling, or demolishing major facilities or improvements that are owned by the Concessionaire.
- 3) Any salvage resulting from the authorized removal, severance, or demolition of Reclamation owned facilities or improvements shall become the property of the United States.
- 4) At the termination of this Contract, Reclamation reserves the right to request the Concessionaire to remove from the Area any Concessionaire-provided or constructed improvements, including those placed underground or permanently attached to Reclamation-owned property or improvements. The Concessionaire has the right to remove any concession provided improvements including decks, walkways, and underground utility placements. The Concessionaire is not guaranteed reimbursement for any Concessionaire provided or constructed improvements made to the Area.
- 5) In the event that Reclamation or Concessionaire-owned facilities or improvements are removed, abandoned, demolished, or substantially destroyed and no other improvements are constructed on the site, the Concessionaire, at its sole expense and upon the request of Reclamation, shall restore the site to a satisfactory condition, similar to the condition at the time of the contract award.

## SEC. 9 FEES

### A. Franchise Fee

- 1) For the term of this Contract, the Concessionaire shall pay to Reclamation for the privileges granted under this Contract a franchise fee equal to 2 percent of the Concessionaire's gross receipts for the preceding year or portion of a year.
- 2) The Concessionaire shall annually pay to Reclamation a minimum, advance, non-refundable franchise fee of \$1,000, regardless of gross revenues.

### B. Payments Due

- 1) The \$1,000 minimum franchise fee will be due and payable to Reclamation by January 31 of each year of the Contract for the coming year. The \$1,000 minimum franchise fee for the first year of operation shall be due to Reclamation within 30 calendar days after the execution of this Contract.
- 2) The balance of the annual franchise fee (gross revenues X percentage rate, minus the minimum franchise fee) shall be due and payable by April 20 of the year following the year of operation. If the \$1,000 minimum franchise fee or the franchise fee balance payment is not received by Reclamation by the respective due dates, the following year's minimum franchise fee shall be \$1,500.

### C. Late Payment

- 1) Late Payment Interest Charge: The Debt Collection Act of 1982 requires the assessment of a late charge if payment(s) is not received within thirty (30) days of the due date. Payments received after the thirty (30) day period will accrue daily interest at five percent (5%) per annum from the due date through the date of payment.
- 2) Administrative Charge: A fee of \$250.00 for the handling of the delinquent account will be assessed if the payment becomes more than sixty (60) days past due and again if it becomes over ninety (90) days past due.
- 3) Penalty Charge on Delinquent Account: An assessment of five percent (5%) per annum penalty charge will be made for each day the payment is delinquent if the debt becomes ninety (90) days past due.
- 4) Notwithstanding the fees and charges described above, Reclamation may terminate this Contract after 60 day delinquent notice is given by Reclamation, and fees, penalties, and interest are not paid 30 days thereafter.

#### D. Adjustment of Franchise Fee

- 1) The Concessionaire or Reclamation may request, in the event that either considers that extraordinary, unanticipated changes have occurred after the effective date of this Contract, a reconsideration and possible adjustment of the franchise fee established in this section. For the purposes of this section, the phrase “extraordinary, unanticipated changes” shall mean changes from the conditions existing or reasonably anticipated before the effective date of this Contract that have affected or will significantly affect, positively or negatively, the Concessionaire.
- 2) Within sixty (60) days from the date the party becomes aware of or should have become aware of the possible extraordinary, unanticipated changes, the Concessionaire or Reclamation must make a request for a reconsideration by mailing a written notice to the other party that includes a description of the possible extraordinary, unanticipated changes and why the party believes the changes have affected or will significantly affect the privileges granted by this Contract.
- 3) The Concessionaire and Reclamation will undertake good faith negotiations as to an appropriate adjustment of the franchise fee. If the negotiation results in an agreement to an adjustment (up or down) of the franchise fee within this period, the franchise fee will be adjusted accordingly, effective as of the date of agreement.
- 4) Any adjustment to the franchise fee will be recognized in a written amendment to this Contract.
- 5) The Concessionaire shall continue to make the established franchise fee payments required by this Contract until such time as a new fee payment schedule is negotiated.

#### **SEC. 10 INSPECTIONS AND REVIEWS**

- 1) Reclamation, with the mandatory presence and participation of the Concessionaire or its duly authorized representative, shall conduct an inspection of the Area and the Concessionaire’s management activities at a minimum of once a year. Once every 5 years, an inspection may be conducted using an “external” inspection crew (e.g. Public Health Service, State Fire Marshall, Industrial Hygienist, etc.). Inspections will evaluate the Concessionaire’s compliance with and performance of the requirements of this Contract, including the timely submittal of all forms, reports, and payments and the manner in which the buildings and grounds are developed, operated, and maintained.
- 2) Based upon the inspection report’s findings which shall be rated as “satisfactory”, “unsatisfactory”, or “marginal”, the annual franchise fee may be increased or decreased.
  - (a) If the Concessionaire receives a score of “satisfactory” for any 2 or more consecutive calendar years, the franchise fee shall be adjusted down by 1 percent, but no lower than a minimum of 1 percent.

- (b) If the Concessionaire receives score of “unsatisfactory” for any 2 or more consecutive calendar years, the franchise fee shall be adjusted up by 1 percent, but no higher than a maximum of 3 percent.
  - (c) A score of “marginal” in any year will not result in an adjustment of the franchise fee if the fee is at its established rate of 2 percent; however, if the franchise fee was previously increased or decreased, as described above, a score of “marginal” in any year will return the franchise fee to its established rate of 2 percent.
  - (d) Any increase or decrease in the franchise fee will be effective for the calendar year following the calendar year(s) of the findings.
- 3) Performance based changes to this Contract do not affect Reclamation’s ability to address or issue findings of default. Any and all other remedies addressed in this Contract remain available for Reclamation’s use and application at its sole discretion.

## **SEC. 11 INDEMNIFICATION AND INSURANCE**

### **A. Indemnification**

- 1) Reclamation shall not be held responsible to the Concessionaire for losses, either financial or to fixed assets, incurred during the operations of the Canyon Ferry Dam and Reservoir for authorized Project purposes, blowing silt, flood, wildfire, or other natural occurrences.

If Reclamation is negligent in its operation of the Project, the scope and limitations for liability is governed by the Federal Tort Claims Act.

