

INTERIM CONCESSION CONTRACT

IDENTIFICATION OF THE PARTIES

THIS Interim Concession Contract is made and entered into by and between the United States of America, acting, through the Regional Director, Mid Pacific Region, Bureau of Reclamation, hereinafter referred to as "Reclamation" or "Contracting Officer" and the (FX10) MARKLEY COVE RESORT, a limited liability company organized and existing under the laws of the State of California, hereinafter referred to as the "Concession Contractor".

WITNESSETH:

WHEREAS, Reclamation has determined that certain facilities and services are appropriate for the public use and enjoyment of the Markley Cove Resort concession area, and the Concession Contractor is willing to provide such facilities and services; and

WHEREAS, Reclamation is willing to allow the Concession Contractor a reasonable opportunity to realize a profit on the operations conducted within the Markley Cove Resort concession area; and

WHEREAS, the Concession Contractor's facilities and services will not be inconsistent with the requirements of Reclamation's Solano Project and will not interfere with the operation and responsibility of any and all entities associated with that Project; and

WHEREAS, Reclamation desires the Concession Contractor to maintain and operate these visitor services at reasonable rates as an independent contractor in conformity with all applicable laws and the terms of this Interim Concession Contract; and

WHEREAS, Reclamation desires the Concession Contractor to conduct these visitor services in a manner that demonstrates sound environmental management, stewardship, and leadership; and

NOW, THEREFORE, pursuant to the authority contained in Reclamation Act of 1902, as amended and supplemented; Reclamation Project Act of 1939; the Federal Water Project Recreation Act of 1965, as amended; Reclamation Development Act of 1974, Public Law 93-493; Reclamation Recreation Management Act, Title XXVIII of Public Law 102-575; and other laws and policies that supplement and amend the acts, the Secretary and the Concession Contractor agree as follows:

DEFINITIONS

The following terms used in this Interim Concession Contract and the exhibits to this Interim Concession Contract will be defined, for the purposes of this Interim Concession Contract and exhibits, as set forth below. Definitions apply to both the singular and the plural forms of the defined terms:

Applicable Laws – Federal, State and local laws governing the development, operation and maintenance of recreation facilities and services at Lake Berryessa, including, but not limited to, the rules, regulations, requirements, and policies promulgated under those laws, whether now in force, or amended, enacted or promulgated in the future.

Base services – the minimum services required under the Interim Concession Contract.

Best management practices – Policies and practices that apply the most current and advanced practicable means and technologies available to the Concession Contractor to undertake and maintain a superior level of environmental performance reasonable in light of the circumstances of the operations conducted under this Interim Concession Contract. Best Management Practices are expected to change from time to time as technology evolves.

Contracting Officer- Regional Director of the Mid-Pacific Region as delegated by the Commissioner.

Day or days – Shall mean calendar days, unless the Contract shall specifically refer to business days which shall exclude weekends and federally recognized holidays.

Exhibit or exhibits – Shall mean the various exhibits, which are attached to this Interim Concession Contract, each of which is hereby made a part of this concession.

Federal estate – Federal land and water areas of the Solano Project that are under the primary jurisdiction of the Department of the Interior, Bureau of Reclamation.

Franchise fee – A payment to the Government that is considered a direct return to the Government upon consideration of the value to the Concession Contractor of the use, rights, and privileges granted by this Concession Contract. Such value shall be based upon a reasonable opportunity for net profit in relation to capital invested and the obligations of this Concession Contract.

Gross revenues – The total amount received or realized by, or accruing to, the Concession Contractor from all sales for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the rights granted by this Concession Contract, commissions earned on contracts or agreements with other persons or companies operating in the area, and Gross Revenues earned from electronic media sales, but excluding

- Intra-company earnings on account of charges to other departments of the operation (such as laundry).
- Charges for employee's meals, lodging, and transportation.
- Cash discounts on purchases.
- Cash discounts on sales.
- Interest on money loaned or in bank accounts.
- Income from investments.
- Income from any subsidiary companies not arising from business conducted in conjunction with this Concession Contract.

- Sale of property that was acquired for the purpose of resale and not for use under this contract.
- Sales and excise taxes that are added as separate charges to sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid Government agencies.

All monies actually received by the Concession Contractor from coin operated devices whether provided by the Concession Contractor or by others shall be included in Gross Revenues. All revenues received by the Concession Contractor from charges for in-room telephone or computer access shall be included in Gross Revenues.

Improvements – An addition to real property that increases its value or utility or that enhances its appearance.

Personal property – All tangible assets not affixed to the land. Personal Property includes but is not limited to: vehicles, boats, barges, park models, or other objects, regardless of size, unless an item of Personal Property becomes a fixture associated with a structure. Floating docks are not considered personal property.

