DRAFT

Contract Number _____

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

# CONCESSION CONTRACT

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**FOR THE DEVELOPMENT, OPERATION AND MAINTENANCE**
**OF A**
**CONCESSION OPPORTUNITY AT**
**LAKE ELWELL,**
**MONTANA**

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LOWER MARIAS UNIT
PICK-SLOAN MISSOURI BASIN PROJECT
LIBERTY COUNTY, MONTANA

## TABLE OF CONTENTS

**1. TERM** ..... 2

**2. SPECIAL CONDITIONS** ..... 2
- A. Concession Site ..... 2
- B. Fees ..... 2
- C. Gross Revenues ..... 3
- D. Use and Financial Data ..... 3
- E. Record Keeping ..... 3
- F. Required Services ..... 4
- G. Authorized Services ..... 4
- H. Operating Season ..... 4
- I. Rate Schedules ..... 4

**3. RECLAMATION PROVIDED IMPROVEMENTS** ..... 5
- A. Facilities ..... 5
- B. Inspection ..... 5
- C. Facility Ownership ..... 5
- D. Property Identification ..... 5

**4. CONCESSIONAIRE PROVIDED IMPROVEMENTS** ..... 5
- A. Concessionaire Property ..... 5
- B. Improvements ..... 6
- C. Property Removal ..... 6

**5. LIMITATIONS** ..... 6
- A. Plan Approval ..... 6
- B. Additional Services ..... 7
- C. Assignment ..... 7
- D. Concessionaire Occupancy ..... 8
- E. Equipment Storage ..... 8
- F. Construction Schedules ..... 8
- G. Right of Entry ..... 8
- H. Damages ..... 8
- I. Suspension ..... 8
- J. Exclusive Use ..... 9
- K. Concessionaire Livestock ..... 9
- L. Visitors Pets and Livestock ..... 9
- M. Seasonal Use ..... 9

**6. CONCESSIONAIRE OPERATION AND MAINTENANCE RESPONSIBILITIESError! Bookmark not defined.**
- A. Annual Operating and Maintenance Plan ..... 9
- B. Concessionaire Responsibilities ..... 10

**7. RECLAMATION OPERATION AND MAINTENANCE RESPONSIBILITIES** ..... 11

**8. TERMINATION** ..... 11
A. Termination ..... 11
B. Voluntary Termination ..... 12
C. Property to be Vacated ..... 12
D. Service of Written Notice ..... 12
E. Interim Operation ..... 12

**9. COMPENSATION** ..... 12

**10. INSURANCE AND BONDING** ..... 13
A. Indemnification ..... 13
B. Insurance ..... 13
C. Bond ..... 14

**11. GENERAL CONDITIONS** ..... 14
A. Public Access ..... 14
B. Non-Exclusive Use ..... 15
C. Compliance ..... 15
D. Hazardous Materials ..... 15
E. Accident Reporting ..... 16
F. Amendment ..... 16
G. Permissive Water Use ..... 16
H. Site Environment ..... 16
I. Safety Program ..... 16
J. Pest Control ..... 17
K. Signs ..... 17
L. Legal Effect of the Contract ..... 17
M. Risk ..... 17
N. Current Address ..... 17
O. Equal Opportunity Requirements ..... 18

**12. COVENANT AGAINST CONTINGENT FEES** ..... 19

**13. HISTORIC AND ARCHEOLOGICAL VALUES** ..... 19

**14. OFFICIALS NOT TO BENEFIT** ..... 20

## EXHIBITS

| | |
|---|---|
| Exhibit A | Location Map |
| Exhibit B | Site Map |
| Exhibit C | Reclamation Provided Buildings and Improvements |
| Exhibit D | Montana Department of Fish, Wildlife and Parks Provided Buildings and Improvements |
| Exhibit E | Memorandum of Understanding between the Bureau of Reclamation and Montana Department of Fish, Wildlife and Parks |
| Exhibit F | Boat Dock Standards |

DRAFT

Contract Number: _____

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

**CONCESSION CONTRACT**

*** * * * * * * * * * * * * * * * * * * ***

**FOR THE DEVELOPMENT, OPERATION AND MAINTENANCE**
**OF A**
**CONCESSION OPERATION AT**
**LAKE ELWELL RESERVOIR**

This Concession Contract (Contract) made this_____ day of _____20__, 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 the Federal Reclamation Laws, is entered into by and between the United States of America, Bureau of Reclamation, hereinafter referred to as "Reclamation", represented by the officer executing this Contract, and_____ hereinafter referred to as the "Concessionaire":

**Witnesseth That:**

**WHEREAS**, Lake Elwell Reservoir (Reservoir) is administered by Reclamation for flood control, irrigation, fish and wildlife, recreation and municipal and industrial benefits; and,

**WHEREAS**, Reclamation has determined that certain facilities and services that are necessary and appropriate for the public use and enjoyment of the Reservoir should be provided; and,

**WHEREAS**, Reclamation desires the Concessionaire to provide, operate and maintain certain facilities and services for the public use and enjoyment of the Reservoir, at reasonable rates, under the general administration and regulations of Reclamation; and,

**WHEREAS**, the Concessionaire desires to provide, operate and maintain such facilities and services for the public use and enjoyment of the Reservoir:

**Now, Therefore**, pursuant to the authority contained in Federal Reclamation Law, other pertinent Federal Laws, Executive Orders, rules and regulations, and Reclamation Policies and Directives and Standards, 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 concession-related facilities and services to the public at the Reservoir. The parties hereby agree to adhere to and abide by the terms and conditions set forth in the following Articles.

## 1. TERM

The term of this Contract shall commence on _____, 20__ and shall expire at midnight on December 31, 2020 (Concessionaire shall remove all personal property by this date). This Contract will not be renewed at its expiration. Should Reclamation determine that continued commercial services are necessary and appropriate beyond the expiration date, such business opportunities shall be advertised for public competition and a new concession contract issued.

## 2. SPECIAL CONDITIONS

A. Concession Site (Site). Subject to the terms and conditions specified in this Contract, Reclamation provides to the Concessionaire approximately 35 acres of land and water area for the operation of a public service concession at the Reservoir. The Site is located in the NE ¼, Section 30, T30N, R4E, as shown in Exhibit A, attached hereto, and is commonly known as Tiber Marina. No other commercial or private entity shall be permitted to provide concession services within the designated Site unless the Concessionaire declines to offer additional services as may be proposed by Reclamation. In addition, this Contract affords the Concessionaire the non-exclusive right to operate temporary, mobile concession facilities and services at other Reservoir developed sites, subject to Reclamation's prior review and written approval

B. Fees.

1) The Concessionaire agrees to pay to Reclamation an annual franchise fee for use of the Site and Reclamation provided facilities (buildings, docks, etc.) and improvements (sidewalks, roads, etc.) as follows:

- 2% of gross revenues and,
- A minimum, advance, non-refundable annual fee of $500, regardless of gross revenues.