- 2) The Concessionaire agrees to assume liability for all liabilities, obligations, losses, damages, or judgments (including without limitation penalties and fines), claims, actions, suits, costs, and expenses (including without limitation attorneys fees and experts’ fees) of any kind and nature whatsoever on account of fire or other peril, bodily injury, death of property damage, or claims for bodily injury, death or property damage of any nature whatsoever, and by whomsoever made, in any way connected with or arising out of the activities of the Concessionaire, its employees, agents or contractors under this Contract.
- 3) The Concessionaire hereby agrees to save, hold harmless, protect, defend and indemnify the United States of America and its agents and employees from and against any and all liabilities, obligations, losses, damages or judgments (including without limitation penalties and fines), claims, actions, suits, costs, and expenses (including without limitation attorneys fees and experts’ fees) of any kind and nature whatsoever on account of fire or other peril, bodily injury, death or property damage, or claims for bodily injury, death or property damage of any nature whatsoever, and by whomsoever made, in any way connected with or arising out of the activities of the Concessionaire, its employees, agents, or contractors under this Contract. This indemnification shall survive the termination or expiration of this Contract.



## B. Insurance in General

- 1) During the entire term of this Contract the Concessionaire shall obtain and maintain at its sole cost and expense the types and amounts of insurance coverage necessary to fulfill the obligations of this Contract. The minimum insurance requirements should be in the amount commensurate with the degree of risk and the scope and size of the activities required or authorized under this Contract, and are consistent with industry standards. Reclamation retains the right to review the types and amounts of insurance coverage purchased by the Concessionaire.
- 2) Reclamation shall not be responsible for any omissions or inadequacies of insurance coverage and amounts in the event the insurance purchased by the Concessionaire proves to be inadequate or otherwise insufficient for any reason whatsoever.
- 3) The Concessionaire shall, at the time insurance is first purchased and annually thereafter, provide Reclamation with a Certificate of Insurance that accurately details the conditions of the policy as evidence of compliance with this section. The Concessionaire shall immediately provide Reclamation with written notice of any material change in the Concessionaire's insurance program including the cancellation of any required insurance coverage.
- 4) All liability policies, beginning with the Concessionaire's next policy renewal in 2005, shall specify that the insurance company shall have no right of subrogation against the United States of America and shall provide that the United States of America is named an additional insured.

## C. Commercial Public Liability

The Concessionaire shall provide commercial general liability insurance against claims arising out of or resulting from the acts or omissions of the Concessionaire or its employees, agents, or contractors in carrying out the activities and operations required and/or authorized under this Contract.

## D. Property Insurance

- 1) The Concessionaire shall provide commercial property, fire and extended insurance coverage on property and improvements for all or part of the replacement cost of the property and improvements.
- 2) In the event of loss, the Concessionaire shall use proceeds of such insurance to repair, rebuild, restore, or replace all major property and improvements that are necessary to meet the required visitors' services. Policies may not contain provisions limiting insurance proceeds to in situ replacement. The Concessionaire shall not be relieved of its obligations under Section 11D (1) because insurance proceeds are not sufficient to repair or replace damaged or destroyed property or improvements. Should the time remaining

on the contract not justify replacement, Reclamation may waive replacement requirements.

- 3) Insurance policies that cover property and improvements shall contain a loss payable clause, which requires insurance proceeds to be paid directly to the Concessionaire without requiring endorsement by the United States. The use of insurance proceeds for repair or replacement of Reclamation property or improvements will not alter their character as property of the United States and, notwithstanding any provision of this Contract to the contrary, the Concessionaire shall gain no ownership or other compensable interest as a result of the use of these insurance proceeds.

## **SEC. 12 BONDS**

### **A. Bonds**

During the term of this Contract, Reclamation, with just cause, may require the Concessionaire to furnish appropriate forms of bonds, in amounts reasonable in the circumstance and acceptable to Reclamation to ensure faithful performance of the Concessionaire's obligations under this Contract. This requirement will only be imposed following a failure to cure any substantive breach during the time period as outlined in section 15 B (2). The bonds will be imposed for a period of one year at a time. Alternative forms of bonds are acceptable and will include:

- 1) Cash Deposit
- 2) Corporate Security
- 3) Irrevocable letters of credit
- 4) U.S. Treasury Bills
- 5) Notes, Bonds, or other negotiable securities
- 6) Certificates of Deposits

The amount of the bonds needed to ensure faithful performance shall be based on the previous year's Operating Expenses.

## **SEC. 13 ACCOUNTING RECORDS AND REPORTS**

### **A. Accounting System**

- 1) The Concessionaire shall maintain an accounting system under which its accounts can be readily identified with its system of accounts classification. Such accounting system shall be capable of providing the information required by this Contract including, but not limited to, the Concessionaire's repair and maintenance obligations. The Concessionaire's system of accounts classification shall be directly related to the Concessionaire Annual Financial Report.
- 2) If the Concessionaire's annual gross receipts are \$250,000 or more, the Concessionaire must use the accrual accounting method.

- 3) In computing net profits for any purposes of this Contract, the Concessionaire shall keep its accounts in such manner that there can be no diversion or concealment of profits or expenses in the operations authorized under this Contract by means of arrangements for the procurement of equipment, merchandise, supplies, or services from sources controlled by or under common ownership with the Concessionaire or by any other device.

**B. Annual Financial Report**

- 1) The Concessionaire shall submit, not later than May 1 of each year, financial information for the preceding Concessionaire's fiscal year or portion of a year, including Income Statements, Balance Sheet, Gross Receipts, and Federal Tax Returns.
- 2) If the annual gross receipts of the Concessionaire are in excess of \$1,000,000, the financial statements shall be audited by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards and Procedures promulgated by the American Institute of Certified Public Accountants.
- 3) If annual gross receipts are between \$500,000, and \$1,000,000, the financial statements shall be reviewed by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards and Procedures promulgated by the American Institute of Certified Public Accountants.
- 4) If annual gross receipts are less than \$500,000, the financial statements may be prepared without involvement by an independent Certified Public Accountant, unless otherwise directed by Reclamation.
- 5) The Concessionaire shall maintain all records, financial or otherwise, during the term of this Contract. The Concessionaire shall maintain the records for 4 years after the expiration or termination of this Contract.

**C. Other Financial Reports**

For the purpose of this Contract only, Concessionaire accepts Reclamation's appraisal of September 9, 2004 as fair representation of the value of the improvements at the start of the Contract.

**SEC. 14 OTHER REPORTING REQUIREMENTS**

Reclamation may require the Concessionaire to submit other information and data regarding its performance under this Contract, including, but not limited to, operational information, visitation rates, occupancy rates, accidents, etc.