Secretary - The Secretary of the Interior or his/her authorized representatives

SECTION 1 – TERM OF INTERIM CONCESSION CONTRACT

A. TERM OF INTERIM CONCESSION CONTRACT

This Interim Concession Contract No. 09LC200026, herein and hereafter referred to as the “Interim Concession Contract” shall be effective on May 27, 2009, and shall be for the term ending May 26, 2011, with two one-year options, unless otherwise provided under B. herein. Each one-year option must be mutually agreed to by the Concession Contractor and Reclamation. This is an Interim Concession Contract permitted to provide continuation of identified public facilities and services following the completion of the previous concession contract. This Interim Concession Contract because of its interim nature may not be transferred or assigned to a third party.

B. INTERIM CONCESSION CONTRACT TERMINATION

The Concession Contractor and Reclamation may terminate this Interim Concession Contract by mutual agreement.

Reclamation may terminate this Interim Concession Contract if Reclamation determines that the Concession Contractor has materially breached any requirement of this Interim Concession Contract. The Interim Concession Contract includes the requirement to:

- Maintain and operate visitor services to the satisfaction of Reclamation.
- Provide those base services pursuant to this Interim Concession Contract.
- Pay the established franchise fee.
- Comply with applicable laws, regulations and codes.

In the event of a breach of this Interim Concession Contract, Reclamation will provide the Concession Contractor an opportunity to cure by providing written notice to the Concession Contractor of the breach. In the event of a monetary breach, Reclamation will give the Concession Contractor a 15-day period to cure the breach. If the breach is not cured within that period, Reclamation may terminate this Interim Concession Contract for default. In the event of a non-monetary breach, if Reclamation considers that the nature of the breach so permits, Reclamation will give the Concession Contractor 30 days to cure the breach or to prepare a plan to cure the breach that is approved by the Contracting Officer and 30 days to implement the plan over a period of time unless the breach involves immediate danger to persons or property or immediate threat to the environment, in which case Reclamation shall give reasonable notice under the circumstances. If the breach is not cured within this specified period of time, Reclamation may terminate this Interim Concession Contract for default. Notwithstanding this provision, repeated breaches (two or more) of the same nature shall be grounds for termination for default without a cure period. In the event of a breach of any nature, Reclamation may suspend the Concession Contractor’s operations, as appropriate. This Interim Concession Contract is subject to 43 Code of Federal Regulations (CFR) Part 430, in the event of termination for default.

Reclamation may terminate this Interim Concession Contract upon the filing by the Concession Contractor’s of any petition seeking relief under any provision of the Bankruptcy Act or successive legislation; an assignment by the Concession Contractor for the benefit of creditors; a petition or other proceeding against the Concession Contractor for the appointment of a trustee, receiver, or liquidator. Reclamation may terminate this Interim Concession Contract if the Contracting Officer

determines that the Concession Contractor is unable to perform the terms of the Interim Concession Contract because of such filings or assignments. Termination of this Interim Concession Contract for any reason shall be by written notice to the Concession Contractor.

In the event that FX10 is selected as the best bidder and awarded a new long-term concession contract, this Interim Concession Contract would be terminated when the new long-term concession contract is executed.

C. NOTICE OF BANKRUPTCY OR INSOLVENCY

The Concession Contractor or any affiliated organization must give Reclamation immediate notice 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 Concession Contractor must also give Reclamation immediate notice of any petition or other proceeding against the Concession Contractor for the appointment of a trustee, receiver, or liquidator, or the taking by any person or entity of the rights granted by this Interim Concession 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 Interim Concession Contract is not a lease but an executory Contract exempt from inclusion in assets of the Concession Contractor pursuant to 11 U.S.C. 365.

D. CONTRACT SUSPENSION

Reclamation may temporarily suspend operations under this Interim Concession Contract in whole or in part, as deemed necessary, in order to protect area visitors or to protect, conserve, and preserve area resources. This Interim Concession Contract may be suspended in whole or in part, for Contract violations that include, but are not limited to, administrative deficiency, operational deficiency, health and safety, employee drug use, environmental regulation noncompliance, as deemed necessary by Reclamation. No compensation of any nature shall be due the Concession Contractor by Reclamation in the event of a suspension of operations, including, but not limited to, compensation for losses based on lost income, profit, wages, or the necessity to make expenditures as a result of the suspension.

E. CONTRACT EXTENSION

The term of this Interim Concession Contract may not be extended beyond that stated in Section 1.A.

F. NO RIGHT OF RENEWAL PREFERENCE

This Interim Concession Contract does not include a right of renewal.

G. CONTRACT SALE OR TRANSFER OF INTERESTS

The Concession Contractor shall not transfer, assign, sell, or otherwise convey or pledge any property or other interests under this Interim Concession Contract.

