## C. CONCESSION CONTRACTOR IMPROVEMENTS

The Concession Contractor may construct or install upon lands assigned to the Concession Contractor under this Concession Contract only those Concession Contractor Improvements that are determined by Reclamation to be necessary and appropriate for the conduct by the Concession Contractor of the services required under this Concession Contract. Construction or installation of Concession Contractor Improvements and associated expenditures may occur only after the written approval by Reclamation of their location, plans, and specifications. Reclamation may prescribe the form and content of the application and the procedures for such approvals. The desirability of any project, as well as the location, plans, and specifications thereof, will be reviewed in accordance with Applicable Laws and Reclamation Manual Policy and Directives and Standards in Exhibit L. The Concession Contractor may not remove, dismantle, or demolish Concession Contractor Improvements without the prior approval of Reclamation.

Any salvage resulting from the authorized removal, severance, or demolition of Concession Contractor Improvements remains the property of the Concession Contractor; however any salvage resulting from the removal, severance, or demolition of Concession Contractor Improvements that have been abandoned by the Concession Contractor shall become the property of the United States.

In the event that a Concession Contractor Improvement is removed, abandoned, demolished, or substantially destroyed and no other improvement is constructed on the site, the Concession Contractor, at its expense, shall promptly, upon the request of Reclamation, restore the site as nearly as practicable to its original condition.

Any monetary interest of the Concession Contractor in improvements assigned to the Concession Contractor shall not be construed to include or imply any authority, privilege, or right to operate or engage in any business or other activity. The use or enjoyment of any such improvements shall be wholly subject to the Applicable Laws and regulations and provisions of this Concession Contract.

## D. PERSONAL PROPERTY

The Concession Contractor shall provide all tangible personal property, including but not limited to removable equipment, vehicles, vessels, furniture, and goods necessary for its operations under this Concession Contract. Such Personal Property shall not be considered Concession Contractor Improvements, and the Concession Contractor shall not be entitled to any reimbursement or other means of compensation for such personal property.

The Concession Contractor is generally not permitted to market personal property, other than approved merchandise, on the Federal Estate. The use of "For Sale" signs or similar signage is strictly prohibited. The Concession Contractor may market its personal property through off-site means and sell its personal property contingent upon immediate removal from the Federal Estate. The Concession Contractor may, however, sell its personal property to a subsequent concession contractor once a succeeding contract is awarded without the need to remove the items from the Federal Estate.

## E. CONDITION OF CONCESSION FACILITIES

The Concession Contractor has inspected the concession facilities, is thoroughly acquainted with their condition, and accepts the concession facilities "as is," subject to Reclamation's obligations under section 3.F.1 of this Concession Contract.

## F. UTILITIES

If Reclamation does not provide utilities to the Concession Contractor, the Concession Contractor shall, with the written approval of Reclamation and under any requirements that Reclamation shall prescribe, secure necessary utilities at its own expense from sources outside the Lake Berryessa area or shall install the utilities within the concession areas with the written permission of Reclamation, subject to the following conditions:

Any water deemed necessary for the operation of the concession areas must be acquired by the Concession Contractor in cooperation with Reclamation at the Concession Contractor's expense in accordance with applicable State procedures and law.

If requested by Reclamation, the Concession Contractor must provide to Reclamation any utility service provided by the Concession Contractor for its operations to such extent as will not unreasonably restrict anticipated use by the Concession Contractor. Unless otherwise agreed by the Concession Contractor and Reclamation in writing, the rate per unit charged Reclamation for such service shall be approximately the average cost per unit of the Concession Contractor providing such service for its own operations.

The Concession Contractor is obligated to pay any special assessments required by the State or County.

## G. CONCESSION FACILITIES IMPROVEMENT PROGRAM

The Concession Contractor shall undertake and complete an improvement program, hereinafter "Concession Facilities Improvement Program" or "CFIP" that benefits the public, costing not less than $76,250,000 dollars (present worth value in 2010) as adjusted in the year of actual construction based on the Consumer Price Index. Each construction project will reflect the adjusted total project cost in the approved project statement as revised required in Exhibit H. The CFIP shall consist of a list of the Concession Contractor Improvements for each concession area as set forth in Exhibit H.

