

Contract No. 06-LM-60-7743

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

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**CONCESSION CONTRACT**

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**FOR THE DEVELOPMENT, OPERATION, AND MAINTENANCE  
OF A  
CONCESSION OPPORTUNITY AT THE  
KIM'S MARINA CONCESSION AREA  
CANYON FERRY RESERVOIR**

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

September 2006

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**EXHIBITS**

- Exhibit A: Nondiscrimination
- Exhibit B: Site Map and Concession Area
- Exhibit C: Assigned Reclamation Property and Improvements
- Exhibit D: Boat Dock Standards
- Exhibit E: Bureau of Reclamation Concessions Management Policy and Directives and Standards

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

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CONCESSION CONTRACT

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FOR THE DEVELOPMENT, OPERATION, AND MAINTENANCE  
OF A  
CONCESSION OPERATION AT THE  
KIM'S MARINA CONCESSION AREA  
CANYON FERRY RESERVOIR

This Concession Contract (Contract) made this 29<sup>th</sup> day of SEPT. 2006, pursuant to the Act of Congress dated June 17, 1902 (32 Stat 388), and acts amendatory thereof, or supplementary thereto, all of which acts are commonly known and referred to as Federal Reclamation Law, is entered into by and between the United States of America, Department of the Interior, Bureau of Reclamation (Reclamation) and

(Finish the above paragraph based upon the business status of the Concessionaire.)

LLC  
Corporation: d/b/a Kim's Marina Resort, a Montana Limited Liability Company,  
Arkman, LLC, a corporation organized and existing under the laws of the State of  
Montana (hereinafter referred to as the "Concessionaire").

Partnership:  
\_\_\_\_\_, a partnership organized under the laws of the State of \_\_\_\_\_,  
(hereinafter referred to as the "Concessionaire").

Sole Proprietorship:  
\_\_\_\_\_, an individual, doing business as \_\_\_\_\_, (hereinafter referred  
to as the "Concessionaire").

**WITNESSETH THAT:**

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

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

**WHEREAS**, Reclamation desires the Concessionaire to operate, maintain, and supply recreation-related facilities and services for public use and enjoyment of Canyon Ferry Reservoir at the Kim's Marina Concession Area (Area) at reasonable rates and under the general administration and regulations of Reclamation; and

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

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

**SEC. 1 TERM OF CONTRACT**

This Contract shall be effective from JANUARY 1, 2007, until its expiration on December 31, 2026. This Contract shall not be renewed. Should Reclamation determine that continued commercial services at the Kim's Marina Concession Area are necessary and appropriate, such business opportunities shall be advertised for public competition and a new concession contract issued. At the expiration of this Contract, the then-existing Concessionaire shall have no preference rights.

## SEC. 2 DEFINITIONS

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

- 1) “Applicable Laws” means Federal, State, and local laws, orders, ordinances, and rules and regulations, whether now in force or amended, enacted, or promulgated in the future.
- 2) “Area” means the lands and waters of the Kim’s Marina concession area to be administered by the Concessionaire under this Contract.
- 3) “Days” shall mean calendar days.
- 4) “Exclusive Use” is any use that excludes other appropriate public recreation use or users for extended periods of time. Exclusive Use includes, but is not limited to, privately owned boat docks, cabins, trailers, manufactured or mobile homes, structures, roads, or other amenities that are determined by Reclamation to be Exclusive Use. Concessionaire owned personal property or improvements which support or are used in the performance of this Contract are not considered private Exclusive Use.
- 5) “Exhibit” shall mean the various exhibits that are attached to this Contract, each of which is hereby made a part of this Contract.
- 6) “Gross receipts” means the total amount received or realized by, or accruing to, the Concessionaire from all sales for cash, check, or credit, for services, accommodations, materials, other merchandise, and gross receipts earned from electronic media sales, but excluding:
  - (a) Intra-company earnings on account of charges to other departments of the operation (such as laundry)
  - (b) Charges for employees’ meals, lodgings, and transportation
  - (c) Cash discounts on purchases
  - (d) Cash discounts on sales
  - (e) Returned sales and allowances
  - (f) Interest on money loaned or in bank accounts
  - (g) Income from investments
  - (h) Income from subsidiary companies outside the Area
  - (i) Sale of property other than that purchased in the regular course of business for the purpose of resale and,
  - (j) Sales and excise taxes that are added as separate charges to sales prices, gasoline taxes, fishing and hunting license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid government agencies.

- (k) All monies paid into coin-operated devices, except coin-operated telephones, whether provided by the Concessionaire or by others, shall be included in gross receipts. Revenues actually received by the Concessionaire from coin-operated telephones shall be included in gross receipts.
- (l) All revenues received from charges for in-room telephone or computer access shall be included in gross receipts.
- 7) "FWP" refers to the Montana Department of Fish, Wildlife and Parks.
- 8) "Sub-Concessionaire" means a third party that has entered into an agreement with a Concessionaire to provide services to the public, whether in consideration of a percentage of revenues or otherwise.
- 9) "Visitor services" means the required and authorized facilities and services the Concessionaire provides under this Contract.
- 10) "Waste stream" means, but is not limited to, any disposed of hazardous waste, hazardous materials, asbestos, or used oil. A waste stream includes pumped sewage (e.g. from holding tanks). A waste stream would also include any point source discharges (e.g. outfall from a sewage treatment plant) into Canyon Ferry Reservoir.
- 11) "Feral animal" means any domesticated animals that have returned to a wild state.

## SEC. 3 SERVICES AND OPERATIONS

### A. Visitor Services

- 1) Required Visitor Services. The Concessionaire is required to provide the following visitor services during the term of this Contract:
  - (a) Gasoline and motor oil sales
  - (b) Boat docks/slips (minimum of 100)
  - (c) Groceries, snacks, and sundries appropriate for the types of recreation use occurring at Canyon Ferry Reservoir
  - (d) Non-alcoholic beverage sales
  - (e) Tourist and directional information to the public
  - (f) Fishing tackle and supplies
  - (g) Camping and day use recreation supplies
  - (h) Courtesy boat dock
  - (i) Boat ramp
  - (j) Campground Facilities (minimum of 100 sites)
  - (k) Day use recreation facilities
  
- 2) Authorized Visitor Services. The Concessionaire is authorized but not required to provide the following visitor services during the term of this Contract:
  - (a) Boat and equipment rentals
  - (b) Photo and film supplies
  - (c) Prepared food
  - (d) Liquor, beer, and wine, subject to Montana state licensing requirements
  - (e) Interpretive materials (e.g. books, postcards, posters, photographs, etc.)
  - (f) Boat launching assistance, for a fee
  - (g) Propane sales
  - (h) Seasonal boat and trailer storage
  - (i) Fishing and hunting licenses, subject to approval of FWP
  - (j) Short-term cabin rentals
  - (k) Pay phone services
  - (l) Recreation related instructional services (e.g. lessons, etc.)
  - (m) Guided recreation services (e.g. fishing, boat tours, etc.)
  - (n) Operation and maintenance of Cave Point Day Use Area
  - (o) Twelve (12) mobile home lot rentals

### B. Additional Services

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

right and authority to determine whether those additional visitor services will be provided.

- 3) Reclamation may identify additional visitor services that should be provided, and may expand the size of the Area to include other Reclamation administered land and water areas at Canyon Ferry Reservoir and assign those opportunities to the Concessionaire, provided the Concessionaire is in agreement. If the Concessionaire declines to offer the additional visitor services as proposed by Reclamation and Reclamation determines the visitor services are necessary and appropriate, another contract for those services may be issued.
- 4) Any and all changes in visitor services provided by the Concessionaire shall be documented in writing and amended to this Contract before such visitor services may be provided.
- 5) One boat slip shall be provided for a Reclamation vessel at no cost.