H. ASSIGNMENT, SALE, OR ENCUMBRANCE OF INTERESTS

The Concession Contractor under Section 1.G. of this Interim Concession Contract has no rights for

assignment or sale of interests pertaining to the operations required and authorized. Reclamation shall not be obliged to recognize any right of any person or entity to an interest in this Interim Concession Contract of any nature, including, but not limited to, operating rights under this Interim Concession Contract, if obtained in violation of this Interim Concession Contract and/or applicable law and policies.

The Concession Contractor shall advise any person(s) or entity proposing to enter into a transaction of the requirements of applicable law and the requirements of this Interim Concession Contract pertaining to non- authorization of assignment, sale or encumbrance of interests.

SECTION 2 - SERVICES AND OPERATIONS

A. BASE AND AUTHORIZED SERVICES

All current services at Markley Cove concession area, with the exception of privately owned trailers/mobile homes, will be expected to continue during the term of this Interim Concession Contract.

1. During the term of this Interim Concession Contract, the Concession Contractor is required to provide the following base services to the public within the area of operation:
 - a. Marina – Manage and maintain public marina and ancillary services and facilities, i.e., public docks, slip rentals, boat launch ramp, marine fuel, houseboat slips, etc. Concession Contractor is required to provide a minimum of 226 boat slips for the various sized vessels up to 40 feet in length for the term of this Interim Concession Contract. Concession Contractor is to provide a minimum of 30 marina rental slips for vessels over 40 feet in length for the term of this Interim Concession Contract. The terms of any rentals should not exceed the term of the Interim Concession Contract.
 - b. Retail Sales – Concession Contractor is required to manage and maintain public retail sales areas featuring supplies such as groceries, boating and fishing supplies, camping supplies, applicable sundries and souvenirs. Reclamation retains the right to prohibit the sale of any items.
2. During the term of this Interim Concession Contract, the Concession Contractor may be authorized to provide the following services with prior approval by Reclamation:
 - a. Watercraft Rental Operation – Manage and maintain rental facilities for commercial houseboats, pleasure boats, and Personal Water Craft. For houseboat rentals, the Concession Contractor is required to submit a request for an allocation of commercial houseboat permits at Markley Cove Resort.
 - b. Lodging Opportunities – Develop, manage, and maintain lodging opportunities.

During the term of this Interim Concession Contract, the Concession Contractor is not authorized to provide any service, facility, or activity not listed in subsection 2(A) of this Interim Concession Contract.

B. SCOPE OF SERVICES

Reclamation reserves the right to determine and control the nature, type, price (Section 2.D.) and quality of the services provided and merchandise sold within the area of operation as described in this Interim Concession Contract. All such services and merchandise will be compatible with the intent of the Contract and questions of applicability or requests for variance shall be forwarded to Reclamation for consideration. Approvals must be in writing.

The Concession Contractor shall provide, operate, and maintain the required services and any additional optional authorized visitor services and any support facilities and services in accordance with this Interim Concession Contract to such an extent and in a manner considered satisfactory by Reclamation. The Concession Contractor is authorized to provide visitor services under the terms of

this Interim Concession Contract within the area of operation per requirements of 43 CFR Part 429 Subpart H regarding private exclusive use on Reclamation property. Concession Contractor shall provide adequate security to ensure public safety and environmental protection for the term of this Interim Concession Contract.

C. LEGAL, REGULATORY, AND POLICY COMPLIANCE

This Interim Concession Contract, and its administration by Reclamation, shall be in accordance with all applicable law and orders, and applicable Federal policies governing the area of operation. The Concession Contractor shall operate and maintain its facilities and appurtenances in safe working order, and shall comply with all applicable laws, policies, and orders and the directives of any other public authority affecting such works.

The Concession Contractor shall give Reclamation immediate written notice of any violation of applicable law by the Concession Contractor, including its agents, or Contractors, and, at its sole cost and expense, must promptly rectify any such violation. Failure to notify Reclamation will be a breach of the contract and can be reason for Reclamation to terminate the contract.

D. RATES FOR GOODS AND SERVICES

Rates for all required and authorized goods and services, shall be reasonable and appropriate for the type and quality of merchandise, facilities, and/or services required and/or authorized under this Interim Concession Contract. Rate approvals shall be requested in advance by the Concession Contractor in writing to Reclamation. The initial rate request of this Interim Concession Contract shall be made within 30 days from the date of this Interim Concession Contract for all services and associated services for the 2009 recreation season. All rate increases for services and merchandise must be approved by Reclamation.

The Concession Contractor may, subject to the prior approval of Reclamation, grant complimentary or reduced rates under such circumstances as are customary in businesses similar to that which will be conducted under this Interim Concession Contract. Otherwise, the Concession Contractor shall require its employees to observe strict impartiality as to rates and services in all circumstances.

The Concession Contractor shall prominently post all rates and charges for goods and services provided to the visiting public as approved by Reclamation.