For the purposes of this Contract, each concession area will have an independent CFIP, the total amount of which shall equal the total minimum CFIP for all the concession areas being administered by the Concession Contractor pursuant to this Concession Contract. The individual concession area amounts are approximately:

| | |
|---|---|
| Mahogany Bay (Formerly Markley Cove Resort) | $9,000,000 |
| Lupine Shores Resort – (Formerly Steele Park Resort) | $6,500,000 |
| Foothill Pines Resort – (Formerly Spanish Flat Resort) | $15,500,000 |
| Blue Oaks Resort – (Formerly Lake Berryessa Marina) | $26,000,000 |

| | |
|---|---|
| Manzanita Canyon Resort – (Formerly Rancho Monticello) | $17,500,000 |
| Chaparral Cove Resort – (Formerly Putah Creek Resort) | $1,750,000 |
| TOTAL MINIMUM CONTRACT CFIP | $76,250,000 |

The Concession Contractor shall undertake construction under each CFIP in accordance with the schedules set forth therein and in a manner that demonstrates to the satisfaction of Reclamation that the Concession Contractor is reasonably carrying forward the CFIP in good faith. No construction may begin until the Concession Contractor receives written approval from Reclamation of plans and specifications in accordance with Exhibit H. Only the Concession Contractor and its construction contractors may commence construction of improvements and may not authorize anyone else, including visitors, to construct anything. During the period of construction, the Concession Contractor shall provide Reclamation with such evidence or documentation as may be satisfactory to Reclamation to demonstrate that the CFIP is being duly carried forward.

The Concession Contractor shall use best efforts to complete all required Concession Contractor Improvements and make them available for public use on or before 2023. Reclamation shall extend this date in circumstances where Reclamation determines that the delay resulted from events beyond the control of the Concession Contractor, including but not limited to, acts of nature, shortages of materials, site availability (including removal and restoration of conditions within the responsibility of Reclamation), and inability to obtain required permits for construction and operation. Beginning in 2018 and every 5 years thereafter, the Concession Contractor shall provide Reclamation a 5-year CFIP schedule to identify and or adjust the Reclamation-authorized Concession Contractor Improvements beyond the initial 5 years identified in Exhibit H.

At the discretion of Reclamation, the Concession Contractor may be relieved in whole or in part of any or all of the obligations specified in the CFIP for designated periods when Reclamation determines that documented circumstances beyond the Concession Contractor's control or Reclamation's control warrant such relief.

The Concession Contractor is authorized to build only those Concession Contractor Improvements that are identified in the CFIP by type and schedule. In the event the Concession Contractor desires to construct additional Concession Contractor Improvements beyond those identified in the CFIP, the Concession Contractor shall develop a proposal for Reclamation's review and consideration. Any eventual decision by Reclamation regarding the Concession Contractor's construction of such additional improvements will consider the impact of such improvements on the operations of other concession contractors at Lake Berryessa to assure compliance with the requirements in the 2006 Visitor Services Plan Record of Decision wherein it discusses "lake-wide integration of government operations and commercial operations in the best interest of the visiting public."

In order to facilitate the Concession Contractor's ability to obtain third-party financing with respect to one or more Concession Contractor Improvements under the CFIP, Reclamation will respond to requests from potential third party lenders designated by the Concession Contractor for appropriate estoppel certificates and/or other reasonable assurances on a timely basis, to the extent consistent with this Concession Contract and Applicable Laws.

## H. MAINTENANCE PLAN AND MAINTENANCE OBLIGATION

The Concession Contractor shall be solely responsible for the physical maintenance, repairs, housekeeping, grounds keeping, and landscaping of all concession facilities used in operations under this Concession Contract, to the satisfaction of Reclamation.

For these purposes, the Concession Contractor shall undertake appropriate inspections and shall establish and revise, as necessary, a Maintenance Plan consisting of specific maintenance requirements for each concession area that shall be adhered to by the Concession Contractor. The Concession Contractor shall submit a single Maintenance Plan, which may include subparts for each concession area, for Reclamation area manager approval within 60 days of the effective date of this Concession Contract. Once approved by Reclamation, the Concession Contractor shall implement and fully comply with the maintenance plan. The initial Maintenance Plan shall conform closely to the Concession Contractor's commitments and content in its original Prospectus proposal.

The maintenance plan requirements are located in Exhibit F. The maintenance plan shall be evaluated and updated by the Concession Contractor annually if necessary and submitted to Reclamation area manager for approval. Reclamation may make reasonable modifications to the Maintenance Plan from time to time after consultation with the Concession Contractor. Such modifications shall be in furtherance of the purposes of this Concession Contract and shall not be inconsistent with the terms and conditions of this Concession Contract.

## I. RESERVE ACCOUNT FOR FACILITIES IMPROVEMENT

The Concession Contractor shall establish and manage a "Reserve Account for Facilities Improvement" (RAFI) for each concession area which is to contain funds that shall be used to carry out, on a project basis, in accordance with Exhibits C, D, E, H, and K, improvements, construction, and repair and maintenance of concession facilities that are nonrecurring within a 7-year timeframe. Such projects may include repair or replacement of foundations, building frames, window frames, roof sheathing, sub-floors, and drainage and the rehabilitation of building systems such as electrical, plumbing, built-in heating, air conditioning, and similar projects including projects directed by Reclamation. No such projects may commence and no associated expenditures may be made until the Concession Contractor receives written approval from Reclamation. Projects paid for with RAFI funds will not include routine, operational maintenance of facilities or housekeeping, landscaping, and grounds-keeping activities.