The annual $500 minimum fee and the annual franchise fee (2% of gross revenues) will be due and payable to Reclamation by April 20, of each year of the Contract. The first annual franchise fee shall be due in its entirety on _____, 20__. The last annual franchise fee shall be due in its entirety on_____, 2021.

1. Late Payment:
    a) 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.

b) Administrative Charge: The cost of handling 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.

c) 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.

C. Gross Revenues. Gross revenues shall mean any and all revenues received from all concession operations under the terms and conditions of this Contract, excepting the sale of hunting and fishing licenses, sale of postage stamps, and gasoline sales tax.

D. Use and Financial Data. The Concessionaire shall submit an Annual Financial Report to Reclamation by April 20 of each year, reflecting concession operations for the previous calendar year (January 1 – December 31). Unless Reclamation provides the Concessionaire with a specific reporting form and format, the Annual Financial Report will list by business line (at a minimum) the gross revenues received from all operations related to the concession operation, all expenses incurred by the concession operation and the net income of the concession operations. Business line receipts include income derived from activities such as camping, sale of fuel, sale of food and merchandise, sale of fishing and hunting licenses, dry storage rentals, shelter rentals, cabin site rentals (if cabins are permitted), etc. Expenses incurred include the cost of salaries, taxes, insurance, fuel, water, permit fees, supplies, services provided by others, etc.

All reports shall be typed, dated, and signed by the Concessionaire. Reclamation may also require additional levels of financial reviews of the Concessionaire's books based upon gross revenues reported: If annual gross receipts are $250,000 or less, financial statements may be prepared without involvement of an independent certified public accountant (CPA) unless otherwise directed by the Secretary of the Interior; If annual gross receipts are between $250,000 and $1,000,000, financial statements shall be reviewed by an independent CPA in accordance with Generally Accepted Auditing Standards and procedures promulgated by the American Institute of Certified Public Accountants (AICPA); If annual gross receipts are in excess of $1,000,000, financial statements shall be audited by an independent CPA in accordance with Generally Accepted Auditing Standards and procedures promulgated by the AICPA. Such additional financial reviews are at the Concessionaire's expense.

E. Record Keeping. Reclamation and the Comptroller General of the United States, or any of their duly authorized representatives, shall at any time up until the expiration of five (5) calendar years after the expiration of this Contract, maintain access to and the right to examine any of the Concessionaire's pertinent books, documents, papers, and records, including Federal and State income tax returns (collectively called "documents"), and such proprietary or affiliate companies of the Concessionaire.

F. Required Services. The Concessionaire is ***required*** to provide the following services under the terms of this Contract:

1) Gasoline and motor oil sales.
2) Groceries, snacks and sundries appropriate for the type of recreation use occurring at the Reservoir.
3) Non-alcoholic beverage sales.
4) Tourist and directional information to the public.
5) Fishing tackle and supplies.
6) Camping and day use facilities (see Exhibit C).
7) Camping and day use supplies.
8) Courtesy boat dock.
9) Campsite & pavilion reservation system.
10) Seasonal boat, camper, and trailer storage.

G. Authorized Services. The Concessionaire is ***authorized, but not required*** to provide the following visitor services during the term of this Contract:

1) Boat rentals.
2) Prepared food (Reclamation must be provided with Health Inspection Compliance reports.)
3) Interpretive materials (books, postcards, posters, photographs).
4) Propane sales.
5) Pay Phone Service.
6) Liquor, beer and wine, subject to Montana state licensing requirements.
7) Boat launching, for a fee, when specifically requested.
8) Concessionaire may build, own, and operate a boat dock with up to 25 slips. (In accordance with Exhibit F – Boat Dock Standards.)
9) Fishing and hunting licenses, subject to approval of the Montana Department of Fish, Wildlife and Parks.
10) Rental cabins (not more than 5).
11) Live bait.

H. Operating Season. The minimum recreation season shall be May 15 through the Labor Day holiday weekend each year. Services shall be available from 8 AM to 6 PM, a minimum of five (5) days a week, Thursday through Monday, and the Memorial Day, Independence Day, and Labor Day holiday weekends. Additional services may be provided and dates and times of services may be expanded with prior Reclamation written approval.

I. Rate Schedules. All rates and services charged to the public by the Concessionaire for camping, boat docking, and dry storage shall be subject to review, regulation and written approval by Reclamation prior to such rates and prices being instituted. By April 20 of each year, the concessionaire shall provide such a listing of prices and charges to Reclamation. In addition, Reclamation also reserves the right to review and approve the quality, type, and price of any and all merchandise sold at concession authorized site

## 3. RECLAMATION PROVIDED IMPROVEMENTS

A. Facilities. Reclamation provides to the Concessionaire at the Site, in good working condition, those items listed in the attached Exhibit C. Buildings and improvements provided by the Montana Department of Fish, Wildlife and Parks (FWP) are listed on Exhibit D. Should an item described in Exhibit D be damaged, destroyed, or rendered unserviceable due to negligence by the Concessionaire, Reclamation may require the Concessionaire to replace the item at the Concessionaire's expense. The Concessionaire shall immediately report the damage, destruction or unserviceable condition of any Reclamation or FWP provided improvements to Reclamation. The Memorandum of Understanding (MOU) between Reclamation and FWP regarding the fish cleaning station is attached as Exhibit E.

The Concessionaire will maintain and repair the residence, store and all other buildings and structures to meet all current building codes.

B. Inspection. An initial inspection of these facilities and improvements will be conducted by Reclamation and the Concessionaire during prior to the start of the recreation season in 20__. Concessionaire accepts the Site and FWP and Reclamation-provided facilities and improvements, subject to the findings of the inspection, in full knowledge that the property is used, and cannot be expected to perform as new. Except for normal wear and tear, the Concessionaire must maintain these facilities and improvements in a good state of repair and service. Photographs of the facilities and improvements taken during this initial inspection shall be made a part of this Contract. The Concessionaire and Reclamation will inspect the condition of the facilities and improvements twice yearly as may be determined by Reclamation.

C. Facility Ownership. Title to Reclamation-owned property shall remain with the Federal Government.

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

## 4. CONCESSIONAIRE PROVIDED IMPROVEMENTS

A. Concessionaire Property. The Concessionaire shall provide at their expense all equipment, furnishings, and supplies needed to fulfill their obligations under the terms and conditions of this Contract, including but not necessarily limited to the following:

1. All appliances, furniture, and equipment needed to operate the Concession, as well as all merchandise, potable water, fuel, propane, propane distribution system, etc., to be sold or furnished to the public. Note: Potable water must be hauled to the Site at the Concessionaires expense.
2. Equipment for recreation-related services the Concessionaire is required to provide and any equipment needed for additional services offered.

3. Vehicular support for the Concession operation.
4. Tools and equipment needed for maintenance of facilities.
5. Record keeping, monitoring, and reporting documents required for the underground fuel storage and distributions system.