E. NONDISCRIMINATION OF SERVICE TO VISITORS

Concession Contractor employees shall not discriminate when setting rates or providing services to visitors. The Concession Contractor shall comply with all applicable law and regulations, whether now in force or made effective after the execution of this Interim Concession Contract, relating to nondiscrimination in providing services.

F. CONCESSION CONTRACTOR EMPLOYEES

The Concession Contractor shall employ all personnel necessary to provide the visitor services required and authorized by this Interim Concession Contract.

The Concession Contractor shall comply with all applicable laws relating to employment and employment conditions.

The Concession Contractor shall require and ensure that its employees are hospitable and exercise courtesy and consideration in their relations with the public and with Reclamation employees. The Concession Contractor will require its employees to wear some type of visual identifier by which they may be identified as employees of the Concession Contractor.

The Concession Contractor shall review the conduct of any of its employees whose action or activities are considered by the Concession Contractor or Reclamation to be inconsistent with the proper administration of the area and protection of visitor safety and enjoyment and shall take such actions as are necessary to correct the situation.

G. CONCESSION CONTRACTOR EMPLOYMENT CONDITIONS

The Concession Contractor shall comply with applicable laws relating to employment of workers, nondiscrimination in employment, and providing accessible facilities and services.

The Concession Contractor shall maintain, to the greatest extent possible, a drug-free environment, both in the workplace and in any Concession Contractor employee housing, within the area of operation.

The responsibility of the Concession Contractor may be exercised through an external agreement with individuals, companies, or agencies qualified to provide such assistance.

H. CONCESSION CONTRACTOR REVIEW PROGRAM

The Concession Contractor shall be evaluated by Reclamation under the Concession Contractor Review Program. The Concession Contractor Review Program will consist of four separate evaluations: (1) Operation and Facilities Evaluation, (2) Public Health Service Inspection, (3) Safety and Environmental Evaluation, and (4) Contract Compliance Evaluation. Other inspections may be conducted as required. The Operation and Facilities Evaluation shall be conducted not less than three (3) times per year with one evaluation during the high use season. All other evaluations shall be conducted semi-annually or more frequently, as needed. At all times Reclamation reserves the right to inspect the site and all facilities. Reclamation will be granted ingress and regress to these locations, but Reclamation will seek to provide reasonable notice as appropriate.

I. LEGAL VEHICLE USES IN THE CONCESSION AREA

The Concession Contractor shall not discriminate based on the kind of licensed vehicle, motorcycle or recreational vehicle driven by a visitor into the public facilities and service areas. All vehicles owned and used by the Concession Contractor must have current license and registration as required by the State of California motor vehicle statutes, rules, and regulations.

J. RECLAMATION ASSISTANCE WITH PRE-EXISTING CONDITIONS

Reclamation agrees to assist the Concession Contractor in addressing some site conditions that existed before the previous concession contract was executed, contingent upon the availability of Federal appropriations. This includes stabilizing some erosion sites where old retaining walls have fallen down and assisting in the removal of some erosion material blocking a culvert and part of the boat launch.

SECTION 3 - PROTECTION AND INTERPRETATION OF AREA RESOURCES

A. ENVIRONMENTAL MANAGEMENT OBJECTIVES

The Concession Contractor shall meet the following environmental management objectives, hereinafter known as "environmental management objectives," in the conduct of its operations under this Interim Concession Contract:

1. The Concession Contractor, including its employees, agents, and Contractors, shall comply with all applicable laws pertaining to the protection of the public, employees, and natural and cultural resources within the area of operation.
2. The Concession Contractor shall incorporate Best Management Practices in its operation, construction, maintenance, acquisition, provision of visitor services, and other activities under this Interim Concession Contract.
3. The operation of the facilities and the provision of services under this Interim Concession Contract shall be performed in a manner that prevents, identifies, and reduces pollution at the source. The Concession Contractor shall comply with all applicable law and Reclamation policies and instructions adopted and implemented during the term of this Interim Concession Contract concerning any hazardous materials that will be used, produced, transported, stored, or disposed of on or in lands, water, or facilities owned by the United States of America or administered by Reclamation.
4. A Concession Contractor may not knowingly allow contamination of lands, water, or facilities within the area of operation by hazardous materials, thermal pollution, refuse, garbage, sewage effluent, industrial/commercial waste, petroleum products, mine tailings, mineral salts, pesticides, pesticide containers, or any other pollutants, including, but not limited to, misuse of pesticides.
5. The Concession Contractor's operation, maintenance, acquisition, and purchasing activities will, to the extent practical, promote the use of environmentally preferable products, including materials and supplies with recycled content, and will avoid or minimize the quantity of toxic and hazardous materials entering the waste stream.
6. The Concession Contractor shall immediately report to Reclamation any event that may or does result in pollution or contamination adversely affecting lands, water, or facilities within the area of operation.