Nothing in this section shall lessen the responsibility of the Concession Contractor to carry out the maintenance and repair of concession facilities or housekeeping and grounds-keeping activities as required by this Concession Contract from Concession Contractor funds exclusive of the funds contained in the RAFI. Each quarter, the Concession Contractor shall submit quarterly RAFI activity reports to Reclamation (Exhibit K) for each concession area. Each year, the Concession Contractor shall include in its annual financial report submitted to Reclamation a reserve account annual reconciliation as detailed in Exhibit J of this Concession Contract.

The Concession Contractor shall establish an interest-bearing banking account to receive deposits for the RAFI. RAFI deposits shall be made quarterly by the Concession Contractor as a percentage of the Concession Contractor's gross receipts. For reporting purposes to Reclamation,

financial records must show both the individual accounts for each concession area and the total RAFI deposits and expenditures for the Concession Contract as a whole.

The Concession Contractor shall establish and deposit into a RAFI, within 15 days after the effective date of this Concession Contract, a sum equal to $2,000 (Two Thousand Dollars) for each of the six concession area RAFI accounts. This amount will serve as an initial working balance and will offset amounts due in the initial quarterly payments until an amount equal to this initial amount has been covered.

The Concession Contractor shall deposit into the RAFI accounts, within 30 days after the last day of each quarter of Concession Contractor operations, a total sum equal to 3 percent (3%) of the Concession Contractor's gross receipts for the previous quarter. If the Concession Contractor fails to make timely deposits to the RAFI or fails to deposit the initial required balance, Reclamation may terminate this Concession Contract for default.

The balance in the RAFI accounts shall be available exclusively for funding projects in accordance with the RAFI's purpose. For all expenditures made for each project from the RAFI, the Concession Contractor shall maintain auditable records including invoices, billings, canceled checks, and other documentation satisfactory to Reclamation. Failure to expend RAFI funds when directed and as scheduled by Reclamation shall be considered as a material breach of this Concession Contract which may result in contract termination.

The Concession Contractor should maintain the value of the improvement with RAFI funds.

RAFI funds are intended to provide a dependable source of funds to help assure that the Concession Contractor and any applicable Reclamation Improvements are maintained at a satisfactory level. Since the RAFI funds themselves and improvements made with the funds protect the Concession Contractor Improvements' value, the Concession Contractor will, to the extent that RAFI funds are not adequate for all the necessary RAFI projects, utilize its own funds for such necessary projects as determined by Reclamation.

Any RAFI funds not duly expended by the Concession Contractor by the end of this Concession Contract shall be the property of the Concession Contractor unless there are approved or otherwise Reclamation required RAFI projects previously identified for completion in advance of contract expiration that have not been accomplished. In this case, those projects' estimated costs will be transferred from the remaining RAFI account to the next concession contractor for application to those projects. If the Concession Contractor is also the succeeding concession contractor, then the RAFI funds that are unexpended during the term of this Concession Contract will apply to the initial RAFI funding established in the next contract less the estimated costs of uncompleted but required projects.

In the event of termination of this Concession Contract for any reason, or expiration of this Concession Contract, any unexpended RAFI funds shall become the property of the Concession Contractor.

## J. SUPPLEMENTAL SURCHARGE

Reclamation anticipates that during the term of this Concession Contract, the Concession Contractor may find it necessary to pay additional costs for ongoing, additional services and fund utility infrastructure construction to be provided or required by Napa County and/or other state or local government entities or agencies that are necessitated by the use, rights and privileges granted under this Concession Contract, which are not presently identifiable, and the Concession Contractor agrees to pay such costs deemed appropriate and approved by Reclamation. Such fees, charges, and assessments ("charges") and required actions may include, but are not limited to, charges for the installation, modification, and or expansion of water and sewer systems, emergency and fire services, law enforcement services, road improvements, environmental and water quality compliance actions, and other activities.

Reclamation has determined that such costs may be a necessary expense of this Concession Contract and as such, the Concession Contractor may collect additional revenues during the term of this Concession Contract to offset such costs. The Concession Contractor may begin to collect a supplemental 5 percent (5%) surcharge within 90 days of the effective date of this Concession Contract, with prior notification to Reclamation, on all goods it sells (excluding gasoline and diesel fuel) and on all services it provides for which it is not required to pay a Transient Occupancy Tax as defined by applicable county ordinance.