B. Improvements. The Concessionaire hereby agrees that Concessionaire provided or constructed improvements to the Site, being those placed underground or permanently attached to a Reclamation owned facilities or improvement, including but not limited to decks and walkways, landscape work, underground utility placements or replacements, shall, upon expiration or termination of this Contract, stay with the land and shall become Reclamation property without any compensation to the Concessionaire.

At the expiration or termination date of this Contract, Reclamation reserves the right to require the Concessionaire to remove any Concessionaire provided or constructed fixed or personal improvements from the Site. The Concessionaire is not guaranteed reimbursement for any Concessionaire provided personal capital improvements made at the Site.

C. Property Removal. Unless directed otherwise or as provided for elsewhere herein, by the termination date of this Contract, the Concessionaire shall have removed any and all of its personal property, fixed or otherwise, including store inventory, personal effects, boat docks, movable buildings or storage structures or other moveable personal property owned or leased by the Concessionaire and shall restore the premises to a condition satisfactory to Reclamation. All property not removed by the expiration or termination date of this Contract shall thereafter be considered abandoned and will automatically become the property of Reclamation and subject to disposal under Federal property regulations. Removal of property and/or any required repair or restoration of Reclamation land or facilities remaining 30 days after the expiration or termination date of this Contract will be performed by Reclamation and the Concessionaire will be billed for all costs associated with the performance of this work.

**5. LIMITATIONS.**

A. Plan Approval.

1. All construction, improvements or alterations to the Site, facilities or improvements, other than emergency maintenance, must be in compliance with state and local building codes and approved in writing by Reclamation prior to construction or site development. Written requests for building construction and site development activities, along with detailed plans and a schedule for completion, must be submitted by the Concessionaire to Reclamation at least 90 days prior to the start of the proposed construction or development.
2. The Concessionaire shall be responsible for obtaining all state or county building permits prior to construction. A copy of all such permits shall be provided to Reclamation before approved construction activities begin. As-built drawings of

building construction and/or site development activities shall be submitted to Reclamation upon completion of construction or development.

3. All docks placed within the Site must comply with the standards established in Exhibit F, "Boat Dock Standards".
4. All utility lines shall be placed underground.
5. Improvements and/or construction activities may require the completion of National Environmental Policy Act (NEPA) reviews, cultural resource compliance, compliance with US Army Corp of Engineers permitting requirements, or compliance with other federal, state, or local laws before any improvements and/or construction activities commence. As such, and depending upon the extensiveness of proposed improvements, the Concessionaire must plan their activities in advance and provide Reclamation sufficient time to review all drawings and proposals, prepare NEPA documentation, etc.

B. Additional Services. The Concessionaire's use of the facilities and improvements provided by Reclamation shall be limited to the activities or services listed in this Contract.

The Concessionaire may develop, offer, or provide other activities or services not specifically listed in this Contract, only upon prior review and written approval by Reclamation. Should the Concessionaire decide to exercise its option under this Contract to operate temporary mobile concession facilities and services at other developed recreation sites on the Reservoir, prior Reclamation review and written authorization shall be required. Reclamation retains the right to establish additional terms and conditions on the Concessionaire's use of these other sites.

C. Assignment. The Concessionaire may not sell, assign or transfer this Contract to another party without the prior written approval of Reclamation. The Concessionaire may not develop business partnerships with other individuals or companies to provide goods and services at the Site, without the prior written approval of Reclamation. No such partnership or business arrangement shall provide for the continual presence of anyone on the Site with the exception of the Concessionaire or its employees. The Concessionaire may not sub-concession any activities or services required by this Contract, or other services or activities not specifically addressed herein.

This Contract may only be assigned for its unexpired term and only with prior written consent of Reclamation. Reclamation shall review the business management capability of the proposed concessionaire, shall require a background survey including financial profile and felony arrest record report of the proposed concessionaire, and may require that a financial analysis of the concession operation including an appraisal of real property improvements be conducted before approving an assignment of the Contract.

In the event of the death of the Concessionaire during the term of the Contract, Reclamation will honor the transfer of the Contract to any designate heirs as prescribed by and in accordance with due process of law, provided that, such heirs are determined capable of managing the concession in a manner consistent with the terms and conditions of the Contract.

D. Concessionaire Occupancy. Occupation of the Site by the Concessionaire or his/her employee is permitted one month prior to the start of the season of operation through one month following the end of the season of operation. Additional time for occupation may be granted with prior written approval from Reclamation. Year-round residence at the Site is not authorized without prior written approval from Reclamation.

E. Equipment Storage. The Concessionaire may not store any personal equipment (except as may be determined appropriate by Reclamation) at the Site or elsewhere at the Reservoir which does not specifically support the daily operation of the services required or authorized under the terms and conditions of this Contract. All equipment must be stored in such a way as to eliminate potential safety issues and maximize the aesthetic view of the Site and surrounding area.

F. Construction Schedules. The Concessionaire agrees to schedule and conduct any construction or maintenance activity in the Site in a manner that minimizes hazards and inconvenience to the public.

G. Right of Entry. There is reserved to the United States, its successors, agents, and assigns, the right to remove from said lands material for construction, operation and maintenance of Federal facilities and to construct, operate, and maintain such facilities thereon.

There is reserved to the United States, its successors, agents, and assigns, the right to prospect and carry on developments for oil, gas, coal, and other minerals, on said lands, under the Act of October 2, 1917 (40 Stat. 297), and the Act of February 25, 1920 (41 Stat. 437), or the Act of August 7, 1947 (61 Stat. 913).

There is reserved to the United States, its successors, agents, and assigns, the right of the officers, agents, employees, licensees, and permittees, or the United States and designees of public bodies, at all proper times and places, freely to have ingress to, passage over, and egress from all of said lands, for the purpose of exercising, enforcing, and protecting their rights and the terms and conditions described in and reserved by this Contract.

H. Damages. The Concessionaire hereby holds harmless the United States from all claims for lost income, profit or wages, or damages to Concessionaire owned facilities, structures, property, or improvements authorized by this Contract, resulting from any project operations, or from any future modifications of the dam, reservoir, or Reclamation lands.

I. Suspension. Reclamation reserves the authority to suspend all or portions of this Contract as deemed necessary by Reclamation, to enhance or protect project purposes, resources, visitor safety, health and enjoyment. In the event of such suspension, Reclamation shall not be liable for any compensation to the Concessionaire for any losses, including, but not limited to lost income, profit, wages, or other compensation which may be claimed by the Concessionaire. In the event Reclamation determines that such a suspension is sufficient to prevent the continued operation of this Contract, said Contract shall be terminated in accordance with other provisions of this Contract.

J. Exclusive Use. The Concessionaire shall not allow the development of exclusive uses within the Site. Reclamation retains the right to determine the definition or instances of exclusive use.