B. ENVIRONMENTAL MANAGEMENT

The Concession Contractor shall follow the same environmental management and hazardous materials requirements as in Part A.9.B and A.9.C of the previous concession contract to meet the Environmental Management Objectives identified in this section, to the satisfaction of Reclamation. Part A.9.b and A.9.c of the previous concession contract is quoted as follows:

"A.9. Protection of Land and Property

b. No waste or byproducts shall be discharged which contain any substances in concentrations which may result in substantial harm to fish and wildlife, or to human water supplies. Storage facilities for materials which, if accidentally discharged, are capable of causing water pollution shall be located so as to prevent any spillage into waters, or

channels leading into water, that would result in substantial harm to fish and wildlife or to human water supplies. No goods, merchandise, or material shall be kept, stored or sold in or on said premises which are in any way explosive or hazardous; and no offensive or dangerous trade, business, or occupation shall be carried on therein or thereon, and nothing shall be done on said premises, other than as is provided for in this agreement, and no machinery or apparatus shall be used or operated on said premises which will in any way injure said premises or adjacent buildings, Provided, however, that nothing contained in this paragraph shall preclude Concessionaire from bringing, keeping, or using on or about said premises such materials, supplies, equipment, and machinery as are appropriate or customary in carrying on its said business or from carrying on its business in all respects as is generally usual. Gasoline and oils shall be stored, handled, and dispensed as required by Federal, State, or local laws, regulations, or ordinances.

c. The Concessionaire shall be responsible for the prevention and control of soil erosion and gulying on the developed area covered by this agreement, and shall provide preventive measures as required by carrying out the provisions of an erosion control plan prepared by the Concessionaire and submitted to the Government for approval not later than September 1 of each year. The plan will be reviewed annually and at any other time deemed necessary by either party. If revision is indicated, such revision will be prepared in writing as agreed to by the Government and the Concessionaire and incorporated into the plan within sixty (60) calendar days thereafter. The Concessionaire will not cause any erosion problems on adjacent lands or undeveloped lands in the resort area.”

Please note that in the quoted portion “Government” refers to Reclamation and “Concessionaire” refers to the Concession Contractor.”

C. ENVIRONMENTAL DATA, REPORTS, NOTIFICATIONS, AND APPROVALS

1. **Inventory of Hazardous Substances and Inventory of Waste Streams** - The Concession Contractor shall submit to Reclamation, at least annually, an inventory of Federal Occupational Safety and Health Administration (OSHA) designated hazardous chemicals used and stored in the area of operation by the Concession Contractor. Reclamation may prohibit the use of any OSHA hazardous chemical by the Concession Contractor in operations under this Interim Concession Contract. The Concession Contractor 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, in operations under this Interim Concession Contract. The Concession Contractor shall also submit to Reclamation, at least annually, an inventory of all waste streams generated by the Concession Contractor under this Interim Concession Contract. Such inventory shall include any documents, reports, monitoring data, manifests, or other documentation required by applicable law regarding waste streams.
2. **Reports** - The Concession Contractor shall submit to Reclamation copies of all documents, reports, monitoring data, manifests, and other documentation required under applicable law to be submitted to any regulatory agencies. The Concession Contractor shall submit a quarterly report on the amount of toxic chemicals entering the waste stream from concession facilities.
3. **Notification of Releases** - The Concession Contractor shall give Reclamation immediate notification of any discharge, release, or threatened release (as these terms are defined by applicable law) within or in the vicinity of the area of operation, (whether solid, semisolid, liquid or gaseous in nature) 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 byproduct.
4. **Notice of Violation** - The Concession Contractor shall give Reclamation, in writing, immediate

notice of any written, threatened, or actual notice of violation from other regulatory agencies of any applicable law arising out of the activities of the Concession Contractor, its agents, or employees.

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

D. CORRECTIVE ACTION

1. The Concession Contractor, at its sole cost and expense, shall promptly control and contain any discharge, release, or threatened release, as set forth in this section, or any threatened or actual violation, as set forth in this section, arising in connection with the Concession Contractor's operations under this Interim Concession Contract, including, but not limited to, payment of any fines or penalties imposed by appropriate agencies. Following the prompt control or containment of any release, discharge, or violation, the Concession Contractor shall take all response actions necessary to remediate the release, discharge, or violation and to protect human health and the environment.
2. Even if not specifically required by applicable law, the Concession Contractor shall comply with directives of Reclamation to cleanup or remove any materials, product, or byproducts used, handled, stored, disposed, or transported onto or into the area of operation by the Concession Contractor to ensure that the area of operation remains in good condition.