For each concession area, the Concession Contractor shall deposit all Supplemental Surcharge funds it collects in a separate, interest bearing, federally insured, Supplemental Surcharge Account (Account) as part of its gross revenue to be maintained by the Concession Contractor. Surcharge funds will not be commingled with other accounts established under this Concession Contract or with any other Concession Contractor funds. For reporting purposes to Reclamation, financial records must show both the individual Accounts for each concession area and the total supplemental surcharge deposits and expenditures for the Concession Contract as a whole. The Concession Contractor will directly pay the applicable entity or government agency for any services provided to or charges or required actions levied on the Concession Contractor deemed appropriate and approved by Reclamation in consultation with the authorized government or agency representative.

The amount of the Supplemental Surcharge shall be reviewed every 3 years to determine whether it should be increased or decreased to enable the Concession Contractor to collect the appropriate amount of funds needed to pay for the services or charges or required actions as defined above. At each 3-year review, the Concession Contractor shall provide a 3-year projection for all sales for which the surcharge applies, and any known or proposed required payments for charges and ongoing and additional services or required actions. The Concession Contractor will propose to Reclamation for approval the appropriate rate for the surcharge necessary to cover such expenses. After the 3-year review, any funds over $10,000 left in any Supplemental Surcharge Account in excess of known or expected services or charges or required actions shall be deposited in the RAFI account for the particular concession area established in section 4.I. and treated as RAFI.

In the event of termination or expiration of the Concession Contract, any Supplemental Surcharge funds that remain after all valid obligations have been met shall first be deposited into the RAFI account for the particular concession area and then be disbursed under the RAFI account closeout process, outlined in subsection 4.I, along with other funds in the RAFI account. If, however, at the expiration of the Concession Contract, the Concession Contractor is also the succeeding

concession contractor and the succeeding contract includes a supplemental surcharge, then the surcharge funds that are unexpended during the term of this Concession Contract will apply to the initial surcharge funding requirement established in the next contract, after accounting for the cost of any payments still required at the time of expiration. If excess funds still remain, they will be transferred to the RAFI account for disbursement as noted above.

The financial reporting for the Account will be performed in accordance with Section 8 and Exhibit J of this Concession Contract.

## K. ANIMALS

Livestock breeding or grazing, farm animals, domestic fowl, or feral animals or fowl are prohibited within the concession areas. In the event that certain animals are necessary for the operation of the concession, the Contracting Officer will be informed in writing of the purpose, type, and number of species before requesting approval by Reclamation. All feral or abandoned animals are prohibited and shall be the responsibility of the Concession Contractor to properly remove such animals.

The Concession Contractor is required to accommodate visitors with service animals, and is permitted to accommodate visitors with domestic pets or livestock provided that adequate, safe, and sanitary corrals and pens are provided. To protect the health and safety of the animals, employees, and visitors, animals will not be allowed to freely roam the concession areas or the Federal estate.

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# SECTION 5 – OWNERSHIP AND DISPOSITION OF FACILITIES

## A. DISPOSITION OF CONCESSION CONTRACTOR IMPROVEMENTS UPON EXPIRATION OF THE CONTRACT

1. All Concession Contractor Improvements within the concession areas shall be considered the property of the Concession Contractor, with any such improvements subject to disposition under the terms of this Contract. Any permanent additions or modifications to these Concession Contractor Improvements approved by Reclamation shall likewise be considered the property of the Concession Contractor.

2. The Visitor Services Plan Record of Decision (VSP ROD) dated June 2, 2006, represents Reclamation's present commercial services plan and formal determination of the future recreation operation and use at Lake Berryessa. The VSP ROD will remain in effect unless or until amended, supplemented, modified or superseded by a successor commercial services planning process or equivalent which, at a minimum, will include (a) an evaluation of the current business model for recreation services at each concession area and whether Reclamation expects this model to continue beyond the term of the current contract; and (b) a systematic facilities assessment to determine the current condition and remaining life expectancy of all Concession Contractor Improvements. The commercial services planning process will include public involvement, financial feasibility evaluation, and environmental analysis, and factual and statistical analysis such as the utilization of the facilities by the public. Reclamation will initiate a successor commercial services plan or equivalent for Lake Berryessa concession operations in year 20 of the Contract. The final approved commercial services plan will be provided to the Concession Contractor within 30 days of completion.

   The commercial services plan may be periodically reviewed and revised by Reclamation as needed. Any revisions to the commercial services plan will be made available to the Concession Contractor within 30 days of such revision and no less than 24 months prior to this Contract's expiration, and Reclamation will notify the Concession Contractor in writing at this time regarding Reclamation's commercial services plan determination whether visitor services will continue at the concession area after the expiration of this Contract. Additionally, assuming a decision to continue visitor services at the concession area, Reclamation's notification will also state whether Reclamation intends to operate visitor services through a concession contract, by direct government management, or through some other means.