K. Concessionaire Livestock. Livestock, farm animals, domestic fowl, etc., are prohibited within the Site, unless such animals are necessary for the operation of the concession. Written approval from Reclamation shall be obtained prior to the use or placement of such animals within the concession.

L. Visitors Pets and Livestock. The Concessionaire is allowed to accommodate clients and visitors with domestic pets or livestock, provided adequate, safe, and sanitary corrals, pens, or other appropriate containment is provided. All dogs, cats, and other domestic pets may not be allowed free access of the Site and must be restrained at all times when outdoors, or in public areas within buildings. This applies to the Concessionaire and clients.

M. Seasonal Use. Seasonal use of campsites shall meet the following requirements:

1. The concessionaire shall develop, for Reclamation's prior review and written approval, a seasonal camping permit, proposed length of seasonal permit, proposed number of campsites to be used for seasonal camping (but not more than 50% of the total sites available), location of seasonal campsites, and campground rules and regulations, before seasonal camping is permitted.
2. No permanent camping or residency is authorized.
3. Seasonal permits may not be issued for periods of time before or after the recreation season.
4. No seasonal camping permittee owned improvements are permitted, i.e. decks, fencing, etc.
5. Mobile homes **may not** be used for seasonal camping by permittees and Reclamation reserves the right to determine what constitutes a mobile home.
6. Permittees may not store other, non-recreation related personal property on the seasonal campsites.
7. Current registration must be displayed on all vehicles, boats, trailers, etc.
8. At the end of the recreation season, all seasonal permits will terminate and all permitted personal property must be removed from the campsites (if secured, dry storage area within the Site is available, the Concessionaire may provide year round opportunities for storage of trailers and boats.)

## 6. CONCESSIONAIRE OPERATION AND MAINTENANCE RESPONSIBILITIES

A. Annual Operating and Maintenance Plan. The Concessionaire shall prepare and annually revise by March 1, an operation and maintenance (O&M) plan for Reclamation's review and approval. The O&M plan shall describe how often maintenance activities will be performed at the Site, how the Concessionaire will provide services to the public, hours of operation, operating season, how often trash pick-up will occur, protection of public health, safety and the environment,

and emergency plans in the event of fire or hazardous material spills. The plan shall contain sufficient detail to enable Reclamation to monitor operations for compliance.

B. Concessionaire Responsibilities. The Concessionaire accepts responsibility for the management, operation, and maintenance of the Site during the term of this Contract as described herein. Concessionaire responsibilities include, but are not limited to, the following:

1. Payment of monthly operation fees for the Site telephone systems.
2. Mowing lawn areas, and watering lawn areas and trees within the Site.
3. Picking up trash and litter within the Site, and disposing of garbage off-site at a Montana approved waste facility site.
4. Payment of all utility costs incurred by the concession, including LP gas and electricity.
5. Resulting damages from improper winterization will be the sole responsibility of the Concessionaire.
6. Obtaining all licenses and permits necessary to operate the concession. The Concessionaire shall provide Reclamation with a copy of all licenses and permits within thirty (30) days of receiving such documents.
7. Maintenance, repair or replacement of the irrigation system (including but not limited to, the floating irrigation pump, irrigation supply line from the lake pump to the Utility building, and all distribution lines), domestic water supply, heating systems, septic system, telephone and electrical systems, utility system for the 5 existing RV campsites, and the above ground portions of the gasoline system, including the pump and delivery hoses, except as described in Section 7 - Reclamation Operation and Maintenance Responsibilities.
8. The Concessionaire shall also report monthly visitation rates, including the number of campsites rented and occupied. The Concessionaire will also assist in the collection and reporting of other data related to recreation uses occurring within the Site. Completion of Reclamation's Recreation Use Data Report (RUDR) shall be completed annually.
9. Pump out and dispose of sewage effluent from the RV dump station, two outdoor pre-cast concrete vault toilets, and concession septic tank as needed, or as determined by Reclamation.
10. Maintenance and repair of the storage compound.
11. Placing, anchoring, adjusting, or otherwise operating and maintain service docks and the boat ramp courtesy dock.
12. Provide, operate, and maintain potable water to the concession for personal and public use, including any testing and permitting requirements. NOTE: Potable water must be hauled to the site.
13. Maintain and repair the fish cleaning station during the recreation season, in accordance with the MOU with FWP.
14. Winterize the concession plumbing systems at the end of each recreation season.
15. Care and maintenance of the shelterbelt west of the concession area, including but not limited to watering, mowing, cultivation, and weed control.

In the event the Concessionaire does not maintain its personal property to meet all codes or standards, Reclamation will give the concessionaire 30-day written notice to correct the problem or remove the subject property from Reclamation lands.

## 7. RECLAMATION OPERATION AND MAINTENANCE RESPONSIBILITIES

Reclamation reserves the sole right to determine whether or not to remove without replacement, modify, or replace any Reclamation-owned buildings or improvements requiring extraordinary maintenance. Reclamation may perform extraordinary maintenance or replacement of Reclamation-owned buildings or improvements (including those systems identified in paragraph 6.B.7 above) if determined to be necessary and appropriate by Reclamation; provided that, the maintenance or replacement of the buildings or improvements are not covered under the Concessionaire's insurance policy, or the actions are not considered routine O&M activities, or are the result of the Concessionaire's neglect or dereliction of responsibilities.

## 8. TERMINATION

A. Termination.
   1. Reclamation may terminate this Contract in whole or in part for default.
   2. Operations under this Contract may be terminated or suspended in whole or in part at the discretion of Reclamation for security and/or project operations, when necessary to enhance or protect area resources or visitor enjoyment or safety, or in the event of catastrophic damage to the Reservoir, Site or facilities due to terrorist acts or natural acts such as earthquake, tornado, extreme weather, etc.
   3. Termination or suspension shall be by written notice to the Concessionaire and, in the event of proposed termination for default; Reclamation shall give the Concessionaire a reasonable period of time to correct stated deficiencies.
   4. Termination for default may be utilized in circumstances where the Concessionaire has breached any requirement of this Contract, including, but not limited to, failure to maintain and operate facilities and services to the satisfaction of Reclamation in accordance with Reclamation's requirements hereunder.
   5. In the event of termination or expiration of this Contract, the total compensation, if any, to the Concessionaire for such termination or upon expiration shall be as described in the "Compensation" section of this Contract.
   6. In the event it is deemed necessary by Reclamation to suspend operations under this Contract, in whole or in part to enhance or protect area resources or visitor enjoyment or safety, Reclamation shall not be liable for any compensation to the Concessionaire for losses occasioned thereby, including but not limited to, lost income, profit, wages, or other monies which may be claimed.
   7. To avoid interruption of services to the public upon the expiration or termination of this Contract for any reason, the Concessionaire, upon the request of Reclamation, may continue to conduct all operations hereunder for a reasonable period of time to allow Reclamation to select a successor Concessionaire.