E. INDEMNIFICATION AND COST RECOVERY FOR ENVIRONMENTAL ACTIVITIES

1. The Concession Contractor indemnification responsibility outlined in Section 6 extends to environmental matters.
2. If the Concession Contractor does not promptly contain and remediate an unauthorized discharge or release arising out of the activities of the Concession Contractor, its employees, agents, and Contractors, as set forth in this section, or correct any environmental self-assessment finding of noncompliance, in full compliance with applicable law, Reclamation may, in its sole discretion and after notice to the Concession Contractor, take any such action consistent with applicable law as Reclamation deems necessary to abate, mitigate, remediate, or otherwise respond to such release or discharge, or take corrective action on the environmental self-assessment finding. The Concession Contractor shall be liable for and shall pay to Reclamation any costs incurred by Reclamation associated with such action, upon demand. Nothing in this section shall preclude the Concession Contractor from seeking to recover costs from a responsible third party.
3. Any intentional violation of any of the provisions of this section shall constitute grounds for initiation of the procedure for immediate termination of the Contract and shall make the Concession Contractor liable for the cost of full and complete remediation and/or restoration of any Federal resources or facilities that are adversely affected as a result of the violation.

F. WEED AND PEST MANAGEMENT

1. The Concession Contractor shall be responsible for managing vermin and other pests on all authorized land and in all facilities assigned for the use in conducting operations under the Contract. Plants and animals that are native to the area of operation may not be removed or harmed except with the prior written approval of Reclamation. The Concession Contractor shall not allow planting of any non-native vegetation by employees or visitors.
2. The Concession Contractor shall submit to Reclamation a Pesticide Use Proposal at least thirty (30) days in advance of any pesticide application. The Concession Contractor is responsible for complying with all training (Federal, State, and local), operational requirements, and licensing requirements as may be pertinent to and required for the application of pesticides within the State of California. The Concession Contractor must follow the guidelines set forth in Reclamation's Integrated Pest Management Plan, which can be found in the Reclamation Manual Directives and Standards, ENV 01-01, located at <http://www.usbr.gov/recman/DandS.html#env>.

G. SOLID WASTE MINIMIZATION

The Concession Contractor shall to the extent possible minimize the solid waste stream that is a product of the operation by the exercise of Best Management Practices.

H. DRAINAGE AND STORM WATER POLLUTION PREVENTION

1. The Concession Contractor shall implement Best Management Practices to prevent the degradation of water quality in storm water and other runoff from facilities assigned to the Concession Contractor. Erosion controls must be implemented at construction sites with disturbed soils exposed. Vehicle and equipment washing must not be allowed to run off untreated water; oil/water separation must occur prior to discharge. Any improvements to drainage systems must be made in accordance with applicable laws.
2. The Concession Contractor shall ensure proper drainage control to protect landscapes, native vegetation, structures, facilities, improvements, and equipment while maintaining natural drainage patterns to the greatest extent possible.

I. WASTEWATER TREATMENT

1. The Concession Contractor shall ensure that all wastewater systems are operated in accordance with all applicable law, and applicable codes, policies, and guidelines.
2. Personnel who routinely come into contact with sewage or who work in or inspect wastewater treatment facilities, ponds, etc., must have a current immunization for tetanus. Wastewater treatment plant personnel shall not eat, drink, or smoke when performing maintenance or inspecting equipment, which may be contaminated with human sewage. Workers cleaning up wastewater spills will wear coveralls, rubber boots, and rubber gloves. On completion of cleanup, workers shall take a hot shower using sufficient soap and water, remove clothing and place in plastic bag for laundering, rinse rubber boots, gloves, and other protective equipment with 100 ppm disinfectant solution of hypochlorite.

3. In the event of a wastewater leak or spill, Reclamation will be notified immediately. Facilities and equipment contaminated with sewage as a result of leaks, spills, and sewage system backflow will be thoroughly washed down with water and detergent.

J. PROTECTION OF CULTURAL AND ARCHEOLOGICAL RESOURCES

Discoveries of any archeological resources by the Concession Contractor shall be promptly reported to Reclamation. The Concession Contractor shall cease work or other disturbance that may impact any protected site or archeological resource until Reclamation grants approval, upon such terms and conditions as Reclamation deems necessary, to continue such work or other disturbance.

K. RISK MANAGEMENT - HEALTH AND SAFETY

For these purposes, the Concession Contractor shall have the same health and safety requirements as in the Part A.6.f. of the previous concession contract, quoted as follows:

“f. Safety

Any unsafe conditions in violation of appropriate Federal, State, or local statutes, regulations, or ordinances shall be corrected within a reasonable time. If the Concessionaire does not correct unsafe conditions which threaten human life or bodily injury promptly, the Government may suspend the Concessionaire’s right to operate the concession for failure to comply with safety requirements. Failure to correct unsafe conditions shall be a material breach of the agreement.”

Please note that in the quoted portion “Government” refers to Reclamation and “Concessionaire” refers to the Concession Contractor.”