**SEC. 15 SUSPENSION, TERMINATION, OR EXPIRATION**

**A. Suspension**

Reclamation may suspend all or portions of this Contract, immediately and without advance warning, when reasonably justified by Reclamation to protect Project purposes, resources, and visitor health and safety. In the event of such suspension, Reclamation shall not be liable for any compensation to the Concessionaire for losses arising out of the suspension including, but not limited to, lost income, profit, wages, or other compensation which may be claimed by the Concessionaire. Reclamation shall provide the Concessionaire with a clear reason for the suspension and provide the Concessionaire with a reasonable time period to cure the situation.

#### B. Termination

- 1) Reclamation may terminate this Contract if it determines that the Concessionaire has materially breached any requirement of this Contract including, but not limited to: the requirement to maintain and operate visitor services to the terms of the Contract, the requirement to provide required visitor services, the requirement to pay the established franchise fee, the requirement to provide appropriate levels of insurance coverage and certificates of insurance, and the requirement to comply with the conditions of Applicable Laws.
- 2) In the event of a breach of this Contract, Reclamation will notify the Concessionaire in writing of the breach. In the event of a monetary breach, Reclamation shall hold the Concessionaire to provisions of Section 9. In the event of a non-monetary breach the Concessionaire shall be given no more than 21 days from receipt of the written notice to accept the breach or to show cause as to why there is not a breach. Depending on the severity of the breach, Reclamation may also assign the Concessionaire a reasonable time period to cure the breach. If the breach is not resolved or cured by the specified date Reclamation may suspend this Contract in accordance with Section 15A above or terminate this Contract for default. If Reclamation determines the breach is of such a nature as to imperil project operations or public health and safety and the Concessionaire fails to correct the breach as directed by Reclamation, Reclamation will take whatever steps it determines necessary to protect project operations or public health and safety. The concessionaire shall be liable for and shall pay to Reclamation any costs associated with such action upon demand. Notwithstanding this provision, repeated material breaches (three or more) of the same nature within a 5 year period, including non-monetary breaches, may be grounds for termination without a cure period.

#### C. Voluntary Termination

This Contract may be terminated by the Concessionaire upon 1-year advanced written notice to Reclamation of voluntary termination. Failure to provide Reclamation 1-year advanced written notice may result in Reclamation charging the Concessionaire for any costs incurred for the operation and maintenance of the Area until such time that a new concessionaire is able to provide visitor services, until 1 full year from the date of the written notice of voluntary termination has passed or this Contract expires, which ever occurs first.

#### D. Interim Operation

Reclamation may select, at its sole discretion and without competition, an interim operator or concessionaire in the event this Contract is terminated before its expiration date. Reclamation may grant the interim operator or concessionaire a temporary contract (not to exceed the expiration date of the terminated contract) or immediately advertise a new concession opportunity for public bid.

#### E. Notice of Bankruptcy or Insolvency

- 1) The Concessionaire shall give Reclamation immediate written notice (within five (5) days) after the filing of any petition in bankruptcy, filing any petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, or making any assignment for the benefit of creditors. The Concessionaire shall also give Reclamation immediate written notice of any petition or other proceeding against the Concessionaire for the appointment of a trustee, receiver, or liquidator or the taking by any person or entity of the rights granted by this contract or any part thereof upon execution, attachment, or other process of law or equity. For purposes of the bankruptcy statutes, Reclamation considers that this Contract is not a lease but an executory contract exempt from inclusion in assets of Concessionaire pursuant to 11 U.S.C. 365.
- 2) Reclamation may terminate this Contract upon the filing or the execution of a petition in bankruptcy by or against the Concessionaire, a petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, an assignment by the Concessionaire for the benefit of creditors, a petition or other proceeding against the Concessionaire for the appointment of a trustee, receiver, or liquidator or the taking by any person or entity of the rights granted by this Contract or any part thereof upon execution, attachment, or other process of the law or equity. Reclamation may terminate this Contract if Reclamation determines that the Concessionaire is unable to perform the terms of the Contract because of bankruptcy or insolvency.

#### F. Requirements in the Event of Termination or Expiration

- 1) In the event of the termination or expiration of this Contract, the total compensation due the Concessionaire shall be as described in this Contract. No other compensation of any nature shall be due the Concessionaire, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the termination or expiration of this Contract unless termination is found to be improper by a court with jurisdiction over the matter. This Contract will not be deemed a settlement of any ongoing litigation.
- 2) Upon termination or expiration of this Contract, and except as otherwise provided in this section, the Concessionaire shall, at its sole expense, vacate the Area within 120 days, remove all the Concessionaire's personal property or improvements, repair any injury to the Area occasioned by installation or removal of such personal property or improvements, and ensure that Reclamation's property and improvements are in at least

as good condition as they were at the beginning of the term of this Contract, reasonable wear and tear excepted. If seasonal conditions can be expected to prevent Concessionaire's timely removal of property, Concessionaire may begin removal prior to expiration and shall be given necessary advance notice of termination for this purpose.

- 3) Upon Reclamation's issuance of a separate permit to the Concessionaire, not to exceed 90 days at a time, the Concessionaire may store its personal property or improvements beyond the expiration date of this Contract. Reclamation shall not permit the Concessionaire any opportunity to use its personal property or improvements on-site for any private business activity including, but not limited to, renting or sub-leasing the personal property or improvements or conducting any visitor services. Reclamation may grant the Concessionaire a limited opportunity to live on site during the extended period of time, provided that the Concessionaire has lived on site during the term of this Contract.

## **SEC. 16 COMPENSATION**

### **A. Just Compensation**

The compensation provided by this Section shall constitute full and just compensation to the Concessionaire for all losses and claims occasioned by the circumstances described below.

### **B. Compensation**

- 1) At the termination or expiration of this Contract, the Concessionaire must remove from the Area all its personal property and improvements developed and used under this Contract, as may be directed by Reclamation. No compensation is due the Concessionaire from Reclamation or a successor concessionaire for the Concessionaire's personal property or improvements so removed. At Reclamation's request, the Concessionaire may leave in the Area for use in future operations certain of its personal property and improvements that may be considered for purchase by a successor concessionaire or Reclamation. The Concessionaire is not required to leave or sell any such personal property or improvements, and the successor concessionaire or Reclamation is not required to purchase such personal property or improvements. Subsequently, if such personal property or improvements are not purchased, they must be removed from the Area within 120 days of termination or expiration of Contract. In the event Reclamation requests the Concessionaire to leave certain of its personal property or improvements for use in future operations, Reclamation shall, subject to the conditions of this Contract, assure the Concessionaire that it will be fairly compensated for said personal property or improvements.
- 2) Personal property and improvements that are not identified for use in future operations and not removed from the Area by the Concessionaire in accordance with the conditions of this Contract (Section 15) shall be considered abandoned property and subject to disposition or disposal by Reclamation, at full cost and expense of the Concessionaire, in accordance with Applicable Laws. Any cost or expense incurred by Reclamation as a

result of such disposition or disposal may be offset from any amounts owed to the Concessionaire by Reclamation to the extent consistent with this Contract and Applicable Laws.