   Until the successor commercial services plan is completed, future direction for the operation of the concessions authorized under this Concession Contract will be determined in accordance with Reclamation's 2006 Visitor Services Plan, as may be amended from time to time in compliance with applicable procedural requirements. Upon expiration of this Concession Contract, the Concession Contractor Improvements that are appropriate under the then existing commercial services plan and in operation at the time of such expiration shall be retained for future public use and enjoyment at the Lake Berryessa concession areas within the scope of this Contract. Should the Concession Contractor not continue as the operator following the expiration of this Contract, Reclamation will require

any new incoming concession contractor to purchase those facilities at fair market value as stipulated by section 5.A.8.

3. Should Reclamation's commercial services plan determine that any operations at the concession areas should be discontinued, the Concession Contractor should begin planning for the removal of Concession Contractor Improvements.

   i. A removal plan must then be submitted to Reclamation for approval no later than 18-months prior to the expiration of this Contract.

   ii. After September 30 of the Contract's year of expiration (*e.g.*, September 30, 2040 if the contract is expiring December 31, 2040), Reclamation may require changes to the services offered at the area in order to facilitate orderly removal. (By way of example, a marina fueling station or restaurant may need to be closed after the summer season to facilitate the completion of the removal process by the final contract expiration date.)

4. If Reclamation's commercial services plan determines that concession operations will generally continue at the area, the notification letter discussed in (2) above will also disclose what Concession Contractor Improvements Reclamation intends to keep operational at the site. Potentially, due to disrepair, changes in recreation demands, safety concerns, or Solano Project operational needs, some facilities may be designated for removal from an area that will still continue to be operated as a concession area. For any such Concession Contractor Improvement designated for removal, the removal provisions of (3) above shall apply to that improvement.

5. For Concession Contractor Improvements designated for removal, the Concession Contractor shall remove these improvements in accordance with the Reclamation-approved removal plan and the provisions of (3)(i) and (3)(ii) shall apply. No federal compensation will be provided for such improvements, but, assuming timely removal, the Concession Contractor retains all rights to utilize these improvements at another location and/or to collect all proceeds associated with their sale or salvage. Concession Contractor Improvements designated for removal but not timely removed by the Concession Contractor in accordance with the Reclamation-approved removal plan shall be deemed to be abandoned by the Concession Contractor and will be subject to disposition or disposal by Reclamation. The Contractor agrees to pay all expenses associated with such disposition or disposal by Reclamation unless the parties specifically agree otherwise in writing.

6. Regarding Concession Contractor Improvements and/or associated personal property, Reclamation will give due consideration to an offer from the Contractor conveying the improvements to Reclamation. If such an agreement is reached, then the Contractor would likely not be responsible for any costs associated with the disposition or disposal of the conveyed improvements, subject to the actual terms of that separate agreement.

7. Facilities designated for retention will be appraised in accordance with Department of the Interior appraisal policy and succeeding standards and manuals. All Department of the Interior appraisals and any third-party appraisal shall conform to Uniform Standards of Professional Appraisal Practices (USPAP) and Uniform Appraisal Standards for Federal

Land Acquisitions (UASFLA) or any other standards that may become applicable in the future pursuant to the Department of the Interior's appraisal policy or as otherwise provided by statute. Any disputes over appraised values will be addressed through Department of the Interior processes, including arbitration as authorized, and all Applicable Laws.

Should relevant changes be made to the Department of the Interior appraisal policies, Reclamation will alert the Concession Contractor to such changes. Further, should a public process occur to change these policies, Reclamation will seek to notify the Concession Contractor in a timely manner so that the Concession Contractor can participate in such process. At a minimum, Reclamation and the Concession Contractor agree to meet and confer in 2012 (and every 5 years thereafter) to review and discuss then-current Departmental appraisal policies and the availability of alternative means of Concession Contractor Improvement valuation standards, processes and procedures. By mutual agreement, Reclamation and the Concession Contractor may amend this Contract to incorporate alternative means of valuation and binding arbitration if those means are legally authorized.

8. If Reclamation determines that the area is to continue under a concession contract, the value of Concession Contractor Improvements designated for retention, as determined pursuant to section 5.A.7 of this Contract, will be incorporated into the bidding process. All potential bidders will be informed in the prospectus (or similar pre-bidding documents) that payment of such value to the outgoing Concession Contractor is a required element of an acceptable bid, and the successor contractor will be required to pay the outgoing Concession Contractor such value as a condition to award of the contract. Reclamation will endeavor to complete the contract award process no later than the expiration date of this contract.

9. If Reclamation determines that the area is to continue as a recreation area but under direct government management, Reclamation will, subject to the availability of appropriations and applicable law, endeavor to purchase the Concession Contractor Improvements designated for retention from the Concession Contractor at the value determined in accordance with section 5.A.7 of this Contract. Reclamation may not take ownership of or operate the Concession Contractor Improvements in order to continue the area as a recreation area under direct government management without payment to the Concession Contractor of just compensation, as determined pursuant to section 5.A.7 of this Contract.