L. FUEL STORAGE

1. The Concession Contractor shall be responsible for compliance with all applicable laws pertaining to fuel storage. The Concession Contractor will provide Reclamation with copies of all reports and correspondence to, or required by, any regulatory agency pertaining to fuel storage. If any leak detection testing indicates a possible release or leak from a tank, Reclamation must be notified immediately; the Concession Contractor will be responsible for fulfilling all reporting, monitoring, and remediation requirements associated with a leak or release.
2. Reclamation must approve all plans for any work involving fuel storage tanks, tracer probes, monitoring wells, removal of contaminated soil, and groundwater remediation work.

SECTION 4 - LAND AND FACILITIES USED IN OPERATION

A. ASSIGNMENT OF LAND AND FACILITIES

Reclamation hereby authorizes the Concession Contractor to use the following facilities for the purposes of this Interim Concession Contract:

1. The authorized lands are shown on Exhibit A.
2. Exhibit B lists certain concession facilities located at Markley Cove Resort as of the effective date of this Interim Concession Contract. Exhibit B may be modified from time to time to include additional concession facilities completed in accordance with the terms and conditions of this Interim Concession Contract
3. There are currently no Reclamation improvements located at Markley Cove Resort as of the effective date of this Interim Concession Contract.

B. CONCESSION FACILITIES ASSIGNMENT WITHDRAWALS

Reclamation may withdraw all or portions of these concession facilities assignments at any time during the term of this Interim Concession Contract if:

1. The withdrawal is necessary for the purpose of conserving, preserving, or protecting area of operation resources or visitor enjoyment or safety
2. The operations utilizing the assigned concession facilities have been terminated or suspended by Reclamation
3. Reclamation and Concession Contractor improvements or land assigned to the Concession Contractor are no longer necessary for the concession operation

Any permanent withdrawal of concession facilities assignments, which Reclamation or the Concession Contractor considers to be essential for the Concession Contractor to provide the visitor services required by this Interim Concession Contract, will be treated as a termination of this Interim Concession Contract pursuant to section 1.

C. DISPOSITION OF CONCESSION CONTRACTOR FACILITIES

The Concession Contractor facilities will be subject to evaluation and potential use in a future concession contract bidding process. There is no obligation for the successor concession contractor to provide compensation for facilities not included in their contract. Prior to expiration of the interim contract at Markley Cove the United States or its contractor will complete an appraisal on facilities indentified by the incoming contractor to establish the final cost to be paid for them. Those facilities not identified to remain must be removed by the Concession Contractor prior to expiration of this Contract.

D. PERSONAL PROPERTY

The Concession Contractor shall provide all personal property, including but not limited to, removable equipment, vehicles, vessels, furniture, inventory, and goods necessary for its operations

under this Interim Concession Contract. Such personal property shall not be considered Concession Contractor improvements, and the Concession Contractor shall not be entitled to any reimbursement or other means of compensation for such personal property. Contractor's personal property necessary for interim operation of Markley Cove concession area may remain through the expiration date of this Interim Concession Contract.

The sale of personal property assets on the Federal Estate by anyone other than the Concession Contractor is prohibited. This includes the sale of boats, vehicles and any other items.

F. UTILITIES

The Concession Contractor will continue to utilize its utility providers in effect on April 1, 2009. Any changes require Reclamation approval.

G. MAINTENANCE OBLIGATION AND MAINTENANCE PLAN

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

For these purposes, the Concession Contractor shall have the same maintenance requirements as in the Part A.6., A.6.a. and A.6.f of the previous concession contract, quoted as follows:

"A.6. Maintenance

The Concessionaire will physically maintain and repair all facilities used in the operation, including grounds maintenance and all necessary housekeeping activities associated with the operation. In order that a high standard of physical appearance, operation, repair, and maintenance will be assured, appropriate annual inspections will be carried out jointly by the Government and the Concessionaire to determine such maintenance and repair needs. Maintenance standards will adhere to the following guidelines:

a. All improvements, facilities, and equipment will be maintained to the standard to which it was approved with an allowance for normal wear and tear resulting from public use.

f. Safety

Any unsafe conditions in violation of appropriate Federal, State, or local statutes, regulations, or ordinances shall be corrected within a reasonable time. If the Concessionaire does not correct unsafe conditions which threaten human life or bodily injury promptly, the Government may suspend the Concessionaire's right to operate the concession for failure to comply with safety requirements. Failure to correct unsafe conditions shall be a material breach of the agreement."

Please note that in the quoted portion "Government" refers to Reclamation and "Concessionaire" refers to the "Concession Contractor."

H. ANIMALS

Livestock or farm animal breeding or grazing, free roaming exotic/feral animals, and domestic fowl are prohibited within the area of operation. The Concession Contractor must take the appropriate legal steps necessary to remove these animals or fowl. In the event that certain animals are deemed

necessary for the operation of the concession by the Concession Contractor, these are authorized.