C. Procedures for Establishing the Value of Concessionaire Personal Property and Improvements

- 1) In the event Reclamation determines to purchase any Concessionaire owned personal property or improvements, Reclamation will conduct an appraisal to determine the fair market value. If there is a dispute between Reclamation and the Concessionaire over the estimated fair market value established by Reclamation's appraisal, the Concessionaire may choose to conduct its own appraisal at their sole cost. The Concessionaire's appraisal must be conducted in accordance with Department of the Interior standards. The Concessionaire should understand that Reclamation is not obligated to raise its estimated values if the Concessionaire's appraisal results in higher values. However, Reclamation may consider the Concessionaire's appraisal in light of significant discrepancies that should have been considered in Reclamation's appraisal, which, had they been considered, would have resulted in a different value. If something in Reclamation's appraisal significantly affects the value of the Concessionaire's personal property and improvements being appraised, Reclamation may consider adjusting its value to more accurately reflect the estimated fair market value based upon the new information presented in the Concessionaire's appraisal. Concessionaire shall not be required to accept Reclamation's appraisal values.
- 2) In the event the concessionaire proposes to sell its personal property and improvements to a prospective buyer, the Concessionaire may conduct an appraisal, using uniform standards common within the appraisal profession, to determine the fair market value of the personal property and improvements to be sold.

**SEC. 17 ASSIGNMENT, SALE, OR ENCUMBRANCE OF INTERESTS**

A. General Requirements

- 1) Reclamation is under no obligation to recognize any right of any person or entity to an interest of any nature in this Contract including, but not limited to, operating rights, if any such perceived rights are obtained in violation of the conditions of this Contract.
- 2) It is the responsibility of the Concessionaire to advise any person(s) or entity proposing to enter into any transactions with said Concessionaire of the requirements of this Contract.
- 3) In the event of the death of the Concessionaire during the term of this Contract, Reclamation will honor its transfer to any designated heirs as prescribed by and in accordance with due process of law, provided that such heirs are determined capable of managing the Area in a manner consistent with the conditions of this Contract.

- 4) The Concessionaire may not develop business partnerships with other individuals or companies to provide visitor services without the prior written approval of Reclamation. No such partnership or business arrangement shall provide for the continual presence of anyone on the Area but the Concessionaire or its employees.
- 5) The Concessionaire may not enter into a contract with a sub-concessionaire to provide any visitor services required or authorized by this Contract or any other visitor services not specifically addressed herein.

#### B. On-site Sales

The commercial sale of goods by anyone other than the Concessionaire is prohibited on the Federal Estate.

#### C. Contract Assignment and Resale Opportunities

The Concessionaire is afforded two methods to sell their personal property and improvements to a potential buyer. The Concessionaire may pursue both methods concurrently, if so desired.

- 1) Method 1. Sale of Personal Property and Improvements and Assignment of Existing Contract (traditional method)

The Concessionaire must notify Reclamation of its desire to sell personal property and improvements when a potential buyer is identified. Reclamation will be afforded 45 days to prepare any necessary documents related to the assignment of the Contract, evaluate, and approve/disapprove the qualifications of any perspective buyer before the contract is assigned. The term of the existing Contract being reassigned will not be extended. The following information governs the sale of the Concessionaire's personal property and improvements and the assignment of the Contract:

- (a) The Concessionaire is selling their personal property and improvements – not the Contract. Concession contracts may be re-assigned, but not bought and sold.
- (b) The Concessionaire and potential buyer propose a buy/sell agreement.
- (c) A potential buyer is purchasing personal property and improvements from the Concessionaire; not the Contract. Potential buyer must provide Reclamation with:
  - (1) A draft operation and maintenance plan
  - (2) Detailed experience and background to include: list of previous jobs, experiences, and references of the potential buyer and key staff, potential buyer knowledge of the hospitality industry, campground management, management and monitoring of a fuel distribution system and propane refueling system, and any other business skills that will assist Reclamation in determining the potential buyer's knowledge and ability to meet the terms and expectations of the contract
  - (3) A statement to the fact that they have no felony convictions nor that they are under indictment for any Federal offense



- (4) Financial documents to include: current business and/or personal financial statements/income tax statement and balance sheet for the past two years, current credit statement from recognized credit reporting agency, anticipated revenue/expense statements for first five years of operation, proposed financial record-keeping system, and any other financial information pertinent to the buyer's proposal and proof of financial stability (including: any reports of bankruptcy within the last 7 years)
  - (5) Supporting documents to include: name/address of proposed insurance carrier along with a tentative notice from the insurance company of its ability to provide said insurance, name/address of financial institutions that may be providing loans with estimated loan amounts, name/address/background history of business or financial backers/partners/officers applicable to the concession operation
  - (6) Any other plans/data/information that the applicant considers pertinent to their evaluation
  - (7) A current buy/sell agreement with the current Concessionaire
- (d) Reclamation conducts an evaluation of the potential buyer to determine if they are qualified to assume the existing Contract.
  - (e) If determined to be qualified, Reclamation assigns the existing Contract to the buyer.
  - (f) If the buyer is using a Contract for Deed to purchase assets, Reclamation's assignment instrument can have a condition to allow a reinstatement of the previous owner into the Contract if a default occurs.
  - (g) The buyer becomes the new concessionaire and operates under the same contract as the previous concessionaire; the term of the contract is not changed.

2) Method 2. Sale of Personal Property and Improvements and Issuance of a New Concession Contract (alternative method)

Instead of assigning the remaining term of the Contract to a potential buyer, the potential buyer is afforded the option of a new, long-term contract. However, this may only occur after a competitive bid process is completed and Reclamation has had the opportunity to evaluate and approve the qualifications of a potential buyer. The Concessionaire must notify Reclamation of its desire to sell its personal property and improvements in advance before a potential buyer is identified to afford Reclamation sufficient time to prepare any necessary documents related to the competitive bid process and issuance of the new contract. The following information governs the sale of the Concessionaire's personal property and improvements and the issuance of the new contract under this method:

- (a) Reclamation prepares a new, draft long-term contract, based upon a Commercial Services Plan (CSP) or other similar planning document and consistent with current policy and directives and standards.
- (b) Reclamation advertises the new long-term concession opportunity in the FedBizOpps or equivalent.
- (c) The Concessionaire advertises the opportunity in the local market area.