10. In the absence of continuing concession operations at the site by either commercial contractor or the government after termination or expiration and subject to the mutual agreement of the Parties at that future time, the Concession Contractor may quitclaim the facilities to the United States rather than (a) bear the cost of removing facilities and/or (b) restoring the site to original condition.

## B. UPON TERMINATION OR REVOCATION

The procedures set forth in this section 5.B shall govern in the event that, as the result of the termination of this Concession Contract under Section 1.B.3 or the revocation of the Concession Contractor's authorization to operate a concession area or facility (other than by expiration) under Section 1.B.2, the Concession Contractor shall cease to be authorized by Reclamation to conduct

operations under this Contract in the case of a termination or with respect to any or all concession areas or Concession Contractor Improvements in the case of a revocation.

1. The Concession Contractor shall convey to a person or entity designated by Reclamation (including Reclamation if appropriate) the interest it has under the terms of this Concession Contract in the affected Concession Contractor Improvements that remain in accordance with the then existing commercial services plan; and Reclamation shall apply the terms and conditions of this Concession Contract, including 5.A.8, 5.A.9 and 5.A.10, so that if a new concession contractor is chosen or if Reclamation has determined to directly manage the area, the Concession Contractor will be paid the fair market value determined pursuant to section 5.A.7 of this Contract for such interest in those Improvements. Reclamation will not take ownership of or operate the relevant Concession Contractor Improvements in order to continue visitor services at the area(s) under long-term direct government management without payment to the Concession Contractor of compensation as determined pursuant to section 5.A.7 of this Contract.

2. The Concession Contractor will, at its own expense, remove Concession Contractor Improvements, if any, not in accordance with the then existing commercial services plan, and its Personal Property, at the affected concession area(s) within one hundred twenty (120) calendar days after a notice of decision by the Regional Director of termination or revocation is sent by Reclamation to Concession Contractor, unless otherwise agreed to in writing by the parties. Concession Contractor Improvements not in accordance with the then existing commercial services plan and Personal Property required to be removed but not removed by the Concession Contractor within one hundred twenty (120) calendar days after a notice of decision of the Regional Director of termination or revocation is sent by Reclamation to the Concession Contractor shall be deemed to have been abandoned by the Concession Contractor and will be subject to disposition or disposal by Reclamation, unless otherwise agreed to in writing by the parties. The Concession Contractor agrees to pay all expenses associated with such disposition or disposal by Reclamation, unless otherwise agreed to in writing by the parties. Reclamation will give due consideration to an offer from the Contractor to convey the Improvements to Reclamation. If such an agreement is reached, then the Contractor would likely not be responsible for any costs associated with the disposition or disposal of the conveyed Improvements, subject to the actual terms of that separate agreement.

## C. DISPOSITION OF PERSONAL PROPERTY

No compensation is due to the Concession Contractor from Reclamation or a successor concession contractor for any Concession Contractor Personal Property that is used in association with this contract. The Concession Contractor may, however, independently offer to sell Personal Property to a succeeding contractor or Reclamation.

In the instance of a regularly scheduled expiration, the Concession Contractor will have all Personal Property removed and all restoration accomplished, at the Concession Contractor's expense, in advance of the last day of the Contract term, unless otherwise authorized in writing by Reclamation.

## D. DISPOSAL COSTS

All property of the Concession Contractor not removed from the area in accordance with the terms of this Concession Contract shall be considered abandoned property. Such abandoned property shall be subject to disposition or disposal by Reclamation, and the Concession Contractor agrees to pay the costs of this disposition or disposal. A failure by the Concession Contractor to pay such costs will result in the full amount being offset, to the full extent allowable under applicable law, against any other payments owed by the United States to the Concession Contractor or its parent company or other related entities.

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# SECTION 6 – FEES

## A. FRANCHISE FEE

For the term of this Concession Contract, the Concession Contractor shall pay to Reclamation, for the use, rights, and privileges granted under this Concession Contract, a Franchise Fee. The Franchise Fee shall be equal to:

One percent (1.0%) of the Concession Contractor's Gross Revenues subject to franchise fees for the year.

The Franchise Fee is a direct return to the Federal Government and is a fair and equitable charge levied by the Government for the use, rights, and privileges granted under this Concession Contract. The Franchise Fee shall be credited to the U.S. Treasury in accordance with Reclamation directives and standards in Exhibit L.

## B. PAYMENTS DUE

1. The Franchise Fee shall be due on a quarterly basis at the end of each quarter (Qtr 1: Jan – Mar, Qtr 2: Apr – Jun, Qtr 3: Jul – Sept, Qtr 4: Oct – Dec) and shall be paid by the Concession Contractor in such a manner that Reclamation shall receive payment within 30 days after the last day of each quarter. Quarterly reporting procedures will be provided upon award of this Concession Contract.