#### C. Operations and Maintenance

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

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

## 2) Concessionaire Responsibilities

- (a) The Concessionaire shall operate and maintain the visitor services described in this Contract and any related support facilities and services, including any Reclamation provided facilities and improvements, to such an extent and in a manner considered satisfactory by Reclamation. The Concessionaire shall provide the personnel, improvements, equipment, goods, and commodities necessary for providing, operating, and maintaining the visitor services in accordance with this Contract, including but not necessarily limited to the following:
- (1) All equipment necessary to operate the concession store and fuel distribution system
  - (2) All equipment necessary to construct and maintain docks and rental slips
  - (3) Vehicle and vessel support for the concession operation
  - (4) Tools and maintenance equipment needed for maintenance of facilities
  - (5) Residence(s)
- (b) In the event the existing Concessionaire wishes to develop a mobile residence(s) within the Concession area, the Concessionaire must receive prior written approval from Reclamation regarding the type and quality of the mobile residence to be used and its placement. It must be maintained in a condition that allows it to be removed from the concession site, at the Concessionaire's sole expense, at the termination or expiration of this Contract, if so required.
- (c) Concessionaire responsibilities include, but are not limited to, the following:
- (1) Paying monthly operation fees for the Area telephone system
  - (2) Mowing and watering lawn areas and watering planted trees within the Area
  - (3) Picking up trash and litter within the Area, and disposing of garbage off site at a State approved municipal solid waste landfill
  - (4) No burning or burying of trash is permitted
  - (5) Paying all utility costs incurred by the Concession, including LP gas and electricity
  - (6) Securing and winterizing buildings and improvements at the end of the recreation season
  - (7) Obtaining all licenses and permits necessary to operate the concession
  - (8) Providing Reclamation a copy of all licenses upon request or during scheduled inspections
  - (9) Placing, anchoring, adjusting, or otherwise operating and maintaining service docks and the boat ramp courtesy dock
  - (10) Maintaining, repairing, or replacing the domestic water system, heating systems, septic system, telephone and electrical systems, gasoline system (including the pump and delivery hoses)
  - (11) Pumping out sewage effluent from the Area's outdoor vault toilets and concession septic tank as needed, and disposing of it off the Federal lands at a State approved site

- (12) Maintaining and repairing the storage area
- (13) Assisting in the collection of data related to recreation uses occurring within the Area as may be requested by Reclamation
- (14) Providing potable water within the Area for personal and public use, including any testing and permitting requirements imposed by Federal, State, or local regulations
- (15) Ensuring that no open burning is to be allowed in the Area with the exception of campfires within designated fire rings and other contained recreational uses
- (16) The burning of vegetative materials will be allowed provided all necessary permits are in place
- (17) It is the Concessionaire's responsibility to obtain and keep current all licenses or permits issued by the State or its political sub-units that are necessary for the operation of the Area under the terms and conditions of the Contract. The Concessionaire shall provide Reclamation a copy of each license or permit within 30 days after it is initially obtained and as they are renewed annually thereafter.

#### D. Operating Season

The minimum recreation season shall be May 1 through September 30 each year. Services shall be available at a minimum from 8 a.m. to 6 p.m. for a minimum of six (6) days per week which includes weekends and holidays. Dates and times of operation may be modified with Reclamation's prior written approval.

#### E. Public Access

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

#### F. Non-Exclusive Use

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

## G. Visual Identity and Quality Control

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

## H. Rates

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

## I. Impartiality as to Rates and Services

- 1) The Concessionaire and its employees shall observe a strict impartiality as to rates and services in providing facilities and services. The Concessionaire shall comply with all

Applicable Laws relating to nondiscrimination in providing visitor services to the public, including those set forth in Exhibit A.

- 2) The Concessionaire may grant complimentary or reduced rates and charges under such circumstances as are customary in a concession related business. However, Reclamation reserves the right to review and modify the Concessionaire's complimentary or reduced rate and charges policies and practices as part of its rate approval process.

#### J. Exclusive Use

Concessionaire-owned personal property or improvements which support, or are used in the performance of this Contract, are not considered private exclusive use. Reclamation has determined the definition of private exclusive use and will require its removal upon direction to the Concessionaire. No new private long-term exclusive use will be allowed on Reclamation lands.

#### K. Use of Rental Cabins

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

## L. Use of Privately-Owned Mobile Homes

- 1) The seasonal use of no more than twelve privately-owned mobile homes for recreational purposes may be authorized by Reclamation. Such use may be authorized subject to the following conditions:
  - (a) Inspections do not reveal a health and/or safety issue
  - (b) The sites do not become unkempt and unattractive
  - (c) No additional infrastructure replacement or betterment is needed to support the existence of the mobile homes (new septic, water supply, flood protection works, etc.)
  - (d) There are no other greater public demands for the space that the mobile homes occupy
  - (e) The presence of the mobile homes does not create an unacceptable environmental or natural resource issue
  - (f) The Concessionaire does not provide Reclamation with an acceptable proposal to use the mobile home area for a different use that is available to the public which has a better business aspect for the marina
  - (g) The mobile homes are not to be used as permanent residences
  - (h) No other condition exists that is serious enough to warrant removal as decided by Reclamation.
  
- 2) The policy of Reclamation is to not allow private, exclusive use on Reclamation lands. Reclamation intends to complete a public process within 2 years after this contract is awarded to develop an exclusive use mobile home removal transition plan. The removal of the mobile homes within this concession area will be completed no more than 5 years after the completion of the public process.

## M. Pets and Livestock

Dogs, cats, and other pets shall not be allowed free access of the Area and must be restrained at all times when outdoors or in public areas within buildings. Concessionaire must attempt to control Feral Animals if they exist within the Concession Area.

## N. Safety

The Concessionaire is responsible for providing and ensuring a safe and healthful environment for both the recreating public and employees by developing, implementing, and administering health, safety, and educational programs to ensure that concession areas are managed in compliance with Federal, State, and local laws, rules, and regulation. As described in Section 3.C.1)(a), public health and safety is a component of the Annual Operating and Maintenance Plan the Concessionaire must submit annually to Reclamation. Reclamation will review and approve the Annual Operating and Maintenance Plan.

## **SEC. 4 CONCESSIONAIRE PERSONNEL**

### **A. Employees**

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

### **B. Housing**

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

## SEC. 5 LEGAL AND REGULATORY COMPLIANCE

### A. Legal and Regulatory Compliance

- 1) The Concessionaire shall comply with all Applicable Laws and Executive Orders now in effect or as may be modified or amended in the future.
- 2) This Contract is revocable and terminable. It is not real property, does not convey any interest in real property, and may not be used as collateral for a loan unless prior written Reclamation approval is granted. If approval is to be granted, Reclamation shall review and approve, in advance, any documents related to such an action.

### B. Violations

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

### C. Addresses and Notification Process

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

#### Reclamation:

Canyon Ferry Field Office, Supervisory Facility Operations Specialist  
7700 Canyon Ferry Road  
Helena, MT 59602

Telephone Number: 406-475-3923

#### Concessionaire:

Kim's Marina  
Attn: (Concessionaire)  
8015 Canyon Ferry Road  
Helena, MT 59602

#### D. Accident Reporting

The Concessionaire shall immediately provide Reclamation and other appropriate Federal, State, or local officials with an oral report of any event occurring within the concession area, of which the Concessionaire is aware, that results in the death of or serious injury to an employee or member of the general public. A written report detailing the incident must be received by Reclamation within 48 hours. In addition, if a written report must be submitted to any Federal, State, or local agencies, copies will be sent to Reclamation.

## SEC. 6 ENVIRONMENTAL AND CULTURAL PROTECTION

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

- 1) Hazardous Substances and Waste Streams. The Concessionaire shall submit to Reclamation:
  - (a) A Spill Response Plan prior to storing, dispensing, or selling fuel. The Spill Response Plan must be updated and submitted to Reclamation every 5 years or whenever changes are made to the fuel storage/delivery system.
  - (b) An inventory of hazardous materials used and stored in the Area by the Concessionaire will be available to Reclamation upon request or during scheduled inspections. Material safety data sheets shall be available upon request.
  - (c) An inventory of all waste streams generated by the Concessionaire will be available to Reclamation upon request or during inspections, including documentation and data, if applicable.
    - (1) Reclamation may prohibit the use of any hazardous material by the Concessionaire in its operations under this Contract. The Concessionaire shall obtain Reclamation's approval before using any extremely hazardous substance, as defined in the Emergency Planning and Community Right to Know Act of 1986 and the Pollution Prevention Act of 1990.
- 2) Reports. The Concessionaire shall submit to Reclamation copies of all documents, reports, monitoring data, and manifests required under Applicable Laws to be submitted to any regulatory agency.
- 3) Notification of Releases. The Concessionaire shall immediately provide Reclamation and other appropriate agencies oral notification of any non-permitted discharge or release, or threatened release of any hazardous or toxic substance, material, or waste of any kind, including, without limitation, building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product within or in the vicinity of the Area. A written report shall be submitted to Reclamation within 5 calendar days of the event and to any other Federal, State, or local agencies with reporting requirements.
- 4) Notice of Violation. The Concessionaire shall, within 5 calendar days of its receipt, give Reclamation a copy of any notice of violation or warning from other regulatory agencies of any Applicable Law arising out of the activities of the Concessionaire, its agents, or its employees.