8. Failure of the Concessionaire to make required concession payments within sixty (60) days of the due date may be grounds for termination of this Contract.
9. Any activity on Federal lands judged to be illegal by a court of law will be cause for immediate termination of the Contract.
10. Failure of the Concessionaire to make required corrections to the Site and all improvements and facilities as required from yearly inspections reports from Reclamation, the State Health Department or any other required Federal, State and local inspection services will be cause for termination of the Contract.

B. Voluntary Termination. This Contract may be terminated by the Concessionaire upon 60 days advanced written notice to Reclamation of voluntary termination.

C. Property to be Vacated. Upon expiration or termination of this Contract, all rights of the Concessionaire hereunder shall cease and the Concessionaire shall have remove all its personal property and property leased from others from the Site and shall quietly and peaceably deliver to Reclamation possession, all land and Reclamation provided facilities and improvements in like condition as when received, except for reasonable wear and damage.

D. Service of Written Notice. Written notices shall be served by certified mail, addressed to the respective post office or mailing addresses given at the foot of this Contract, or to the last known addresses of the respective parties. The mailing of any such notice properly enclosed, addressed, stamped, and certified, shall be considered served.

E. Interim Operation. Reclamation may select an interim operator in the event this Contract is terminated for default prior to its termination date. A new concessionaire may be selected as the interim operator for the remaining term of the Contract if Reclamation deems it to be in the best interests of the Federal government.

**9. COMPENSATION**

At the termination or expiration of this Contract, the Concessionaire must remove from the Site 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. Reclamation will not compensate the Concessionaire for any personal improvements made to Reclamation's property.

At Reclamation's request, the Concessionaire may leave in the Site for use in future operations certain of its personal property or improvements that may be considered for purchase by a successor concessionaire, or subject to the availability of appropriated funds, by 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. However, if the successor concessionaire or Reclamation determine to purchase said property or improvements, the value of the property or improvements shall be established as

herein described; and the successor concessionaire or Reclamation will compensate the outgoing Concessionaire the established value.

The expenditure or advance of any money or the performance of any obligation of Reclamation under this Concession Contract shall be contingent upon appropriation and allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Concessionaire from any obligations under this Concession Contract. No liability shall accrue to Reclamation in case funds are not appropriated or allotted.

Property or improvements designated for retention will be appraised in accordance with the Department of the Interior (Interior) appraisal policy and succeeding standards and manuals. All Interior appraisals and any third-party appraisals shall conform to the 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 Interior's appraisal policy or as otherwise provided by statue.

At the expiration or termination of this Contract, all property leased by the Concessionaire from other vendors for use on the Site shall have been removed. Reclamation will not compensate a lessor for any property the Concessionaire may have leased for use in the Site and that was either damaged or not returned. If the leased property is not removed at the expiration or termination of this Contract, Reclamation shall not be held liable to the lessor for any property deemed abandoned by Reclamation and either disposed of or destroyed.

## 10. INSURANCE AND BONDING

A. Indemnification. The Concessionaire shall save, hold harmless, defend, and indemnify the United States of America, its agents, and employees from losses, damages, or judgments and expenses due to fire or other peril, bodily injury, death, or property damage or from claims for bodily injury, death, or property damage of any nature whatsoever, and by whomsoever made, arising out of any activity associated with this Contract.

This indemnification excludes Reclamation employees and its agents from losses, damages, or judgments due to their negligence.

B. Insurance. The Concessionaire shall furnish proof of insurance, such as a certificate of insurance, to Reclamation prior to the commencement of this Contract and by March 1, for each year thereafter that this Contract is in effect. Reclamation reserves the right to review and approve the insurance policy prior to issuance. The holder shall send an authenticated copy of any insurance policy obtained by the holder pursuant to this clause to Reclamation immediately upon issuance of the policy. Any insurance policies obtained by the Concessionaire pursuant to this clause shall name the United States as an additional insured, and the additional insured provision shall provide for insurance coverage for the United States as required under this clause. Such policies shall also specify that the insurance company shall give 30 day prior written notice to Reclamation of

cancellation of or any modification to the policies. Minimum amounts of coverage and other insurance requirement are subject to change at the sole discretion of Reclamation on the anniversary date of this Contract.

1. Liability. The Concessionaire shall have in force liability insurance covering losses associated with the use and occupancy authorized by this Contract arising from personal injury or death and third-party property damage in the minimum amount of:
    - $1,000,000 for injury or death to one person,
    - $1,000,000 for injury or death to more than one person and,
    - $1,000,000 for third-party property damage.

2. Casualty. The Concessionaire shall have in force casualty insurance for the federal government property covered by this Contract, including the land and government-owned improvements in the minimum amount of $250,000 per occurrence. The types of loss to be covered by this clause shall include but not be limited to fire suppression costs and damage to government-owned improvements and lands covered by this Contract. At the sole discretion of Reclamation, the agency may require the Concessionaire to use all proceeds from property damage insurance policies to repair, rebuild, restore, or replace damaged government property covered by the policy, or may obtain payment of those proceeds from the Concessionaire or insurance company.

C. Bond. The Concessionaire shall procure and maintain within 14 days after the execution of this Contract, for the term of this Contract, a performance bond or similar instrument in the amount of $10,000 to indemnify Reclamation from failure of the Concessionaire to perform under any of the terms or conditions of this Contract, to cover any unrepaired or uncompensated damages to Reclamation facilities, improvements or resources or to cover any cleanup or site restoration necessary after the Contract terminates.

The bond shall provide that at Reclamation's sole discretion the surety shall pay the United States for any loss covered by the bond.

## 11. GENERAL CONDITIONS

A. Public Access. The Concessionaire may restrict public access within the Site for security and/or health and safety reasons, upon prior written approval by Reclamation. The Concessionaire shall have no other control over public access to or use of the Reservoir and surrounding Federal lands. The Concessionaire may not charge the public for the use of any boat ramps, however, the Concessionaire may assess a charge should a member of the public specifically ask the Concessionaire to provide a launch and retrieve service for their boat. The Concessionaire may charge for this launch and retrieve service at the Site.

B. Non-Exclusive Use. The use and occupancy authorized by this Contract is not exclusive. Reclamation reserves a continuing right of access to the Site and all Reclamation owned

facilities, for inspection, monitoring, or any other purpose consistent with any right or obligation of the United States under any law or regulation. Reclamation reserves the right to allow others to use the Site in any way that is not inconsistent with the Concessionaire's rights and privileges under this Contract. Reclamation shall make every effort to avoid or minimize any impacts to the Concession operation that might result from such other use. Except for any restrictions Reclamation determines are necessary to protect the installation and operation of authorized structures and developments, the lands and waters covered by this Contract shall remain open to the public for all lawful purposes. To facilitate public use of this area, all existing roads shall remain open to the public, except for roads that may be closed by joint agreement of the Concessionaire and Reclamation.