   The Concession Contractor shall pay any additional Franchise Fee amounts due within 30 days after the end of the Concession Contractor's fiscal year as a result of adjustments to Gross Revenues determined at the time of submission of the Concession Contractor's annual financial report. Overpayments shall be offset against the following year's fees. In the event of termination, bankruptcy, or expiration of this Concession Contract, overpayments will first be credited against any money due and owing the Government, and the remainder, if any, will be returned to the Concession Contractor.

2. The Concession Contractor may use either the Treasury Financial Communications System and shall electronically deposit all payments, or the Concession Contractor may mail all payments directly to the following address:

   US Bureau of Reclamation – Mid Pacific
   PO Box 301502
   Los Angeles, CA 90030-1502

   Additionally, the Concession Contractor shall send all reports to the Lake Berryessa Concession Office, Concession Manager, by fax and mail. The fax number is (707) 966-0409. The mailing address is 5520 Knoxville Road, Napa, CA 94558.

## C. INTEREST AND PENALTY

An interest charge and penalty will be assessed on overdue amounts for each quarter, or portion thereof, that payment is delayed beyond the 30 day period provided for above. The percent of interest charged will be equal to the current value of funds rate to the U.S. Treasury as published annually in the Federal Register by the U.S. Treasury. In addition, an administrative charge of $53.00 and a penalty charge of 6 percent (6%) per annum will be assessed after any payment is 90 days delinquent. If Contractor fails to submit quarterly financial reports within 30 days of quarter end, an estimate of revenue due to the U.S. Government will be developed and a bill for collection will be sent to the Contractor. Unless full payment is received within 90 days from the due date specified in the Contract, the Concession Contractor will be in breach of the Contract and the Contract may be terminated after the 15-day period to cure the breach.

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# SECTION 7 – INSURANCE AND INDEMNIFICATION

## A. INDEMNIFICATION

The Concession Contractor agrees to assume liability for and does hereby agree to save, hold harmless, protect, defend, and indemnify the United States of America, its agents, and its employees from and against any and all liabilities, obligations, losses, damages or judgments, including but not limited to, penalties and fines, claims, actions, suits, costs and expenses (including but not limited to attorney's fees and expert's 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 Concession Contractor, its employees, agents, subcontractors, or contractors under this Concession Contract. This indemnification shall survive the termination, bankruptcy, or expiration of this Concession Contract.

## B. INSURANCE IN GENERAL

The Concession Contractor shall obtain and maintain during the entire term of this Concession Contract, at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of this Concession Contract and Exhibit I subject to the approval of Reclamation. The initial insurance requirements are set forth below and in Exhibit I. Any changes or additional requirements that Reclamation determines necessary must be reasonable and consistent with the types and coverage amounts of insurance a prudent businessperson would purchase in similar circumstances. Before signing the Concession Contract, the Concession Contractor shall report to Reclamation, and Reclamation shall review and approve, the types and amounts of insurance coverage to be purchased by the Concession Contractor. The Concession Contractor shall purchase such insurance to be effective as of the date of signing the Concession Contract.

Reclamation will not be responsible for any omissions or inadequacies of insurance coverage and amounts in the event the insurance purchased by the Concession Contractor proves to be inadequate or otherwise insufficient for any reason whatsoever.

## C. CERTIFICATE OF INSURANCE AND CERTIFICATE OF ENDORSEMENT

The Concession Contractor 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 Concession Contractor shall provide Reclamation immediate written notice of any material change in the Concession Contractor's insurance program hereunder, including without limitation, cancellation of any required insurance coverage. Furthermore, the Concession Contractor will provide Reclamation with a Certificate of Insurance and Certificate of Endorsement (COE) through the insurance company. The insurance company's COE will provide Reclamation with notice of policy change or cancellation. Reclamation will be an "additional Named Insured" on all insurance policies.

## D. COMMERCIAL PUBLIC LIABILITY

The Concession Contractor shall acquire commercial general liability insurance against claims arising out of or resulting from the acts or omissions of the Concession Contractor or its employees, agents, or contractors in carrying out the activities and operations required or authorized under this Concession Contract. This insurance shall be in the amount commensurate with the degree of risk and the scope and size of the activities required under this Concession Contract, as more specifically set forth in Exhibit I. Furthermore, the commercial general liability package shall provide no less than the coverage and limits described in Exhibit I. All liability policies 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.

From time to time, Reclamation may, at Reclamation's discretion, modify Exhibit I to revise the minimum required limits or to require additional types of insurance, provided that any additional requirements must be reasonable and consistent with the types of insurance a prudent businessperson would purchase in similar circumstances.