5) Communication with Regulatory Agencies. The Concessionaire shall provide timely written advance notice to Reclamation of scheduled communications, including without limitation, meetings, audits, inspections, hearings, and other proceedings between regulatory agencies and the Concessionaire related to compliance with applicable laws concerning its operations under this Contract. The Concessionaire shall also provide Reclamation any written materials prepared or received by the Concessionaire in advance of or subsequent to any such communications. The Concessionaire shall also provide timely notice to Reclamation following any unplanned communications between environmental regulatory agencies and the Concessionaire.

#### B. Corrective Action

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

#### C. Weed and Pest Management

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

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

The Concessionaire shall be particularly alert in any construction operations to take all reasonable and necessary precautions to protect and preserve any and all antiquities or other objects of archaeological, paleontological, cultural, historic, or scientific interests on Reclamation lands within the concession site. Objects under consideration include, but are not limited to, historic or prehistoric ruins, human remains, funerary objects, and other artifacts. Should such sites or objects or evidence of sites or objects be discovered, the Concessionaire shall immediately suspend any and all work involving the area in question, make a reasonable effort to protect such discovery, and advise Reclamation of the existence of such discovery. The Concessionaire shall immediately provide an oral notification to Reclamation of the discovery of human remains on Reclamation lands. The Concessionaire shall forward a written report of its findings to Reclamation within 48 hours by certified mail. The Concessionaire shall cease activity and stabilize and protect such discoveries until authorized to proceed by Reclamation. Protective and mitigative measures specified by Reclamation shall be the responsibility of the Concessionaire. Reclamation shall promptly have the area inspected to determine its historical significance and the appropriate actions to be taken (e.g. salvage, test excavation, etc., or resumption of construction activities). Cost of any salvage work, test excavation, etc., will be borne by the United States. All objects salvaged from public lands are the property of the United States Government and will be turned over to Reclamation for disposition.

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

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

Reclamation hereby assigns the Area to the Concessionaire. The Area contains approximately 53.28 acres of land and water and is located in the NE1/4 NW1/4 SW1/4, Sec 2, T10N, R1W, as shown and described in Exhibit B, attached hereto, and is commonly known as Kim's Marina.

### **B. Area Withdrawals**

- 1) Reclamation may withdraw all or portions of the Area at any time during the term of this Contract if:
  - (a) The withdrawal is necessary for the purpose of conserving, preserving, or protecting project purposes, resources, or visitor health or safety;
  - (b) The concession services using the Area have been terminated or suspended.

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

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

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

- 1) The right to remove from the Area material for construction, operation, and maintenance of Federal facilities and to construct, operate, and maintain such facilities thereon is reserved to the United States, its successors, agents, and assigns.
- 2) The right to prospect and carry on developments for oil, gas, coal, and other minerals, within the Area, as provided for under the Act of October 2, 1917 (40 Stat. 297), the Act of February 25, 1920 (41 Stat. 437), and the Act of August 7, 1947 (61 Stat. 913), is reserved to the United States, its successors, agents, and assigns.
- 3) The right to issue easements, rights of way, permits, etc., for use of the Area is reserved to the United States, its successors, agents, and assigns. When issuing such use agreements, Reclamation will make every effort to avoid actions that may be inconsistent with the Concessionaire's rights and privileges expressed under this Contract. Reclamation will consult with all parties prior to the issuance of such use agreements.
- 4) The right of the officers, agents, employees, licensees, and permittees of the United States and designees of public bodies, at all times and places, freely to have ingress to, passage over, and egress from all of said Area, for the purpose of exercising, enforcing, and protecting their rights is reserved to the United States, its successors,

agents, and assigns. Reclamation shall provide a minimum of 48 hours notice to the Concessionaire for official health and safety inspections, financial audits, etc., that necessitate the Concessionaire's participation, for more than one (1) hour. Reclamation shall provide longer notice for inspections requiring more of the Concessionaire's time, commensurate with the timing and urgency of the inspection. Reclamation employees shall notify the Concessionaire upon their arrival at the concession area, and exercise courtesy and consideration in their relations with the Concessionaire and the public.

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

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

#### F. Property Identification

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

#### G. Utilities Not Provided by Reclamation

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

#### H. Permissive Water Use

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

## I. Reclamation Responsibilities

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

## J. Damage to Concessionaire Owned Facilities

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

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

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

### **A. Construction or Installation Activities**

- 1) The plans for modification of existing improvements and for new improvements or construction activities must be submitted, in writing, to Reclamation for its prior review and written approval. No improvements or construction activities may commence until prior written approval is granted. Reclamation will at all times have the right to determine the appropriate level of planning documents required to evaluate, to its satisfaction, the extent, scope, form, and structural integrity of all improvements or construction activities. All utility line replacements or initial installation shall be placed underground. Improvements or construction activities may require, but may not be limited to, the completion of National Environmental Policy Act (NEPA) reviews and cultural resource compliance. US Army Corps of Engineers and local Conservation District permitting requirements must be met before any improvements or construction activities commence. Depending upon the extent of proposed improvements or construction activities, the Concessionaire must plan activities in advance and provide Reclamation a minimum of 60 days to complete its administrative oversight duties as described above. Reclamation shall respond within 45 days with approval, reason for disapproval, or reason that more time is needed.
- 2) All newly constructed facilities, or existing facilities to be reconstructed will be harmonious in form, line, color, and texture with the surrounding landscapes.
- 3) Concessionaire-provided or constructed improvements that are primarily landscaping or erosion control in nature shall, upon termination or expiration of this Contract, stay with the land and shall become Reclamation property without any compensation to the Concessionaire.
- 4) Boat docks shall meet the minimum standards described in Exhibit D. Dock designs that have been approved by Reclamation in the previous contract are understood to meet current standards.

### **B. Removal Activities**

- 1) The Concessionaire may not remove, dismantle, or demolish Reclamation owned facilities or improvements without the prior written approval of Reclamation.
- 2) The Concessionaire will give Reclamation reasonable notification before removing, dismantling, or demolishing major facilities or improvements that are owned by the Concessionaire.
- 3) Any salvage resulting from the authorized removal, severance, or demolition of Reclamation owned facilities or improvements shall become the property of the United States.

- 4) At the termination of this Contract, Reclamation reserves the right to require the Concessionaire to remove from the Area any Concessionaire-provided or constructed improvements, including those placed underground or permanently attached to Reclamation-owned property or improvements. The Concessionaire has the right to remove any concession provided improvements including decks, walkways, and underground utility placements. The Concessionaire is not guaranteed reimbursement for any Concessionaire provided or constructed improvements made to the Area.
  
- 5) In the event that Reclamation or Concessionaire-owned facilities or improvements are removed, abandoned, demolished, or substantially destroyed and no other improvements are constructed on the site, the Concessionaire, at its sole expense and upon the request of Reclamation, shall restore the site to a satisfactory condition, similar to the condition at the time of the contract award.

## SEC. 9 FEES

### A. Franchise Fee

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

### B. Payments Due

- 1) The \$1,000 minimum franchise fee will be due and payable to Reclamation by January 31 of each year of the Contract for the coming year. The \$1,000 minimum franchise fee for the first year of operation shall be due to Reclamation within 30 calendar days after the execution of this Contract or by January 31, 2007, whichever is later.
- 2) The balance of the annual franchise fee (gross revenues X percentage rate, minus the minimum franchise fee) shall be due and payable by April 20 of the year following the year of operation. If the \$1,000 minimum franchise fee or the franchise fee balance payment is not received by Reclamation by the respective due dates, the following year's minimum franchise fee shall be \$1,500.

### C. Late Payment

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

#### D. Adjustment of Franchise Fee

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

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

Reclamation shall conduct two concession area inspections each year. One inspection shall be conducted with the mandatory presence and participation of the Concessionaire or its duly authorized representative during the prime recreation season and shall consist of an inspection of the concession area and the Concessionaire's management activities. The second inspection shall consist of a review of the previous concession inspection as well as a review of the current condition of the concession area. The Concessionaire shall receive copies of both concession inspections. Once every 5 years, an inspection shall be conducted using an "external" inspection crew (e.g. Public Health Service, State Fire Marshall, Industrial Hygienist, etc.). Inspections will evaluate the Concessionaire's compliance with and performance of the requirements of this Contract, including the timely submittal of all forms, reports, and payments and the manner in which the buildings and grounds are developed, operated, and maintained.