- (d) The ads announce the opportunity to bid on the new contract and states the date at which time bids must be delivered to Reclamation.
- (e) Reclamation evaluates all bids and identifies those bidders that meet all bid submittal requirements.
- (f) The list of qualified bidders is submitted to the Concessionaire for consideration.
- (g) The concessionaire will then determine which bidder best meets their requirements.
- (h) The Concessionaire and bidder then begin negotiations for the sale of the concessionaire's improvements; and Reclamation and the bidder begin the process of entering into a new contract.

During this process, the Concessionaire may decide not to accept the outcome of the competitive bid process and choose not to sell its improvements. Or, the Concessionaire may accept a purchase offer non-competitively from a potential buyer who is willing to assume the existing Contract for its remaining term. If a successful bidder is not identified during the offering, the opportunity remains open until the Concessionaire notifies Reclamation that its personal property and improvements are no longer for sale or that a potential buyer has been identified. If there isn't a sale by the expiration of the existing Contract, the traditional competitive bidding process will then be initiated which does not allow the existing Concessionaire an opportunity to be consulted prior to the award of the next contract.

## **SEC. 18 GENERAL PROVISIONS**

- 1) Reclamation, the Comptroller General of the United States, the Government Accounting Office (GAO), the Office of Inspector General (OIG), or any of their duly authorized representatives shall have access to the records of the Concessionaire as provided by this Contract and the terms of Applicable Laws.
- 2) All information required to be submitted to Reclamation by the Concessionaire pursuant to this Contract is subject to public release by Reclamation to the extent provided by Applicable Laws. Reclamation will not release any information that has been specifically identified by Concessionaire as confidential, private or proprietary information that should not be publicly disclosed. Proprietary information shall not include sales figures, prices and rates, services available, or terms of this Contract.
- 3) The Concessionaire is not entitled to be awarded or to have negotiating rights, to any Federal procurement or service contract by virtue of any provision of this Contract.
- 4) Any and all taxes, fees, or assessments of any nature that may be lawfully imposed upon the property or business of the Concessionaire by any Federal agency or State or political subdivisions thereof shall be paid promptly by the Concessionaire.
- 5) No member of the executive, legislative, or judicial branches of the Federal Government shall be admitted to any share or part of this Contract or to any benefit that may arise from this Contract. This restriction shall not be construed to extend to this Contract if made with a corporation or company for its general benefit.

- 6) This Contract contains the sole and entire agreement of the parties. No oral representations of any nature form the basis of or amend the term or conditions of this Contract. Any and all changes to this Contract shall be recognized in a written amendment, agreed to, and executed by all parties to this Contract.
- 7) This Contract does not grant rights or benefits of any nature to any third party.
- 8) The Concessionaire shall not store any personal equipment (except as may be determined appropriate by Reclamation) in the Area which does not specifically support the provision or operation of the visitor services required under this Contract. Concessionaire shall be permitted to store personal property on site that is associated with or relating to occupancy of the residence.
- 9) The invalidity of a specific provision of this Contract shall not affect the validity of the remaining provisions of this Contract.
- 10) Waiver by Reclamation or the Concessionaire of any breach of any of the conditions of this Contract by the other party shall not be deemed to be a waiver or elimination of such condition of any subsequent breach of the same type nor of any other condition of this Contract. The subsequent acceptance of any payment of money or other performance required by this Contract shall not be deemed to be a waiver of any other breach, whether preceding or succeeding, of this Contract.
- 11) Claims against Reclamation arising from this Contract shall be forfeited to Reclamation by any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance thereof within the meaning of 28 U.S.C. 2514.
- 12) Reclamation is not responsible for providing security for the protection of Concessionaire owned personal property or improvements during the term of this Contract or for any extended periods of time Reclamation may grant the Concessionaire. Reservoir-wide law enforcement on Federal land and water areas is provided by the Lewis and Clark or Broadwater County Sheriff's Department. Fish, wildlife, and water safety laws and regulations are enforced by the Montana Department of Fish, Wildlife, and Parks (MDFWP).
- 13) A minimum of one person on the concession staff on duty at any time must have current basic training in First Aid and cardiopulmonary resuscitation (CPR). Proof of certification must be available upon request by Reclamation.
- 14) Conflict Resolution: In the event of any disagreement between the parties regarding the implementation of this Contract, the parties shall attempt resolution through the following procedures.
  - (1) Discussion between the Concessionaire and the Facility Manager/Recreation Specialist or designee.

- (2) If resolution is not achieved, discussion between the Concessionaire and Supervisory Resource Manager/Area Manager or designee
- (3) If resolution is not achieved, either party has the right to request a mediator or non-binding arbitrator.

15) Reclamation shall enter into a timely bid process near the end of this contract to allow the concessions continued operation, unless Reclamation can determine that removal of the concession is appropriate and beneficial to the public.

16) The concessionaire's 2005-2010 Facility Improvement Plan is incorporated into the Contract as Exhibit E. In relation to the improvements listed in Exhibit E:

The following improvements have approval to proceed

- (a) Replacement of all plywood decking on all docks with new 1x8 rough cut decking.
- (b) Relocation of courtesy dock to Chalet "beach".
- (c) Addition of new 160 ft. courtesy dock with 24 ft. slips on the north side. (E Dock)
- (d) Replace outer dock run with 8 ft wide run of similar length, supporting 32 slips. (D Dock)
- (e) Use portions of 6 ft. wide dock replaced above to replace one run of old wooden docks. (B Dock)
- (f) Replace all wooden docks with new steel docks as previously approved by Reclamation.
- (g) Paint or re-side buildings on the upper tier; replace windows and doors.

The following improvement is approved but requires environmental compliance to be completed within 45 days of execution of this Contract.

- (a) Addition of up to 4 recreational use cabins at Chalet site as recommended in Reclamation's Commercial Services Plan.

The following improvements have approval pending additional information and discussions between both parties.

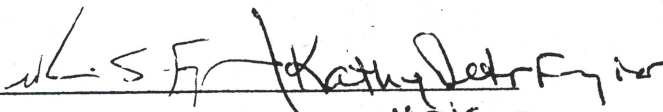
- (a) Installation of 4 (four) full hookup campsites at location of removed 2 bedroom cabin.
- (b) Remodel or replace existing shower and toilet facilities with fully wheelchair accessible facilities. (I)
- (c) Add vacuum boat pump-out to fuel dock. (F Dock)
- (d) Add two extended sections to Fuel dock and moorings for rental boats. (F Dock)
- (e) Replace upper and lower sections of launch ramp.
- (f) Add mobile unit to store as originally planned for limited food service. (H)

The following item is not approved but has merit for further discussions between Reclamation and the Concessionaire.