C. Compliance. The Concessionaire shall comply with all applicable Federal, State, and local laws, orders, rules and regulations, and Reclamation policies and directives and standards, in effect now or as may be promulgated, modified or amended in the future.

D. Hazardous Materials.

1. The Concessionaire may not allow contamination or pollution of Federal lands, waters or facilities and for which the Concessionaire has the responsibility for care, operation, and maintenance by its employees or agents and shall take reasonable precautions to prevent such contamination or pollution by third parties. Substances causing contamination or pollution shall included but are not limited to hazardous materials, thermal pollution, refuse, garbage, sewage effluent, industrial waste, petroleum products, mine tailings, mineral salts, misused pesticides, pesticide containers, or any other pollutants.
2. The Concessionaire shall comply with all applicable Federal, State, and local laws and regulations, and Reclamation policies and directives and standards, existing or hereafter enacted or promulgated, concerning any hazardous material that will be used, produced, transported, stored, or disposed on or in Federal lands, waters or facilities.
3. "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.
4. Upon discovery of any event which may or does result in contamination or pollution of Federal lands, waters or facilities, the Concessionaire shall initiate any necessary emergency measures to protect health, safety, and the environment and shall report such discovery and full details of the actions taken to Reclamation. Reporting may be within a reasonable time period. A reasonable time period means within twenty-four (24) hours of the time of discovery if it is an emergency, or by the first working day if it is a non-emergency. An emergency is any situation that requires immediate action to reduce or avoid endangering public health and safety or the environment.
5. Violation of any of these provisions, as determined by Reclamation, may constitute grounds for termination of this Contract. Such violations require immediate corrective action by the Concessionaire and shall make the Concessionaire liable for

the cost of full and complete remediation and/or restoration of any Federal resources or facilities that are adversely affected as a result of the violation.

6. The Concessionaire agrees to include the provisions contained in paragraphs 1) through 5) above, in any subcontract or third party contract, permit, or agreement; it may enter into pursuant to this Contract.
7. Reclamation agrees to provide information, as requested, necessary for the Concessionaire using reasonable diligence, to comply with the provisions of this Article.

E. Accident Reporting. The Concessionaire shall immediately report to Reclamation any event which results in the death or injury to concession employee(s) or member(s) of the general public.

F. Amendment. This Contract may be amended by mutual consent of the parties hereto, or by unilateral action of Reclamation for security purposes or to conform to reservoir-specific operations, public laws, rules, regulations or policies. The length of term of this Contract may not be extended except as described in the Concessions Management Policy and Directives and Standards, or renewed for additional terms. At the end of the first five (5) years of operation, Reclamation may evaluate the concession operation to determine if the established franchise fee is appropriately established, and may, at its sole discretion, adjust the franchise fee to a rate that reflects a fair return to the government.

G. 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 domestic purposes, including irrigation of the Site. 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. Reclamation does not warrant the quality of the water for domestic (potable) use and assumes no liability for water used for such purposes. Reclamation is under no obligation to construct or furnish water treatment facilities.

H. Site Environment. It is the responsibility of the Concessionaire to provide employees and visitors a safe, orderly, sanitary, and visually acceptable Site.

I. Safety Program. Within two weeks after the execution of this Contract the Concessionaire shall develop and implement a Safety Program to be submitted to Reclamation for review and concurrence. By March 1, of each year thereafter, the Concessionaire shall submit to Reclamation for its review and concurrence, an updated Safety Program. The program should include a self-inspection of all equipment, facilities and work processes by qualified concession personnel to verify compliance with established Federal, State, and local safety and occupational health regulations.

J. Pest Control. The Concessionaire shall be responsible for managing vermin, feral animals, and other pests, including weeds, on all lands and facilities within the Site. Prior to initial operations, the Concessionaire shall develop and submit for Reclamation approval, a pest management plan detailing safe and environmentally sensitive control and/or eradication of potential pests at the Site. Plants and animals that are native to Montana or the immediate area may not be removed or harmed except with prior written approval of Reclamation. All pest management activities will be guided by the concepts and practices of an approved Integrated Pest Management (IPM) plan as approved by Reclamation. The Concessionaire is responsible for complying with all training (Federal, State, and local), operational requirements, and licensing requirements pertinent to and required for the application of pesticides in Montana.

K. Signs, Advertising, and Visual Identity and Thematic Displays. Signs or other advertising posted on Reclamation lands shall be subject to prior written approval of Reclamation as to location, design, size, color and content. Signs shall be maintained to standards described in Reclamation's sign manual. Advertisements, circulars, brochures, letterheads, and other media or materials shall not misrepresent in any way the accommodations or services provided or the status of the Contract or Site. The fact that the Site is located on Reclamation land shall be made readily apparent in all the Concessionaire's brochures and printed advertising regarding use of the Site. All signs, documents, etc., produced by the Concessionaire, shall conform to standards established in Reclamation's Visual Identity program.

L. Legal Effect of the Contract. 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. In such cases, Reclamation shall review and approve, in advance, any documents related to such an action.

M. Risk. Loss to the property may result from, but is not limited to, theft, vandalism, fire and any fire-fighting activities (including prescribed burns), avalanches, rising waters, winds, falling limbs or trees, and acts of God. If the authorized improvements are destroyed or substantially damaged, Reclamation shall conduct an analysis to determine, at its sole discretion, whether the improvements can be safely occupied in the future and whether rebuilding should be allowed. If rebuilding is not allowed, all or portions of this Contract may be terminated.

N. Current Address and Point of Contact. The Concessionaire and Reclamation shall keep each other informed of current mailing addresses, including those necessary for payment of fees.

Reclamation's mailing addresses and points of contacts are as follows:

Contract Management:
Bureau of Reclamation
Canyon Ferry Division
Assistant Supervisory Facilities Operations Specialist
7700 Canyon Ferry Road
Helena, MT 59602

Local Operations and Oversight:
Bureau of Reclamation
Marias/Milk Rivers Division
Lands and Recreation Branch Supervisor
P.O. Box 220
Chester, MT 59522

Concessionaire's mailing address and point of contact is as follows:

Name:

Address:

Concessionaire's street address is the same as above.

O. Equal Opportunity Requirements.

1. The Concessionaire shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Concessionaire will take affirmative action to ensure that such applicants are employed, and that employees are treated fairly during employment without regard to their race, color, religion, sex, or national origin. 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 setting forth the provisions of this Equal Opportunity clause. Copies of such notices may be obtained from Reclamation upon request.
2. The Concessionaire will send to each labor union or representative of workers with which it 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 this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
3. The Concessionaire shall comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.
4. The Concessionaire shall furnish all information and reports required by said amended Executive Order, and by the rules, regulations, and orders of the Secretary of Labor or pursuant thereto, and will permit access to its books, records, and accounts by Reclamation and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

5. In the event of the Concessionaire's non-compliance with the Equal Opportunity clause of this Contract or with any of the said 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 contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
6. The Concessionaire shall include the provisions of paragraphs 1 through 5 of this section, in all purchase orders unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each vendor. The Concessionaire will take such action with respect to any subcontract or purchase order as Reclamation may direct as a means of enforcing such provisions, including sanctions for non-compliance: 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 Reclamation, the Concessionaire may request the United States to enter into such litigation to protect the interests of the United States.