## **SEC. 11 INDEMNIFICATIONS AND INSURANCE**

### **A. Indemnification**

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

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

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

### **B. Insurance in General**

- 1) During the entire term of this Contract, the Concessionaire shall obtain and maintain at its sole cost and expense the types and amounts of insurance coverage necessary to fulfill the obligations of this Contract. The minimum insurance requirements shall be commensurate with the degree of risk and the scope and size of the activities required or authorized under this Contract, and consistent with industry standards. Reclamation retains the right to review the types and amounts of insurance coverage purchased by the Concessionaire to ensure consistency with industry standards, evidence of which is to be provided by estimates provided to Reclamation by the Concessionaire.

- 2) Reclamation shall not be responsible for any omissions or inadequacies of insurance coverage and amounts in the event the insurance purchased by the Concessionaire proves to be inadequate or otherwise insufficient for any reason whatsoever.
- 3) The Concessionaire shall, at the time insurance is first purchased and annually thereafter, provide Reclamation with a Certificate of Insurance that accurately details the conditions of the policy as evidence of compliance with this section. The Concessionaire shall immediately provide Reclamation with written notice of any material change in the Concessionaire's insurance program, including the cancellation of any required insurance coverage.
- 4) All liability policies, beginning with the Concessionaire's next policy renewal in \_\_\_\_\_, shall specify that the insurance company shall have no right of subrogation against the United States of America and shall provide that the United States of America is named an additional insured.

#### C. Commercial Public Liability

The Concessionaire shall provide commercial general liability insurance against claims arising out of or resulting from the acts or omissions of the Concessionaire or its employees, agents, or contractors in carrying out the activities and operations required and/or authorized under this Contract. The minimum liability limit is \$300,000 per occurrence. Lower limits are not acceptable.

#### D. Property Insurance

- 1) The Concessionaire shall provide commercial property, fire and extended insurance coverage on property and improvements for all or part of the replacement cost of the property and improvements.
- 2) In the event of loss, the Concessionaire shall use proceeds of such insurance to repair, rebuild, restore, or replace all major property and improvements that are necessary to meet the required visitors' services. Policies may not contain provisions limiting insurance proceeds to in situ replacement. The Concessionaire shall not be relieved of its obligations under Section 11.D.(1) because insurance proceeds are not sufficient to repair or replace damaged or destroyed property or improvements. Should the time remaining on the contract not justify replacement, Reclamation may waive replacement requirements.
- 3) Insurance policies that cover property and improvements shall contain a loss payable clause, which requires insurance proceeds to be paid directly to the Concessionaire without requiring endorsement by the United States. The use of insurance proceeds for repair or replacement of Reclamation property or improvements will not alter their character as property of the United States and, notwithstanding any provision of this Contract to the contrary, the Concessionaire shall gain no ownership or other compensable interest as a result of the use of these insurance proceeds.

#### E. Business Interruption and/or Extra Expense Insurance

Certain risks are associated with operating a marina on Canyon Ferry Reservoir, such as multi-year drought or annual drawdown of the reservoir to meet: project operations; maintenance and repair activities; or high-water inflows. Therefore, the Concessionaire should carry Business Interruption and/or Extra Expense Insurance. Business interruption insurance, if maintained by the Concessionaire, should cover the loss of income and continuation of fixed expenses in the event of damage to or loss of concession facilities. Extra expense insurance if maintained by the Concessionaire should cover the extra expenses above normal operating expenses to continue operations in the event of damage or loss to covered property.

## **SEC. 12 BONDS**

### **A. Bonds**

- 1) During the term of this Contract, Reclamation, with just cause, may require the Concessionaire to furnish appropriate forms of bonds, in amounts reasonable in the circumstance, and acceptable to Reclamation to ensure faithful performance of the Concessionaire's obligations under this Contract. This requirement will only be imposed following a failure to cure any substantive breach during the time period as outlined in section 15.B.(2). The bonds will be imposed for a period of one year at a time. Alternative forms of bonds are acceptable and will include:
  - a) Cash Deposit
  - b) Corporate Security
  - c) Irrevocable letters of credit
  - d) U.S. Treasury Bills
  - e) Notes, Bonds, or other negotiable securities
  - f) Certificates of Deposits
  
- 2) The amount of the bonds needed to ensure faithful performance shall be based on the previous year's Operating Expenses.

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

### **A. Accounting System**

- 1) The Concessionaire shall maintain an accounting system under which its accounts can be readily identified with its system of accounts classification. Such accounting system shall be capable of providing the information required by this Contract including, but not limited to, the Concessionaire's repair and maintenance obligations. The Concessionaire's system of accounts classification shall be directly related to the Concessionaire Annual Financial Report.
- 2) If the Concessionaire's annual gross receipts are \$250,000 or more, the Concessionaire must use the accrual accounting method.
- 3) In computing net profits for any purposes of this Contract, the Concessionaire shall keep its accounts in such manner that there can be no diversion or concealment of profits or expenses in the operations authorized under this Contract by means of arrangements for the procurement of equipment, merchandise, supplies, or services from sources controlled by or under common ownership with the Concessionaire or by any other device.

### **B. Annual Financial Report**

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

## **SEC. 14 OTHER REPORTING REQUIREMENTS**

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

## **SEC. 15 SUSPENSIONS, TERMINATION, OR EXPIRATION**

### **A. Suspension**

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

### **B. Termination**

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

### C. Voluntary Termination

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

### D. Interim Operation

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

### E. Notice of Bankruptcy or Insolvency

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

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

- 1) In the event of the termination or expiration of this Contract, the total compensation due the Concessionaire shall be as described in this Contract. No other compensation of any nature shall be due the Concessionaire, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the termination or expiration of this Contract unless termination is found to be improper by a court with jurisdiction over the matter.
- 2) Upon termination or expiration of this Contract, and except as otherwise provided in this section, the Concessionaire shall, at its sole expense, vacate the Area within 120 days, remove all the Concessionaire's personal property or improvements, repair any injury to the Area occasioned by installation or removal of such personal property or improvements, and ensure that Reclamation's property and improvements are in at least as good condition as they were at the beginning of the term of this Contract, reasonable wear and tear excepted. If seasonal conditions can be expected to prevent Concessionaire's timely removal of property, Concessionaire may begin removal prior to expiration and shall be given necessary advance notice of termination for this purpose.
- 3) Upon Reclamation's issuance of a separate permit to the Concessionaire, not to exceed 90 days at a time, the Concessionaire may store its personal property or improvements beyond the expiration date of this Contract. Reclamation shall not permit the Concessionaire any opportunity to use its personal property or improvements on-site for any private business activity including, but not limited to, renting or sub-leasing the personal property or improvements or conducting any visitor services. Reclamation may grant the Concessionaire a limited opportunity to live on site during the extended period of time, provided that the Concessionaire has lived on site during the term of this Contract.

## **SEC. 16 COMPENSATION**

### **A. Just Compensation**

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

### **B. Compensation**

- 1) At the termination or expiration of this Contract, the Concessionaire must remove from the Area all its personal property and improvements developed and used under this Contract, as may be directed by Reclamation. No compensation is due the Concessionaire from Reclamation or a successor Concessionaire for the Concessionaire's personal property or improvements so removed. At Reclamation's request, the Concessionaire may leave in the Area for use in future operations certain of its personal property and improvements that may be considered for purchase by a successor Concessionaire or Reclamation. The Concessionaire is not required to leave or sell any such personal property or improvements, and the successor Concessionaire or Reclamation is not required to purchase such personal property or improvements. Subsequently, if such personal property or improvements are not purchased, they must be removed from the Area within 120 days of termination or expiration of Contract. In the event Reclamation requests the Concessionaire to leave certain of its personal property or improvements for use in future operations, Reclamation shall, subject to the conditions of this Contract, assure the Concessionaire that it will be fairly compensated for said personal property or improvements.
- 2) If the existing Concessionaire is selected as the next operator, then the current value must be based on a recent appraisal. If someone other than the existing concessionaire is selected, then the value will be determined on the price the new concessionaire pays for whatever assets Reclamation or they want retained, if any. If a new operator does not want any of the existing assets, then the value would be based on the actual cost on all new facilities.
- 3) Personal property and improvements that are not identified for use in future operations and not removed from the Area by the Concessionaire in accordance with the conditions of this Contract (Section 15) shall be considered abandoned property and will be subject to disposition or disposal by Reclamation, at full cost and expense of the Concessionaire, in accordance with Applicable Laws. Any cost or expense incurred by Reclamation as a result of such disposition or disposal may be offset from any amounts owed to the Concessionaire by Reclamation to the extent consistent with this Contract and Applicable Laws.