- (a) Develop trailer storage area adjacent to the marina

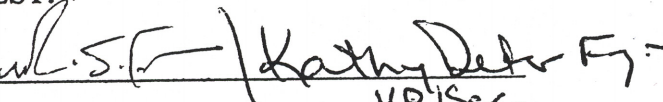
IN WITNESS WHEREOF, the duly authorized representative(s) of the Concessionaire(s) and Reclamation have executed this Contract.

**CONCESSIONAIRE**

BY  Date: 3-21-05  
VP/Sec.

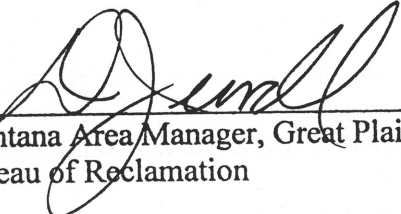
PRES FRAZIER INDUSTRIES INC  
(Title), (Company Name)

**[CORPORATIONS]**

ATTEST: FRAZIER INDUSTRIES INC  
BY  Date: 3-21-05  
VP/Sec.

TITLE: PRES

**UNITED STATES OF AMERICA**

BY   
Montana Area Manager, Great Plains Region  
Bureau of Reclamation

Date: 21 MARCH 2005

# **EXHIBIT A**

## **Nondiscrimination**

**EXHIBIT "A"**  
**NONDISCRIMINATION**

**A. Employment**

(1) The Concessionaire will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, or disabling condition. The Concessionaire will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, or disabling condition. Such action shall include, but not be limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessionaire agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Secretary setting forth the provision of this nondiscrimination clause.

(2) The Concessionaire will, in all solicitations or advertisements for employees placed by on behalf of the Concessionaire, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, national origin, or disabling condition.

(3) The Concessionaire will send to each labor union or representative of workers with which the Concessionaire has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of the Concessionaire's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) Within 120 days of the commencement of a concession that generates gross receipts which exceed \$50,000 and having 50 or more employees shall prepare and maintain an affirmative action program at each establishment which shall set forth the contractor's policies, practices, and procedures in accordance with the affirmative action program requirement.

(5) The Concessionaire will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Concessionaire will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Concessionaire's books, records, and accounts by the Secretary of the Interior and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Concessionaire's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled,



terminated or suspended in whole or in part and the Concessionaire may be declared ineligible for further Government concession contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Concessionaire will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Concessionaire will take such action with respect to any subcontract or purchase order as the Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Concessionaire becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary, the Concessionaire may request the United States to enter into such litigation to protect the interests of the United States.

### **B. Construction, Repair, and Similar Contracts**

The preceding provisions A(1) through A(8) governing performance of work under this Contract, as set out in Section 202 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, shall be included in all contracts executed by the Concessionaire for the performance of construction, repair, and similar work contemplated by this Contract.

### **C. Facilities**

The Concessionaire is prohibited from publicizing any and all services, facilities, privileges, accommodations, or activities available to the general public and permitted by this Contract in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of race, color, religion, sex, age, national origin, or disabling condition.

### **D. Accessibility**

Title V, Section 504, of the Rehabilitation Act of 1973, as amended in 1978, requires that action be taken to assure that any "program" or "service" being provided to the general public be provided to the highest extent reasonably possible to individuals who are mobility impaired, hearing impaired, and visually impaired. It does not require architectural access to every building or facility, but only that the service or program can be provided somewhere in an accessible location. It also allows for a wide range of methods and techniques for achieving the intent of the law, and calls for consultation with disabled persons in determining what is reasonable and feasible.

No handicapped person shall, because a Concessionaire's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance or conducted by any Executive agency or by the U.S. Postal Service.

### **E. Discrimination Prohibited**

A Concessionaire may not directly or through contractual, or other arrangements, on the basis of handicap:

- (1) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;
- (2) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
- (3) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;
- (4) Provide different or separate aids, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;
- (5) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;
- (6) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or
- (7) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

### **F. Existing Facilities**

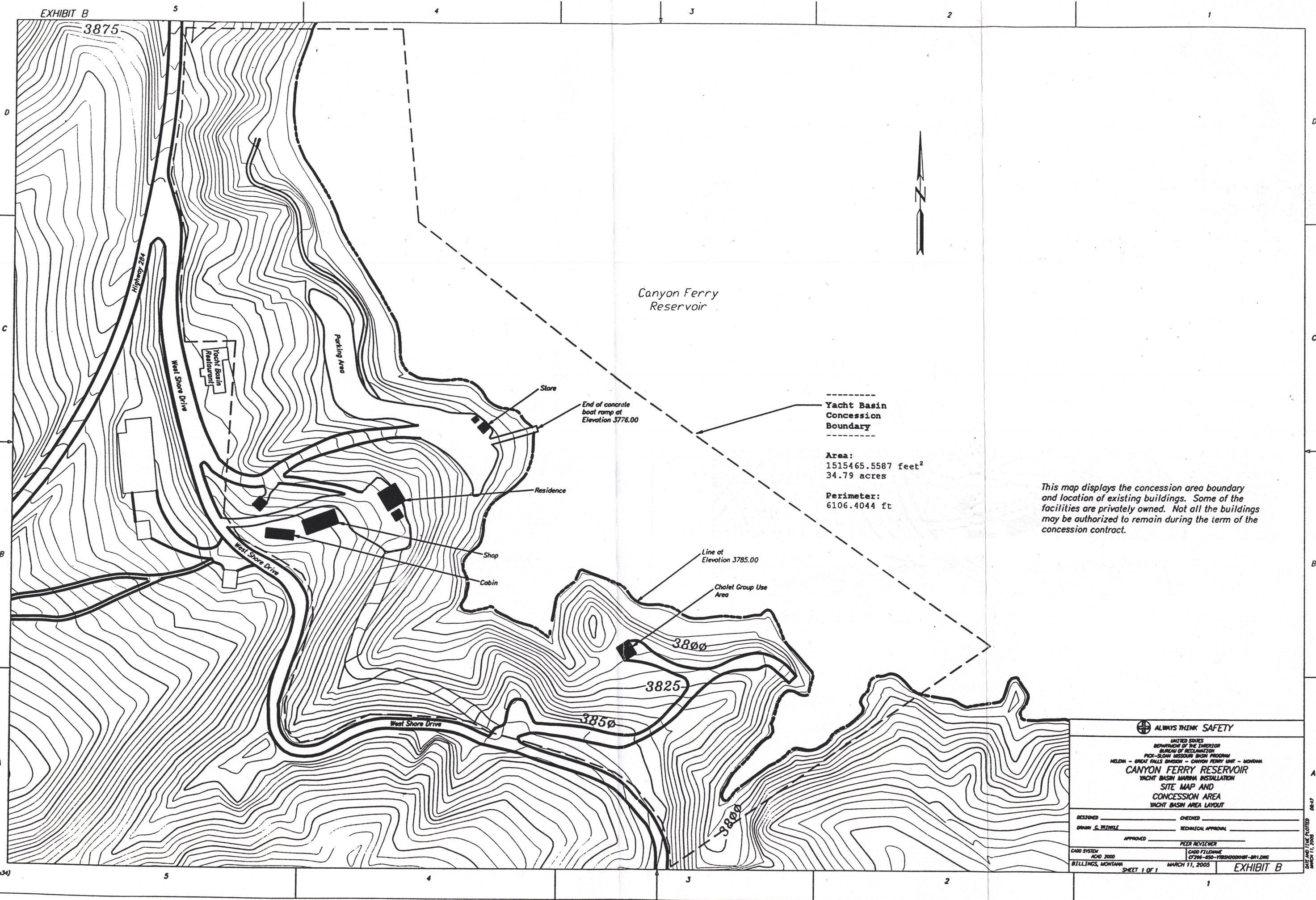
The Concessionaire shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not require a Concessionaire to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