## 12. COVENANT AGAINST CONTINGENT FEES

The Concessionaire warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Concessionaire for the purpose of securing business. For breach or violation of this warranty, Reclamation shall have the right to annul this Contract without liability, or in its discretion, to deduct from the agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

## 13. HISTORIC AND ARCHEOLOGICAL VALUES

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 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 their findings to Reclamation within 48 hours by certified mail. The Concessionaire shall cease activity, 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 follow (salvage, test excavation, etc., and resumption of construction). Cost of any salvage work 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.

**14. OFFICIALS NOT TO BENEFIT**

No member or delegate of Congress or employee of the Federal Legislative, Executive, or Judicial branches shall be a party to this contract in his or her personal capacity or receive any personal benefit arising from this Concession Contract.

**IN WITNESS WHEREOF**, the parties have hereunto subscribed their names as of the date first-above written.

_____

Concessionaire Date

_____

Concessionaire Date

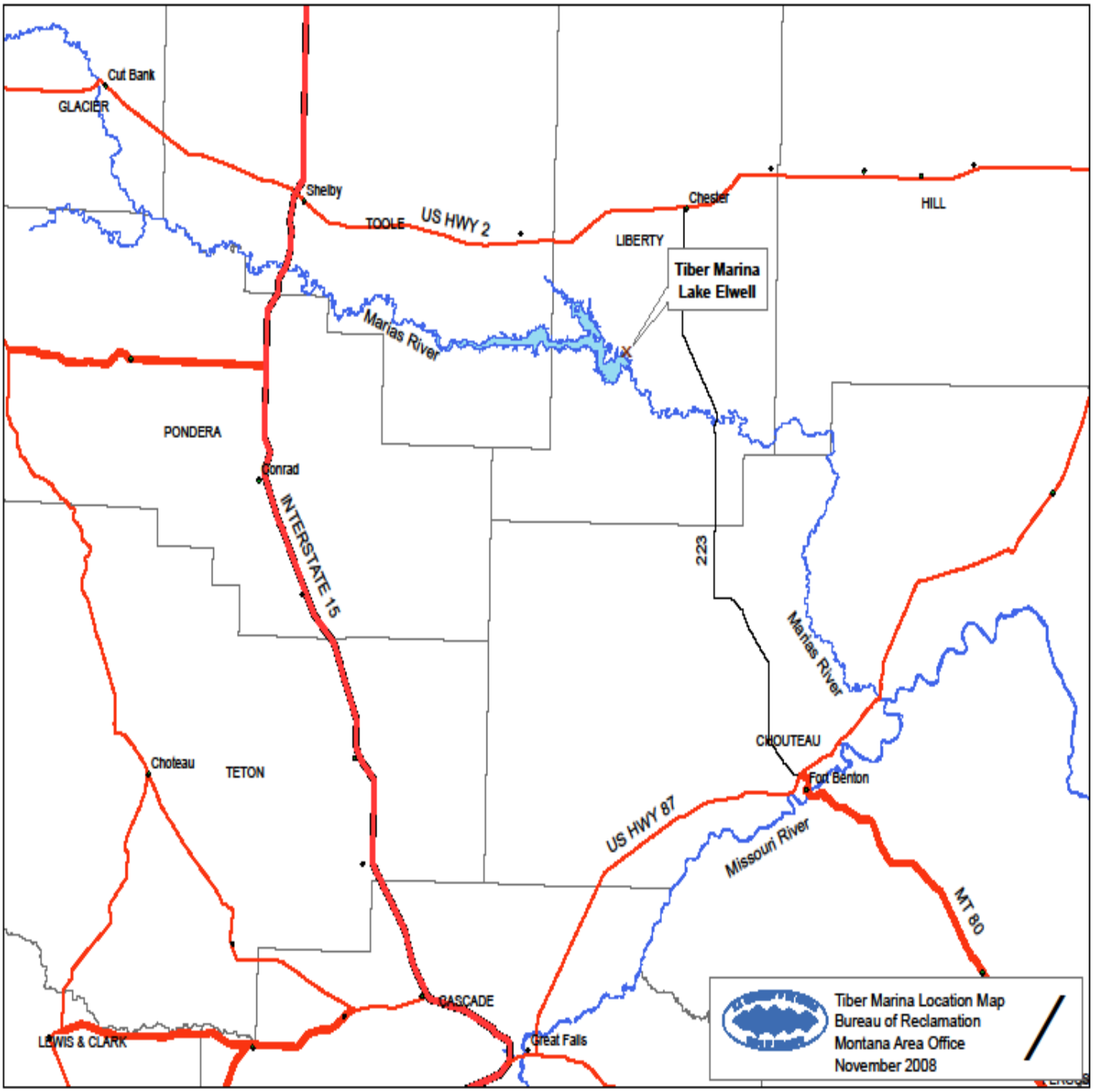
_____

Area Manager Date
Montana Area Office
Great Plains Region
Bureau of Reclamation

# EXHIBIT A

# Location Map

DRAFT


Cut Bank
GLACIER
Shelby
TOOLE
US HWY 2
Chester
LIBERTY
HILL
Tiber Marina
Lake Elwell
Marias River
PONDERA
Conrad
INTERSTATE 15
223
Marias River
CHOUTEAU
Fort Benton
Choteau
TETON
US HWY 87
Missouri River
MT 80
CASCADE
Great Falls
LEWIS & CLARK
Tiber Marina Location Map
Bureau of Reclamation
Montana Area Office
November 2008

# EXHIBIT B

# Site Map

DRAFT

SITE ENTRANCE
TO ISLAND RECREATION AREA
UMITS OF SURVEY
UMITS OF SURVEY
LAKE ELWELL
LAKE ELWELL
Legend
Facilities
Gas Pump
Boat Ramp
Fish Cleaning Station
Sign
UST - Fuel
Vault Toilet
Campsites
Electric Only
Full Hookups
Buildings
Concession Building
Concession Residence
Group Shelter
Utility Storage Building
Tiber Concession Boundary
Fenced Storage
Main Roads
Shelterbelt
Trees
Tiber Marina Concession Area
Bureau of Reclamation
Montana Area Office
November 2008
0 0.025 0.05 0.1 0.15 0.2 0.25 Miles
Note: Concession Management Area is approximatley 29.1 acres
T. 30 N., R. 5 E. Sec. 30 NE1/4

# EXHIBIT C

# Bureau of Reclamation Provided

# Building and Improvements

1. One 19-foot by 53-foot unfurnished residence building with 3 bedrooms, 1 bathroom, cedar board and batten siding, and electric forced-air furnace.