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

- 1) This concession contract hereby provides the Concessionaire, subject to all applicable definitions, requirements, and limitations of this concession contract, the right to reimbursement for concessionaire improvements constructed by the Concessionaire under the terms of this concession contract, including, but not limited to, those capital improvements that result from the construction, improvement, or repair of an existing Reclamation improvement or concessionaire improvement.
- 2) This concession contract specifies the Concessionaire's right to reimbursement in Real Property improvements. The Concessionaire shall not receive reimbursement under this concession contract except as described in this concession contract. Reimbursement shall be obtained as a result of expenditures by the Concessionaire of concessionaire funds. The Concessionaire shall obtain reimbursement only in improvements approved by Reclamation.
- 3) The amount of reimbursement shall be determined by the original cost of the fixed asset or capital improvement less depreciation. The Concessionaire must obtain the approval of Reclamation before beginning construction. This written approval shall specify the amount of money to be spent to construct or rehabilitate the fixed asset, the allowed depreciable life of the improvement, and the construction details and schedule. Depreciation shall be calculated according to IRS schedules.
- 4) If the Concessionaire named in this concession contract is awarded the subsequent concession contract, it will receive no capital investment recovery (CIR) at the time of contract expiration. Instead, the Concessionaire shall retain the CIR until the expiration of the next concession contract.
- 5) The value of reimbursement will, under no circumstances, exceed the fair market value of the fixed asset or capital improvement. The fair market value is determined as the discounted net present value of the concession's future income stream associated exclusively with the capital investments for which the Concessionaire will be reimbursed.
- 6) The compensation provided by this section shall constitute full and just compensation to the Concessionaire from Reclamation for all losses and claims occasioned by the circumstances described below.
- 7) At the beginning of this concession contract, the Concessionaire herein named shall establish the fair market value of all fixed assets or capital improvements located within the concession area. The current fair market value shall constitute the cost of the improvements in order to establish a depreciation schedule.

## **SEC. 17 ASSIGNMENTS, SALE, OR ENCUMBRANCE OF INTERESTS**

### **A. General Requirements**

- 1) Reclamation is under no obligation to recognize any right of any person or entity to an interest of any nature in this Contract including, but not limited to, operating rights, if any such perceived rights are obtained in violation of the conditions of this Contract.
- 2) It is the responsibility of the Concessionaire to advise any person(s) or entity proposing to enter into any transactions with said Concessionaire of the requirements of this Contract.
- 3) In the event of the death of the Concessionaire during the term of this Contract, Reclamation will honor its transfer to any designated heirs as prescribed by and in accordance with due process of law, provided that such heirs are determined capable of managing the Area in a manner consistent with the conditions of this Contract by Reclamation.
- 4) The Concessionaire may not develop business partnerships with other individuals or companies to provide visitor services without the prior written approval of Reclamation. No such partnership or business arrangement shall provide for the continual presence of anyone on the Area but the Concessionaire or its employees.
- 5) The Concessionaire may not enter into a contract with a Sub-Concessionaire to provide any visitor services required or authorized by this Contract or any other visitor services not specifically addressed herein.

### **B. On-Site Sales**

Except for the sale of a mobile home on site to a buyer that agrees to remove the mobile home from the site, the sale of personal property by anyone other than the Concessionaire is prohibited on the Federal estate. Concessionaires will be permitted to sell their personal property on the Federal estate only to Reclamation or a succeeding Concessionaire.

### **C. Contract Assignment and Resale Opportunity**

- 1) Concessionaires or parties holding interests in a concession contract may not sell, assign, or transfer their interests or a part of their interests to another party without the prior written approval of the contracting official (Regional Director or delegate). Concessionaires must complete and submit all sale and transfer information as required by Reclamation before approval of a sale or transfer of all or any portion of a concession operation will be considered.
  - (a) Proposed Transfer. A proposed transfer of interest is subject to the same evaluation process that is performed for a new concession contract. The Reclamation-designated official may choose not to approve a proposed sale or transfer or may choose to place

conditions on the approval. A potential buyer must provide the following information before Reclamation makes a determination to approve a proposed sale or transfer:

- A draft operation and maintenance plan
- Detailed experience and background to include: list of previous jobs, experiences, and references of the potential buyer and key staff, potential buyer knowledge of the hospitality industry, campground management, management and monitoring of a fuel distribution system and propane refueling system, and any other business skills that will assist Reclamation in determining the potential buyer's knowledge and ability to meet the terms and expectations of the contract
- A statement to the fact that they have no felony convictions nor that they are under indictment for any Federal offense
- Financial documents to include: current business and/or personal financial statements/income tax statement and balance sheet for the past two years, current credit statement from recognized credit reporting agency, anticipated revenue/expense statements for first five years of operation, proposed financial record-keeping system, and any other financial information pertinent to the buyer's proposal and proof of financial stability (including: any reports of bankruptcy within the last 7 years)
- Supporting documents to include: name/address of proposed insurance carrier along with a tentative notice from the insurance company of its ability to provide said insurance, name/address of financial institutions that may be providing loans with estimated loan amounts, name/address/background history of business or financial backers/partners/officers applicable to the concession operation
- Any other plans/data/information that the applicant considers pertinent to their evaluation
- A current buy/sell agreement with the current Concessionaire

b) Change of Original Contract Terms

- 1) Concession contracts will provide that the terms and conditions are subject to change by Reclamation before approval of a sale or transfer. The length of the term may be reduced but not extended.
- 2) Reclamation will provide the Concessionaire the appropriate Assignment, Acceptance, and Approval of Sale or Transfer documents the Concessionaire and a potential buyer must be completed before the sale or transfer may be authorized.

## SEC. 18 GENERAL PROVISIONS

- A. Reclamation, the Comptroller General of the United States, the Government Accounting Office (GAO), the Office of Inspector General (OIG), or any of their duly authorized representatives shall have access to the records of the Concessionaire as provided by this Contract and the terms of Applicable Laws.
- B. All information required to be submitted to Reclamation by the Concessionaire pursuant to this Contract is subject to public release by Reclamation to the extent provided by Applicable Laws. Reclamation will not release any information that has been specifically identified by Concessionaire as confidential, private or proprietary information that should not be publicly disclosed. Proprietary information shall not include sales figures, prices and rates, services available, or terms of this Contract.
- C. The Concessionaire is not entitled to be awarded or to have negotiating rights, to any Federal procurement or service contract by virtue of any provision of this Contract.
- D. Any and all taxes, fees, or assessments of any nature that may be lawfully imposed upon the property or business of the Concessionaire by any Federal agency or State or political subdivisions thereof shall be paid promptly by the Concessionaire.
- E. No member of the executive, legislative, or judicial branches of the Federal Government shall be admitted to any share or part of this Contract or to any benefit that may arise from this Contract. This restriction shall not be construed to extend to this Contract if made with a corporation or company for its general benefit.
- F. This Contract contains the sole and entire agreement of the parties. No oral representations of any nature form the basis of or amend the term or conditions of this Contract. Any and all changes to this Contract shall be recognized in a written amendment, agreed to, and executed by all parties to this Contract.
- G. This Contract does not grant rights or benefits of any nature to any third party.
- H. The Concessionaire shall not store any personal equipment (except as may be determined appropriate by Reclamation) in the Area which does not specifically support the provision or operation of the visitor services required under this Contract. Concessionaire shall be permitted to store personal property on site that is associated with or relating to occupancy of the residence.
- I. The invalidity of a specific provision of this Contract shall not affect the validity of the remaining provisions of this Contract.

- J. Waiver by Reclamation or the Concessionaire of any breach of any of the conditions of this Contract by the other party shall not be deemed to be a waiver or elimination of such condition of any subsequent breach of the same type nor of any other condition of this Contract. The subsequent acceptance of any payment of money or other performance required by this Contract shall not be deemed to be a waiver of any other breach, whether preceding or succeeding, of this Contract.
- K. Claims against Reclamation arising from this Contract shall be forfeited to Reclamation by any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance thereof within the meaning of 28 U.S.C. 2514.
- L. Reclamation is not responsible for providing security for the protection of Concessionaire owned personal property or improvements during the term of this Contract or for any extended periods of time Reclamation may grant the Concessionaire. Reservoir-wide law enforcement on Federal land and water areas is provided by the Lewis and Clark or Broadwater County Sheriff's Department. Fish, wildlife, and water safety laws and regulations are enforced by the Montana Department of Fish, Wildlife, and Parks (FWP).
- M. A minimum of one person on the concession staff on duty at any time must have current basic training in First Aid and cardiopulmonary resuscitation (CPR). Proof of certification must be available upon request by Reclamation.
- N. Conflict Resolution: In the event of any disagreement between the parties regarding the implementation of this Contract, the parties shall attempt resolution through the following procedures.
- 1) Discussion between the Concessionaire and the Facility Manager/Recreation Specialist or designee.
  - 2) If resolution is not achieved, discussion between the Concessionaire and Supervisory Resource Manager/Area Manager or designee.
  - 3) If resolution is not achieved, either party has the right to request a mediator or non-binding arbitrator.
  - 4) If issues arise that cannot be resolved, this Contract, or section thereof, is/are subject to appeal in accordance with 43 CFR, Part 4.