# **EXHIBIT B**

## **Site Map and Concession Area**

EXHIBIT B

3875



Canyon Ferry Reservoir

-----  
Yacht Basin Concession Boundary  
-----

Area:  
1515465.5587 feet<sup>2</sup>  
34.79 acres

Perimeter:  
6106.4044 ft

*This map displays the concession area boundary and location of existing buildings. Some of the facilities are privately owned. Not all the buildings may be authorized to remain during the term of the concession contract.*

ALWAYS THINK SAFETY

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
FISH-SLEW RESERVOIR BASIN PROGRAM  
HELEN - GREAT FALLS DIVISION - CANYON FERRY UNIT - MONTANA  
**CANYON FERRY RESERVOIR**  
YACHT BASIN MARINA INSTALLATION  
SITE MAP AND  
CONCESSION AREA  
YACHT BASIN AREA LAYOUT

DESIGNED BY: \_\_\_\_\_ CHECKED BY: \_\_\_\_\_  
DORIAN C. REYNOLDS TECHNICAL APPROVAL  
APPROVED BY: \_\_\_\_\_ PEER REVIEWER

CADD SYSTEM: ACAD 2000 CADD FILENAME: C:\796-650-1785\000000\001-01.DWG  
BILLINGS, MONTANA SHEET 1 OF 1 MARCH 11, 2005

EXHIBIT B

(22x34)

DATE PLOTTED: MARCH 11, 2005 08:47

# **EXHIBIT C**

## **Assigned Reclamation Property and Improvements**

## **EXHIBIT C**

### **BUREAU OF RECLAMATION PROVIDED BUILDINGS AND IMPROVEMENTS**

1. One pre-cast vault toilet located beside the parking area located northeast of the marina store.
2. Two unisex C.X.T. vault toilets in the Chalet Area.
3. One group use shelter in the Chalet Area.
4. Electric utilities to the group use shelter in the Chalet Area.
5. Wooden rail fence in the Chalet Area.
6. Wooden stairway constructed out of landscape timbers leading to the beach in the Chalet Area.
7. Metal swing gate in the entrance to the Chalet Area.
8. Two BBQ grills in the Chalet Area.
9. Fee collection tube in the Chalet Area.
10. Garbage can rack in the Chalet Area.
11. Entrance sign in the Chalet Area.
12. Fire ring with benches in the Chalet Area.

# **EXHIBIT D**

## **Boat Dock Standards**

## Exhibit D

### **BOAT DOCK STANDARDS**

**Introduction.** The standard and drawings used here are adopted from the U.S. Army Corps of Engineers (Corps) Minimum Design Standards For Moorage Facilities, the Corp's Marina Safety Standards For Commercial Concessions and Gasoline Docks, and from recommendations from the National Park Service, and commercial dock manufacturers. All floating facilities approved by Reclamation shall meet or exceed the minimum design standards listed below.

#### **1. Boat Docks (Moorage and Service Docks):**

- a. Wood Frame Construction:
  - (1) Wood materials are limited to cedar, cypress, redwood, pressure treated and marine grade. Use of creosote is not allowed due to health risk associated with skin contact.
  - (2) No wood product subject to submersion may be treated with what has been listed as a hazardous material. A Hazardous material@ means any substance, pollutant, or contaminant listed as hazardous under the Comprehensive Environmental Response, Compensation, and liability Act of 1980, as amended, 42 U.S.C. section 9601, et seq., and the regulations promulgated pursuant to that Act.
  - (3) Floor joists and flotation frames shall not be less than 2"X 6" dimension material and spaced in such a manner to allow for expansion. No part of the wood frame shall rest in the water under minimum live load conditions.
- b. Other Construction Requirements:
  - (1) Docks using other than wood frame construction (aluminum, steel, plastic, etc.) must be commercially engineered and manufactured.
  - (2) Horizontal joints on the walking surface (decking) may not exceed 2" in width (for instance, cross-plank spacing), and vertical joints on the walking surface may not exceed 3" in height (thresholds, the joint where two dock sections meet, etc.) unless they are sloped back to 1:12 (8.3%). In constructing new wood decking, care should be taken to insure that shrinkage will not form gaps in the decking that exceed 2" in width.
  - (3) Finger docks (walkways between boat slips) shall be a minimum 36" wide (48" is recommended). Main docks serving the public (basically all other public docks, service docks, walkways, gas docks, etc.) shall be a minimum of 48" wide (60" wide is recommended).
  - (4) Decking shall be firm and slip-resistant. If exposed wood decking is used as a surfacing material, planks should run perpendicular to the direction of travel.
- c. In construction, all connections will be secured with sheet metal, steel plates, metal straps, or plywood gussets to resist wave action.
- d. Storage compartments and other mounted or built-in marina equipment are permissible on docks, providing walkways at least 48" wide are provided around any and all equipment stored or mounted on the dock.
- e. All electrical service on docks must be installed, operated and maintained in accordance with the requirements of the National Electrical Code (NEC), the National Electrical Safety Code, and applicable State and local codes. Concessionaires must obtain a certificate from a licensed/certified and practicing electrician stating that all electrical wiring is in compliance with the NEC and local codes.
- f. Reclamation reserves the right to allow fuel dispensing from service docks. The concessionaire is responsible for developing and submitting detailed plans for Reclamation's review and



approval of a dock-based fuel dispensing system. The concessionaire will be required to strictly comply with all applicable Federal, State and local codes or guidelines regarding fuel dispensing, storage and safe handling.