## E. PROPERTY INSURANCE

In the event of damage or destruction, the Concession Contractor will repair or replace those concession facilities, real property and the Personal Property used by the Concession Contractor in the performance of the Concession Contractor's obligations under this Concession Contract.

For this purpose, the Concession Contractor shall obtain fire and extended insurance coverage on concession facilities for all or part of their replacement cost, as specified in Exhibit I. The minimum amounts of such insurance coverage currently in effect are set forth in Exhibit I. This exhibit will be revised at least every 3 years or sooner if there is to be a substantial increase in the minimum amount of coverage to be obtained.

Commercial property insurance shall provide for the Concession Contractor and the United States of America to be named insured as their interests may appear.

In the event of loss, the Concession Contractor shall use all proceeds of such insurance to repair, rebuild, restore, or replace concession facilities and Personal Property used in the Concession Contractor's operations under this Concession Contract as directed by Reclamation. Policies may not contain provisions limiting insurance proceeds to in situ replacement. The Concession Contractor shall not be relieved of its obligations because insurance proceeds are not sufficient to repair or replace damaged or destroyed property.

Insurance policies that cover concession facilities shall contain a Loss Payable Clause approved by Reclamation that requires insurance proceeds to be paid directly to the Concession Contractor without requiring endorsement by the United States. The use of insurance proceeds for repair or replacement of concession facilities will not alter their character as properties of the United States. Notwithstanding any provision of this Concession Contract to the contrary, the Concession

Contractor shall gain no ownership or other compensable interest as a result of the use of these insurance proceeds.

The commercial property package shall include the coverage and amounts described in Exhibit I.

## F. BONDS

During the term of this Concession Contract, Reclamation may require the Concession Contractor to furnish appropriate forms of bonding or securities to reasonably ensure faithful performance of the Concession Contractor's obligations under this Concession Contract. Examples of when a bond may be reasonably required include but are not limited to the following: a number of inter-related projects that individually would not require a bond but are significant in total, projects required to protect public health and safety, and projects critical to the continuity of recreation services to the public. Prior to exercising this provision, Reclamation will provide the Concession Contractor an opportunity to provide input on both the scope and subject matter of such reasonable bonds.

The Concession Contractor may be required to have any construction contractor hired by it to furnish a performance bond or other assurance acceptable to Reclamation in connection with the construction of improvements over one million dollars, including but not limited to projects undertaken under the CFIP or using funds from the RAFI. To the extent the construction contractor provides a performance bond and adequate surety is provided to Reclamation, then no other construction bonding shall be required.

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# SECTION 8 – ACCOUNTING RECORDS AND REPORTS

## A. ANNUAL FINANCIAL REPORTS AND ACCOUNTING SYSTEM

The Concession Contractor shall maintain a financial accounting system under which its accounts can be readily identified with its system of accounts classification. Such an accounting system shall be capable of providing the information required by this Concession Contract, including, but not limited to, the Concession Contractor's RAFI and the Supplemental Surcharge obligations. The Concession Contractor's system of accounts classification shall use, without exception and without modification unless approved by Reclamation, the Concession Contractor annual financial reports provided in Exhibit J to this Concession Contract.

The Concession Contractor shall follow Generally Accepted Accounting Principles (GAAP) in recording financial transactions and in reporting results to the authorized officer. An income-tax basis of accounting following, Statement of Auditing Standards (SAS) No. 62, entitled "Special Reports", may be substituted for a GAAP based system with prior approval by Reclamation. The minimum acceptable accounting system shall include:

1. Systematic internal controls and recording by kind of business the gross receipts derived from all sources of business conducted under this authorization. Receipts should be recorded daily, and if possible, deposited into a bank account without reduction by disbursements. Receipt entries shall be supported by source documents such as cash register tapes, sale invoices, rental records, and cash accounts from other sources.

2. A permanent record of investments in facilities (depreciation schedule) current source documents for acquisition costs of capital items.

3. Preparation and maintenance of such special records and accounts as may be specified by the authorized officer.

4. Bank accounts will be maintained separately for the businesses conducted under this permit and not commingled with those for other businesses of the Concession Contractor.

5. The holder shall retain the above records and keep them available for audit for 5 years after the end of the year involved.

The Concession Contractor must use the accrual accounting method. If annual gross revenues do not exceed $250,000, the Concession Contractor's financial statements and Annual Financial Reports (AFR) may be prepared and submitted without a review or audit opinion of an independent certified public accountant (CPA), unless otherwise directed by Reclamation.

If annual gross revenues exceed $250,000 but not $1,000,000, the required AFR Schedules and any financial statements must be reviewed by an independent CPA in accordance with the standards and procedures as are applicable for the year of the review promulgated by the AICPA.

If the annual gross revenues of the Concession Contractor exceed $1,000,000, the required AFR Schedules and financial statements must be audited by an independent CPA in accordance with the