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

CONCESSIONAIRE Axtman, LLC, d/b/a Kilo's Marina & Resort

Gregory S. Axtman, member

BY Maryann M. Axtman, member Date: 9-29-06

(Title), (Company Name) Mary Ann Axtman, Member  
Greg Axtman, Member

~~[CORPORATIONS]~~

ATTEST:

BY \_\_\_\_\_

Date: \_\_\_\_\_

TITLE: \_\_\_\_\_

~~[SOLE PROPRIETORSHIP]~~

WITNESSES:

~~[PARTNERSHIP]~~

WITNESSES AS TO EACH:

[Concessionaire]

UNITED STATES OF AMERICA

BY [Signature]  
Area Manager, Montana Area Office  
Great Plains Region  
Bureau of Reclamation

Date: 29 SEPTEMBER 2006

# **EXHIBIT A**

## **Nondiscrimination**

# EXHIBIT A

## NONDISCRIMINATION

### A. Employment

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

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

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

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

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

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

the Secretary of the Interior and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Concessionaire's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated or suspended in whole or in part and the Concessionaire may be declared ineligible for further Government concession contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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

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

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

## **C. Facilities**

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

## **D. Accessibility**

Title V, Section 504, of the Rehabilitation Act of 1973, as amended in 1978, requires that action be taken to assure that any "program" or "service" being provided to the general public be provided to the highest extent reasonably possible to individuals who are mobility impaired, hearing impaired, and visually impaired. It does not require

architectural access to every building or facility, but only that the service or program can be provided somewhere in an accessible location. It also allows for a wide range of methods and techniques for achieving the intent of the law, and calls for consultation with disabled persons in determining what is reasonable and feasible.

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

#### **E. Discrimination Prohibited**

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

(1) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(2) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(3) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(4) Provide different or separate aids, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(5) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(6) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

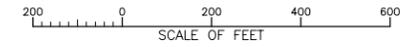
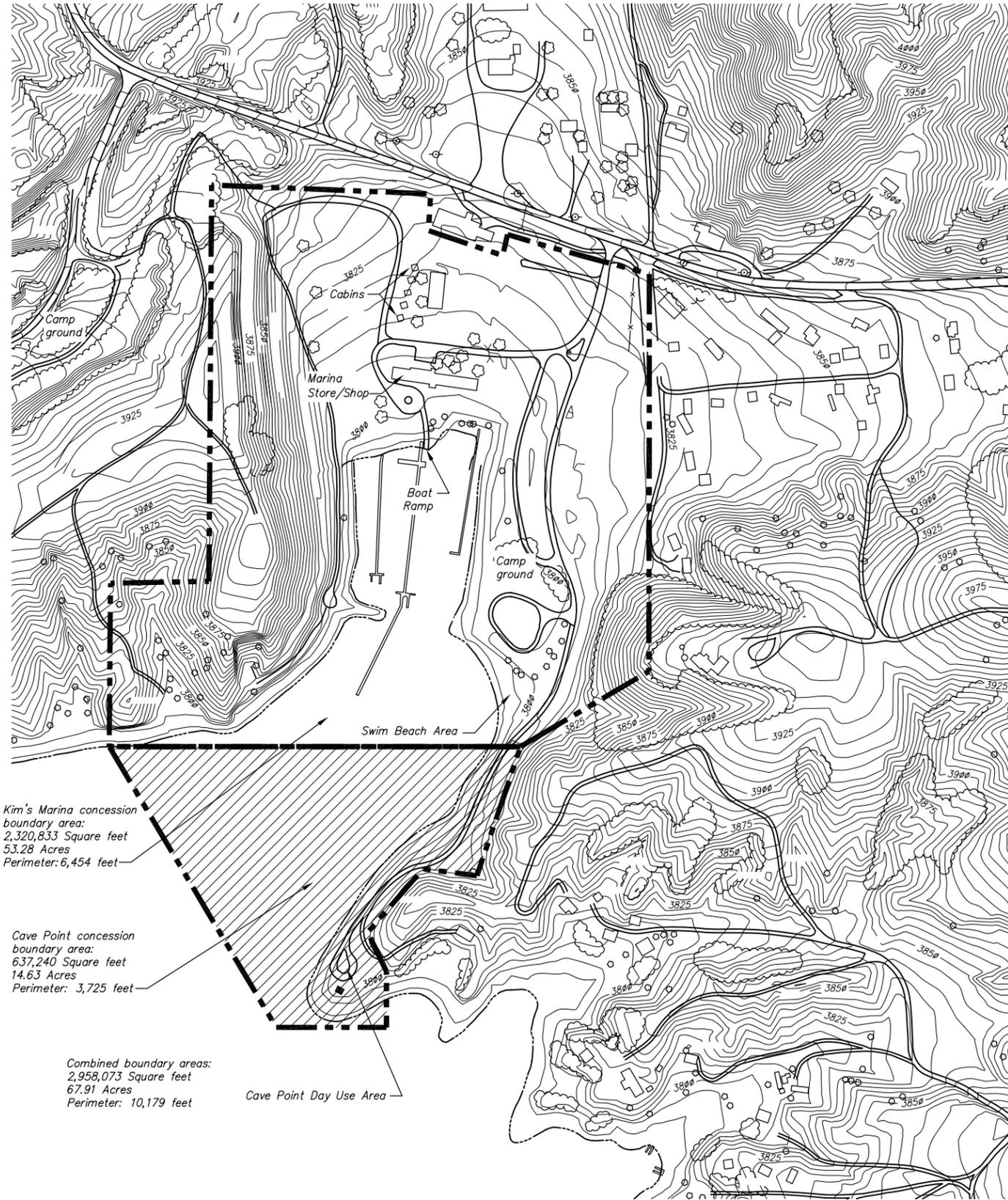
(7) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

#### **F. Existing Facilities**

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

# **EXHIBIT B**

## **Site Map and Concession Area**



Kim's Marina concession  
boundary area:  
2,320,833 Square feet  
53.28 Acres  
Perimeter: 6,454 feet

Cave Point concession  
boundary area:  
637,240 Square feet  
14.63 Acres  
Perimeter: 3,725 feet

Combined boundary areas:  
2,958,073 Square feet  
67.91 Acres  
Perimeter: 10,179 feet

Cave Point Day Use Area

ALWAYS THINK SAFETY

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

PICK-SLOAN MISSOURI BASIN PROGRAM  
CANYON AREA UNIT - MONTANA

CANYON FERRY RESERVOIR  
KIM'S MARINA  
SITE MAP AND CONCESSION AREA

DESIGNED: C. TRINKE CHECKED: \_\_\_\_\_

DRAWN: \_\_\_\_\_ TECH. APPR: \_\_\_\_\_

APPROVED: \_\_\_\_\_

BILLINGS, MONTANA SHEET 1 9/19/2005

296-650-3075

# **EXHIBIT C**

## **Assigned Reclamation Property and Improvements**

# **EXHIBIT C**

## **ASSIGNED RECLAMATION PROPERTY AND IMPROVEMENTS**

1. One pre-cast vault toilet located in parking area east of entry road.
2. One 140' wave-eater system.

# **EXHIBIT D**

## **Boat Dock Standards**

# EXHIBIT D

## BOAT DOCK STANDARDS

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

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

- a. Wood Frame Construction:
  - (1) 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.
  - (3) All wood frame docks shall comply with the attached drawing, "Suggested Construction Plans For A Safer Boat Dock".
- b. Other Construction Requirements:
  - (1) Docks using other than wood frame construction (aluminum, steel, plastic, etc.) must be commercially engineered and manufactured.
  - (2) Horizontal joints on the walking surface (decking) may not exceed 2" in width (for instance, cross-plank spacing), and vertical joints on the walking surface may not exceed 3" in height (thresholds, the joint where two dock sections meet, etc.) unless they are sloped back to 1:12 (8.3%). In constructing new wood decking, care should be taken to insure that shrinkage will not form gaps in the decking that exceed 2" in width.
  - (3) Finger docks (walkways between boat slips) shall be a minimum 36" wide (48" is recommended). Main docks serving the public (basically all other public docks, service docks, walkways, gas docks, etc.) shall be a minimum of 48" wide (60" wide is recommended).
  - (4) Decking shall be firm and slip-resistant. If exposed wood decking is used as a surfacing material, planks should run perpendicular to the direction of travel.
- c. In construction, all connections will be secured with sheet metal, steel plates, metal straps, or plywood gussets to resist wave action.
- d. Storage compartments and other mounted or built-in marina equipment are permissible on docks, providing walkways at least 48" wide are provided around any and all equipment stored or mounted on the dock.
- e. All electrical service on docks must be installed, operated and maintained in accordance with the requirements of the National Electrical Code (NEC), the National Electrical Safety Code, and applicable State and local codes. 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 slope of the walkway, but shall not be allowed to exceed a 1:3 running slope (1 foot drop in 3 foot run, or 33%).