- g. Storage of fuel or any other flammable substance on docks is not permitted.
- h. Docks shall be designed for a minimum structural load of 50 lbs. per square foot.
- I. Variance from any of the standards set forth in this Exhibit may be granted by Reclamation only after a review of detailed plans submitted by the concessionaire, subject to the approval of the Corps, and subject to a final inspection of the finished structure.

## **2. Walkways (Connecting Finger Piers and Accessing Other Docks and the Shore):**

- a. Walkways will be at least 48" in width (60" is recommended).
- b. Walkways connecting main piers to the shore, including ramps, gangways, and stairs, shall be constructed with handrails at each side of the walkway. Handrails shall be approximately 42" in height, with an intermediate rail approximately 22" in height below the handrail. Posts for handrails should be spaced no farther than 8 feet apart. Handrails must have a smooth surface and be able to withstand a load of at least 200 pounds applied in any direction at any point with a minimum of deflection.
- c. Walkways shall be structurally sound. If lumber is used, it will have a minimum size of two inches by six inches or be of equivalent strength. The lumber shall be free of knots, splits, decay, and protruding nails, or conditions which would decrease the strength and impair the safety of the walkway.
- d. Walkways from shore to dock shall be free from excessive spring, deflection, or lateral movement and adequately supported with flotation where necessary. Walkways shall be accessible from the shore along a clearly marked path. Walkways from shore to dock shall be adjusted with changing water levels so as to minimize the slope of the walkway, but shall not be allowed to exceed a 1:3 running slope (1 foot drop in 3 foot run, or 33%).

## **3. Flotation:**

- a. Freeboard. Flotation shall be adequate to support the top of the decking no less than 12" and no more than 20" above the water level under dead load conditions (the entire weight of the floating units and all permanently mounted equipment), and no less than 8" above the water level under minimum live load conditions. Flotation shall be designed for a minimum dead load of 19 lbs. per square foot (p.s.f.), and a minimum live load of 30 lbs. p.s.f.
- b. Flotation shall consist of commercially manufactured polyethylene flotation structures (billets) injected with polystyrene or urethane foam. Reclamation may consider allowing other commercially manufactured flotation structures if the alternate flotation will not:
  - (1) sink or become water-logged if punctured,
  - (2) be subject to damage by animals,
  - (3) deteriorate on contact with petroleum products
  - (4) contaminate the water when punctured.
- c. Docks must be maintained in such a manner that they are easily visible above the surface of the water. Some portion of the structure must be at least 18 inches out of the water (i.e., handrails, surface of the dock, storage cabinets, etc.)
- d. Existing dock flotation may be allowed by Reclamation until it has deteriorated to the point of contaminating the environment, or is no longer capable of meeting the freeboard requirements of Item 3(a), above. All new or replacement flotation shall comply with Item 3(b), above.

## **4. Anchorage:**

- a. An anchorage system shall be provided which will insure secure mooring of the structure. The anchorage shall provide safety against extreme water fluctuations, currents, drift impact, and wave action.

- b. The use of vegetation or the placement of permanent structures on the shoreline as an anchorage system is not allowed.

# **EXHIBIT E**

## **2005 – 2010 Facility Improvement Plan**

## **Proposal Update:**

*March 7, 2005*

Prior to the 2006 recreational season:

- Replacement of all plywood decking on docks with new rough-cut 1x8 treated decking
- Relocation of courtesy dock to Chalet "beach"
- Addition of new 160 ft. courtesy dock with 24ft. slips on the north side (E Dock)

Prior to the 2007 recreation season:

- Replace outer dock run with 8ft. wide run of similar length, supporting 32 slips (D Dock)
- Use portions of 6ft. wide dock replaced above to replace one run of old wooden docks (B Dock)
- Installation of 4 (four) full hookup campsites at location of removed 2 bedroom cabin

Prior to 2008 recreation season;

- Replace all wooden docks with new steel docks as previously approved by Reclamation (A Dock)
- Addition of up to 4 recreational use cabins at Chalet site as recommended in Reclamation's Commercial Services Plan (G)
- Remodel or replace existing shower and toilet facilities with fully wheelchair accessible facilities (I)
- Add vacuum boat pump-out to fuel dock (F Dock)
- Add two extended sections to Fuel dock and moorings for rental boats (F Dock)

Prior to 2010 recreation season:

- Replace upper & lower sections of launch ramp
- Repaint or reside buildings on upper tier; replace windows and doors
- Add mobile unit to store as originally planned for limited food service (H)
- Develop trailer storage area adjacent to marina

## Chalet Proposal Update:

Our operation would include maintenance of the grounds and building, outhouses, roads/parking areas. YBM would pay trash collection fees and electricity to the area. We would set our own prices for services offered, which would then be subject to royalties to Reclamation as per our contract. We would, of course, honor any existing booking arrangements made by Reclamation.

The area would be operated as Reclamation has done in the recent past as an absolute minimum. Several improvements we would like to add would include:

- A foot trail encircling the marina bay connecting the Chalet area with marina facilities.
- Upon completion of a new courtesy dock at the marina, we would like to move our present dock to the Chalet. There it would offer proper boat access to the Chalet and act as a breakwater to protect the marina from waves out of the southeast.
- Up to four cabins would be positioned as shown, without any excavation or other alterations to the site.

## Dock Replacement, Dock "A"

We propose to replace with a design similar to our new steel docks, but with the following differences:

- We will construct these docks out of 5 inch channel instead of the 6 inch we used on the big-boat docks. With the smaller boats these docks accommodate and their well-protected location, we feel 5 inch channel will have abundant strength and result in a 15% less weight/displacement.
- We would go with a 12 inch deep float rather than the 16 inch to reduce freeboard providing for better safety in accommodating the small boats.
- Main dock sections would be 6 feet wide; finger docks 3 feet wide, 16 or 20 feet long.

The Yacht Basin Concession area presently has no area to store boat trailers for seasonal dock renters. In the past the trailers have been stored on adjacent private land, and we currently rely on Orville Johnson's good will so that we may continue to do so. However, we feel that this makes the concession very vulnerable to the whims of outside interests. We would like to propose developing a storage yard on adjacent Reclamation land. There is a vestige of a road across from the entrance to the Chalet that would be the most sensible place to build an access to the land south of West Shore Drive. We would like the opportunity to walk the area and discuss possibilities.