2. One 19-foot by 53-foot unfurnished concession building with inside food service counter, product display area, two handicapped accessible public rest rooms with showers, outside covered and open decks, and propane gas forced-air furnace.

3. One 16-foot by 24.5-foot wood frame, cedar sided utility building containing water pump, pressure tank, and storage space.

4. One 4-foot by 60-foot floating courtesy dock.

5. Approximately 50 wooden fence posts, which makes the existing fenced storage area.

6. One fiberglass underground gasoline storage tank, fiberglass supply lines, and pump.

7. Utility systems including:

    a. A pressurized water system with a pressure tank, electric centrifugal pump and piping, supplied from a 2,200-gallon above ground tank and a 1,500-gallon buried cistern.

    b. A 2,000-gallon (two 1,000 gallon tanks in series) septic drain field system.

    c. Outside lighting consisting of five 250-watt sodium-vapor lamps on 30-foot wood poles and two 500-watt quartz flood lamps for the service dock.

8. Two pre-cast concrete vault toilets located adjacent to the parking area.

9. Fourteen campsites consisting of the following:
    - Nine campsites with electrical hook-ups (50/30/20 amp).
    - Five campsites with water, sewer, and electrical hook-ups (30/20 amp)

10. One RV dump station.

11. Graveled roads and parking areas.

12. Concrete boat launch ramp.

13. One recreation shelter (pavilion).

# EXHIBIT D

# Montana Department of Fish, Wildlife and Parks

# Provided Buildings and Improvements

1. One fish cleaning station

# EXHIBIT E

# Memorandum of Understanding
# Between
# The Bureau of Reclamation
# And
# The Montana Department of Fish, Wildlife and Parks

**MEMORANDUM OF UNDERSTANDING**
**BUREAU OF RECLAMATION (B.O.R)**
**AND MONTANA DEPARTMENT OF FISH, WILDLIFE & PARKS**
**FOR THE CONSTRUCTION AND MAINTENANCE**
**OF A FISH CLEANING STATION**

THIS Memorandum of Understanding, entered into this 1st day of June, 1998, between the State of Montana, DEPARTMENT OF FISH, WILDLIFE & PARKS (FWP), whose main address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701, and BUREAU OF RECLAMATION (B.O.R), whose main address is P.O. Box 30137, Billings, Montana 59107-0137.

RECITALS

The Bureau of Reclamation owns and controls certain real property known at Tiber Reservoir Marina, located in Liberty County, Montana, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference.

FWP is desirous of constructing a fish cleaning station at Tiber Reservoir that will be accessible by the public, and the Bureau of Reclamation wishes to assist FWP by providing a location for the fish cleaning station at Tiber Reservoir.

AGREEMENT

In consideration of the mutual promises, terms, and provisions of this MOU, the parties agree to the terms and provisions set forth below:

1. PURPOSE: The purpose of this MOU is to establish responsibilities for construction, operation and maintenance of a fish cleaning station at Tiber Reservoir, according to the terms and conditions outlined in this MOU

2. TERM: This MOU will remain in full force and effect for a term of twenty (20) years unless otherwise terminated, as provided in this MOU.

3. CONSTRUCTION: FWP agrees to diligently provide all of the design and construction of the fish cleaning station at Tiber Reservoir. The design details include geometrics template, utility details, sign location, septic tank/drain field, and other details. Construction will be contingent on obtaining necessary approvals from the other agencies with jurisdiction. The location of the fish cleaning station will be mutually determined by FWP and Reclamation, within the boundary of the Tiber Marina Concession Area. The location will conform to the Tiber Marina Master Plan prepared by Reclamation (expected completion date of may 15, 1998). FWP is responsible for obtaining any construction and operation of the fish cleaning station. Reclamation is responsible for compliance with the national Environmental Policy Act (NEPA). FWP will complete construction of the facilities by September 1, 1998.

4. UTILITIES: FWP will provide at its expense a graded area and necessary utilities for proper placement and operation of the fish cleaning station, including electricity and nonpotable water.

5. OPERATIONS AND MAINTENANCE: The duly authorized operator of the Tiber Marina Concession Area (Concessioner) will provide for day to day cleaning and minor maintenance of the fish cleaning station. Any repairs or maintenance items costing more than five dollars ($5) will be the responsibility of FWP. In the event the concessioner defaults or otherwise terminates his concession contract with Reclamation, or if the concession is closed for the

season (typically September 15 to May 15, annually) FWP will be responsible for operation and maintenance of the fish cleaning station.

6. SIGN. FWP may install and maintain an appropriate sign at the area which states, among other things, that FWP constructed the fish cleaning station and provides information about the area.

7. TERMINATION: Either FWP or the Bureau of Reclamation may terminate the MOU by giving the other written notice of termination at least 180 days in advance of the date specified for termination, unless an earlier date for termination is mutually agreed to by FWP and the Bureau of Reclamation. Upon termination, FWP will close the station in accordance with applicable law and regulation. The parties acknowledge that such law and regulation may not require complete removal of the station's fixtures and equipment.

8. LIAISONS. FWP designates its Region 4 Supervisor in Great Falls and the Bureau of Reclamation designates its on-site manager to act as liaisons between FWP and the Bureau of Reclamation for the operation of this MOU.

9. MODIFICATIONS. This document constitutes the sole and entire MOU between the parties. No statements, promises or inducements made by either party which are not contained in this MOU are valid or binding unless evidenced in writing and signed by both parties.

IN WITNESS WHEREOF, the parties have executed this MOU.

MONTANA FISH,
WILDLIFE & PARKS

By: _____
Director

THE BUREAU OF RECLAMATION

By: _____
B.O.R. Area Manager

# EXHIBIT F

# Boat Dock Standards

For purchasing and construction of docks, reference California's Department of Boating, *Layout and Design Guidelines for Marina Berthing Facilities* (July 2005*)*. This document can be found at www.dbw.ca.gov/TechDocs/MarinaGuide.aspx. For self constructed docks, the following minimum standards must be met:

**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) All wood in the structure including the deck must be treated with a preservative. The preservative used will not be toxic to fish and wildlife if leached from the wood. CCA treatment is acceptable.
   (2) 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 ½" in width (for instance, cross-plank spacing), and vertical joints on the walking surface may not exceed ¼" 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 ½" in width.
   (3) Finger 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. Concessioners 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 concessioner is responsible for developing and submitting detailed plans for Reclamation's review and approval of a dock-based fuel dispensing system. The concessioner 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 concessioner, 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" minimum 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 slop of the walkways, 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. Beaded Styrofoam shall not be used on any new docks or as replacement flotation on existing docks. Reclamation may consider allowing other commercially manufactured flotation structures if the alternate flotation <u>will not</u>:
   (1) sink or become water-logged if puncture,
   (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, is no longer capable of meeting the freeboard requirements of Item 3(a), above, or when existing docks are repaired or rebuilt. 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.