### **3. Flotation:**

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

### **4. Anchorage:**

- a. An anchorage system shall be provided which will insure secure mooring of the structure. The anchorage shall provide safety against extreme water fluctuations, currents, drift impact, and wave action.
- b. The use of vegetation or the placement of permanent structures on the shoreline as an anchorage system is not allowed.

# **EXHIBIT E**

## **Bureau of Reclamation Concessions Management Policy and Directives and Standards**

# Reclamation Manual

## Policy

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**Subject:** Concessions Management

**Purpose:** Sets forth the policy for planning, development, management, and operation of concessions at Reclamation projects.

**Authority:** Reclamation Act of 1902, as amended and supplemented; the Reclamation Project Act of 1939; and the Federal Water Project Recreation Act of 1965, as amended.

**Contact:** Land, Recreation, and Cultural Resources Office, D-5300

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### 1. Concessions Management Policy.

- A. **Stewardship.** Reclamation and its managing partners will ensure that concessions are planned, developed, and managed to meet public needs, are compatible with the natural and cultural resources, and provide a variety of services which are consistent with authorized project purposes.
- B. **Authorization of Concessions.** Based on the principles contained in this policy, Reclamation will authorize concessions which establish or continue to provide necessary and appropriate facilities and services.

### 2. Definition.

- A. **Concession.** A concession is a non-Federal commercial business that supports appropriate public recreation uses and provides facilities, goods, or services for which revenues are collected. A concession involves the use of the Federal estate and usually involves the development of real property improvements.

### 3. Concessions Principles. The following principles guide the planning, development, and management of concessions:

- A. Concessions will provide quality recreation facilities and services accessible to persons with disabilities, and appropriate visitor goods and services at reasonable rates.
- B. Concession operations will provide for the protection, conservation, and preservation of natural, historical, and cultural resources.
- C. Commercial facilities and services will be planned and developed through a commercial services planning and public involvement process, in cooperation with other public agencies.

# Reclamation Manual

## Policy

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- D. Concessionaires will be provided with opportunities for a reasonable profit and may be compensated for Reclamation-approved improvements that will remain the property of the United States.
  - E. Reclamation will ensure fair competition in the awarding of concessions contracts and will not allow preferential rights of renewal.
  - F. Exclusive use of the Federal estate will not be allowed and existing exclusive use will be removed as soon as possible.
  - G. Concessions will comply with applicable Federal, State, and local laws.
4. **Supporting Directives and Standards and Guidelines.** Implementation of the Concessions Management Policy is accomplished through the use of the Reclamation Manual Directives and Standards, and Guidelines.
- Concessions Management by the Bureau of Reclamation, LND 04-01.
  - Concessions Management by Non-Federal Partners, LND 04-02.
  - Concessions Management Guidelines.

# Reclamation Manual

## Directives and Standards

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**Subject:** Concessions Management by Non-Federal Partners

**Purpose:** Establishes minimum approval standards for all new, modified, or renewed non-Federal concession contracts.

**Authority:** Reclamation Act of 1902, as amended and supplemented; the Reclamation Project Act of 1939; and the Federal Water Project Recreation Act of 1965, as amended.

**Contact:** Land, Recreation, and Cultural Resources Office, D-5300

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1. **Non-Federal Partners.** Reclamation may transfer to non-Federal partners the responsibility to develop and manage public recreation areas and concession services. Transferred areas are managed by a partner under Federal authorities, the partner's authorities, specific contracts, and agreements with Reclamation. Well-planned and -managed concessions on the Federal estate are of mutual interest to Reclamation and its partners. Reclamation is responsible for continuous management oversight of managing partners and their concessions operations.
2. **Compliance With Directives and Standards.** New concession contracts issued by managing partners must comply with these directives and standards. Existing concession contracts issued by managing partners must, at the first opportunity, be brought into compliance with these directives and standards. If a concession contract is amended or terminated because of contract default or for other reasons and a subsequent concession contract is issued by the non-Federal partner, the subsequent concession contract must be in compliance with these directives and standards.
3. **Definitions.**
  - A. **Concession.** A concession is a non-Federal commercial business that supports appropriate public recreation uses and provides facilities, goods, or services for which revenues are collected. A concession involves the use of the Federal estate and usually involves the development of real property improvements.
  - B. **Exclusive Use.** Exclusive use is any use that excludes other appropriate public recreation use or users for extended periods of time. Exclusive use includes, but is not limited to, boat docks, cabins, trailers, manufactured or mobile homes, structures, or amenities that are determined by Reclamation to be exclusive use.
  - C. **Federal Estate.** The Federal land and water areas under the primary jurisdiction of the Department of the Interior, Bureau of Reclamation.

# Reclamation Manual

## Directives and Standards

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- D. **Fixed Assets.** Fixed assets are any structures, fixtures, or capital improvements permanently attached to the Federal estate.
  - E. **Improvement.** An addition to real property that increases its value or utility or that enhances its appearance.
  - F. **Management Agreement.** A management agreement is a binding contract between Reclamation and a partner to provide public recreation opportunities and concession services on the Federal estate.
  - G. **Non-Federal Partner.** A non-Federal partner is a non-Federal public entity that manages recreation and other resources through a contractual agreement with Reclamation.
  - H. **Total Benefits to the Government.** Total benefits include:
    - (1) **Direct Returns.** These are fees generated by authorized concession contracts and paid directly to the managing entity or to the United States Treasury.
    - (2) **Direct Benefits.** These are fees paid into a contractually designated special account for resource and capital improvements that directly benefit the public in the area of operations where the fees are collected.
    - (3) **Indirect Benefits.** These are services performed by the concessionaire that benefit the public or improvements made to the Federal estate by the concessionaire.
4. **Managing Partner Agreements.**
- A. **Third-Party Concession Agreements.** Third-party concession agreements are agreements between the non-Federal managing partner and another entity to provide concession related services and facilities.
    - (1) **Agreement Standards.** Any concession contract, including a contract renewal or modification, issued by the non-Federal managing partner must meet the requirements of these Concessions Management Directives and Standards.
    - (2) **Contract Approval.** Before issuing or renewing a non-Federal concession contract, the contract must be approved by Reclamation.
    - (3) **Stand In Stead Conditions.** All concession contracts must state that Reclamation will not stand in stead for the managing partner should the

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management agreement expire or be terminated. At Reclamation's discretion, Reclamation may issue a new concession contract that is in compliance with Reclamation Manual (RM), *Concessions Management by Reclamation*, LND 04-01. Reclamation will not issue a new contract until all exclusive use has been removed.

- B. **Review and Evaluation.** All management agreements will require Reclamation to conduct annual concession operation reviews and evaluations. Reclamation may also conduct unplanned reviews, as necessary. If a review identifies operational or administrative deficiencies in the operation of a concession, a timetable must be established by the area office to correct these deficiencies.
  - C. **Exclusive Use.** New, renewed, or modified management agreements and concession contracts will include clauses that prohibit new exclusive use and require that existing exclusive use be phased out. When existing concession contracts issued by the partner are modified or renewed, Reclamation and the partner must establish a timetable in the concession contract that phases out existing exclusive use before the expiration of the contract. This timetable must be established before the concession contract is resubmitted to Reclamation for approval. The concessionaire and a person hired to guard the concessionaires investment may reside on the Federal estate, with the written approval of Reclamation.
  - D. **Disposition of Fees.** Unless State or local laws direct how concession fees paid to the partner will be used, the following will apply: (1) fees will be returned to the area to provide for operation, maintenance, and replacement of recreation facilities and new facility development; (2) any excess fees (profit) will be returned to Reclamation and disposed of according to RM, *Crediting of Incidental Revenues*, PEC 03-01.
  - E. **Statistical Data.** Each year, the managing partner will be required to provide Reclamation with the information specified in Reclamation's Recreation Use Data Report. Other information may be required, as necessary. This information will provide an accurate inventory of facilities. The report will also contain other data about the managing partner's recreation and concession operations on the Federal estate.
5. **Concessions Planning.** Concession development will adhere to the concessions principles listed in RM, *Concessions Management* (LND P02), will be based on appropriate plans developed by the partner or Reclamation, and will be approved by the Regional Director or delegate. Reclamation can provide direction and assistance in the process, as necessary, to accomplish effective commercial services planning.

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6. **Concessions Contracting.** The following items will be addressed in all new and renewed concessions contracts issued by non-Federal partners.
  - A. **Sale and Transfer.** The sale and transfer of existing concessions must be approved according to the management agreement and reported to Reclamation in a timely manner.
  - B. **Contract Language.** The partner will develop and use contract language that complies with all applicable Federal laws, rules, regulations, and Executive Orders. Reclamation can provide examples of standard contract structure and language.
  - C. **Length of Term.** The term for a concession may not exceed the term of the management agreement between Reclamation and the partner. In general, terms should be as short as possible and based on the new investment required as determined by a financial feasibility evaluation.
  - D. **Subconcessions.** All subconcessions must meet the terms and conditions of the prime concession contract. The partner must approve all subconcessions and notify Reclamation in advance of any authorization that needs Reclamation approval. Generally, subconcessions are discouraged in order to keep operations under single management.
  - E. **Concessions Building and Improvement Program.** All designs and construction must comply with applicable Federal, State, and local environmental and historic preservation laws and regulations and building code requirements. In areas where no State or local construction standards exist, Reclamation may provide appropriate standards. Where required and before construction, building permits must be obtained from local authorities by the concessionaire. All facilities will be harmonious in form, line, color, and texture with the surrounding landscape.
  - F. **Operation and Maintenance Plan.** Concessionaires will prepare an annual operation and maintenance plan, which must be approved by the partner. The concession contract must clearly state what the plan will contain. Reclamation can provide examples of such plans for the partner and the concessionaire.

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### G. **Reimbursement for Fixed Assets.**

- (1) A right to reimbursement may exist when a concessionaire places Reclamation-approved fixed assets on the Federal estate. Title to fixed assets must be established in the concession contract. Reimbursement of a concessionaire for fixed assets is the responsibility of the partner. The method for determining the amount of reimbursement and the method of payment will be specifically addressed in the concession contract between the partner and the concessionaire.
- (2) In the event the partner's agreement with Reclamation expires or is terminated without a commitment by both Reclamation and the partner to enter into another agreement, all the concessionaires' fixed assets and personal property must be removed from the Federal estate unless Reclamation decides to issue a new concessions contract and decides to retain the fixed assets. [See paragraph 4A(3).] The partner will be responsible for ensuring that the concession area is returned in a condition satisfactory to Reclamation.
- (3) It must be clearly stated that no financial obligation or risk will reside in the Federal Government for reimbursement for fixed assets or personal property as a result of the partner awarding a concession contract. All new concession contracts issued by the partner will address rights for reimbursement to the concessionaire for fixed assets. Interests in a concessionaire's fixed assets may not extend beyond the term of the management agreement. In addition, the concession contract must provide appropriate language regarding interests in fixed assets and methods of reimbursement, if any, to the concessionaire by the partner.

H. **Area of Operation.** Each concession contract will authorize and define only the physical area necessary to conduct the business activities allowed by the contract. Concession boundaries must be surveyed by the partner and easily recognizable by the visiting public.

I. **Additional Facilities or Services.** Any proposal for expansion of facilities or services must be reviewed by Reclamation and approved by the partner before the expansion takes place.

J. **Exclusive Use.** The contract must state that no new facility, service, or site determined by Reclamation to be exclusive use will be allowed. New, renewed, or modified concession contracts issued by the partner will include clauses that establish a timetable for phasing out existing exclusive use before the contract expires.

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- K. **Reclamation Rights.** All concession contracts must be subject to the rights of Reclamation and its agents to use the subject lands and waters for project purposes.
- L. **Termination of Concession Contract.** Concession contracts will acknowledge the right of Reclamation to terminate, for cause, any concession contract authorized by a non-Federal partner.
- M. **Total Benefits.** The partner will establish and recover fair benefits, including direct return and direct and indirect benefits, for the uses, rights, and privileges granted by a concession contract. For disposition of fees, see paragraph 4D.
- N. **Rates and Merchandise.** Rates charged by concessionaires for services, food, lodging, and merchandise will be based on charges for comparable facilities, services, and merchandise provided by the private sector in similar situations. The partner must approve the rates requested by concessionaires.
- O. **Concessions Safety Program.** Concessionaires are responsible for providing and ensuring a safe and healthful environment for both the visiting public and employees by developing, implementing, and administering health, safety, and educational programs to ensure that concession areas are managed in compliance with Federal, State, and local laws, rules, and regulations.
- P. **Environmental Compliance.** Concession contracts will address all activities with potential environmental impacts resulting from the release of hazardous materials to the environment including, but not limited to, the following: pesticides, herbicides, sewage effluents, petroleum products, and liquid waste (gray water). Concessionaires are required to follow all applicable Federal, State, and local laws, rules, and regulations related to hazardous substance use, storage, and disposal. Application for and acquisition of all required certifications and permits are the responsibility of the concessionaire.
- Q. **Food Sanitation.** Concessionaires' food services will comply with Federal, State, and local food handling and sanitation regulations.
- R. **Advertising and Signs.** The Reclamation logo or name, along with the non-Federal partner logo or name, will be displayed at all concession entrances used by the public. Outdoor signs or other forms of advertising on the Federal estate must be approved by Reclamation before they are displayed.
- S. **Sale of Personal Property.** The sale of personal property other than the approved concessions inventory is prohibited on the Federal estate. No party will be permitted to sell personal property, including vehicles, manufactured or mobile

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homes, house trailers, travel trailers, boats, or personal water craft, on the Federal estate.

- T. **Utility Services Provided by Reclamation.** The fee charged for utility services provided by Reclamation will be based on the recovery of full operating and replacement costs for utility capital investments and comparable utility rates. Utility services include, but are not limited to, electricity, power, water, waste disposal, gas, and communication systems.
- U. **Insurance Program.** Concessionaires must have and maintain an appropriate insurance policy that will indemnify the United States and meet applicable State requirements. All liability policies will provide that the insurance company will have no right of subrogation against the United States and must provide that the United States is named as an additional insured. The partner may establish similar requirements itself, but it must provide Reclamation with a copy of the insurance certificate that identifies the above conditions.
- V. **System of Recordkeeping.** Financial reports and records necessary for management and oversight of concessions must be maintained and available to the partner and to Reclamation upon request. At a minimum, each concessionaire will complete Reclamation's Annual Financial Report form(s).

### 7. Concessions Administration.

- A. **Annual Review and Evaluation.** All concession agreements issued by the non-Federal partner will require Reclamation and the non-Federal partner to conduct annual concession reviews and evaluations. The review should identify problems, solutions, and a timetable for resolving the problems in a written report. The non-Federal partner must ensure that any operational or administrative deficiencies noted by the review are corrected in accordance with the established timetable.
- B. **Nonprofit Organizations.** In certain circumstances, it may be suitable for cooperative associations or nonprofit organizations to sell goods or provide visitor services to meet the goals and objectives of both Reclamation and the partner. These associations and organizations must be approved by the partner if the cooperating association operates within a concession or elsewhere on the Federal estate. The cooperating association will be responsible for maintaining its accounting system, and the system cannot be combined with a concessionaire's annual financial report. Nonprofit organizations will also be given very clear instructions identifying the type of business they are authorized to conduct and the types of goods and services they may provide. All organizations must provide written proof of their nonprofit status to Reclamation and the partner.

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- C. **Employment of Reclamation Personnel or Family Members**<sup>1</sup>. Reclamation employees or family members may not be owners, partners, board members, corporate officers, general managers, or employees of any business providing commercial services on the Federal estate, nor may they have any financial interest in such a company. Ownership of stock shares traded in a recognized open market is not considered a financial interest under these directives and standards. Reclamation employees are further prohibited from using their public office for private or family gain. A Reclamation employee involved in preparing specifications, awarding a contract, or administering a concession may not be involved in that activity if the employee or a family member is involved in any phase or operation of that concession. Any Reclamation employee or family member responsible for any phase of a concession contract will be excused from duties related to the concession contract if the employee or a family member is involved in competing for the contract or if the Reclamation employee may benefit financially from the awarding of the contract.

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<sup>1</sup>Guidance on this issue should be obtained from an ethics counselor in the servicing Reclamation Personnel/Human Resources Office.