The Concession Contractor is allowed to accommodate clients and visitors with domestic pets in accordance with Napa County Ordinances. To protect the health and safety of the animals, employees, and visitors, animals will not be allowed to freely roam the area of operation or the Federal estate.

SECTION 5 – FEES

A. FRANCHISE FEE

The franchise fees due will be 1 percent of gross revenues which are subject to franchise fees for the term of this Interim Concession Contract. The franchise fee is a direct return to the Federal Government and is a fair and equitable charge levied by the Government for the use, rights, and privileges granted under this Interim Concession Contract, and shall be remitted in a timely fashion as designated in B.2. below .

B. PAYMENTS DUE

1. The franchise fee shall be due on a quarterly basis at the end of each quarter (Qtr 1: Jan - Mar, Qtr 2: Apr – Jun, Qtr 3: Jul – Sept, Qtr 4: Oct – Dec) and shall be paid by the Concession Contractor in such a manner that Reclamation shall receive payment within 30 days after the last day of each quarter. The Concession Contractor shall pay any additional franchise fee amounts due within 30 days after the end of the Concession Contractor's fiscal year as a result of adjustments to gross receipts determined at the time of submission of the Concession Contractor's annual financial report. Overpayments shall be offset against the following year's fees. In the event of termination, bankruptcy, or expiration of this Interim Concession Contract, overpayments will first be credited against any money due and owing the Government, and the remainder, if any, will be returned to the Concession Contractor.
2. The Concession Contractor shall either use the Treasury Financial Communications System to electronically deposit all payments, or mail all payments and reports directly to the following address:

US Bureau of Reclamation
Mid-Pacific Region
POB 894242
Los Angeles, CA 90189-4242

Additionally, the Concession Contractor shall send a copy of all reports to the Lake Berryessa Concession Office, Concession Manager, either by fax or mail.

C. INTEREST AND PENALTY

An interest charge and penalty will be assessed on overdue amounts for each quarter, or portion thereof, that payment is delayed beyond the 30 day period provided for above. The percent of interest charged will be equal to the current value of funds rate to the U.S. Treasury as published annually in the Federal Register by the U.S. Treasury. In addition, an administrative charge of \$53.00 and a penalty charge of 6% per annum will be assessed after any payment is 90 days delinquent. If the Concession Contractor fails to submit quarterly financial reports within 30 days of quarter end, an estimate of revenue due to the U.S. Government will be developed and a bill for collection will be sent to the Contractor. Unless full payment is received within 90 days from the due date specified in the Interim Concession Contract, Contractor will be in breach of the Interim Concession Contract and the Interim Concession Contract may be terminated without notice.

SECTION 6 - INDEMNIFICATION AND INSURANCE

A. INDEMNIFICATION

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

B. INSURANCE IN GENERAL

The Concession Contractor shall maintain all insurance policies in effect on April 1, 2009 for the duration of the Contract term. No changes shall be made without Reclamation approval

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

SECTION 7 - ACCOUNTING RECORDS AND REPORTS

A. ACCOUNTING SYSTEM AND ANNUAL FINANCIAL REPORTS

The Concession Contractor shall maintain a financial accounting system under which its accounts can be readily identified with its system of accounts classification. Such an accounting system shall be capable of providing the information required by this Interim Concession Contract. The Concession Contractor's system of accounts classification shall use, without exception and without modification unless approved by Reclamation, the Concession Contractor annual financial reports provided in Exhibit D to this Interim Concession Contract.

The Concession Contractor shall follow Generally Accepted Accounting Principles in recording financial transactions and in reporting results to the authorized officer. The minimum acceptable accounting system shall include:

1. Systematic internal controls and recording by the kind of business and the gross receipts derived from all sources of business conducted under this authorization. Receipts should be recorded daily, and if possible, deposited into a bank account without reduction by disbursements. Receipt entries shall be supported by source documents such as cash register tapes, sale invoices, rental records, and cash accounts from other sources.
2. A permanent record of investments in facilities (depreciation schedule) current source documents for acquisition cost of capital items.
3. Preparation and maintenance of such special records and accounts as may be specified by an authorized officer.
4. Bank accounts will be maintained separately for the businesses conducted under this permit and not commingled with those for other businesses of the Concession Contractor.
5. The holder shall retain the above records and keep them available for audit for 5 years after the end of the year involved.
6. The Concession Contractor shall provide Reclamation or qualified representatives of Reclamation access to all financial records and supporting documents including sub-concession records.

The Concession Contractor must use the accrual accounting method. If annual gross revenues do not exceed \$1,000,000, the Concession Contractor's financial statements and Annual Financial Reports may be prepared and submitted without a review or audit opinion of an independent certified public accountant (CPA), unless otherwise directed by Reclamation.

If the annual gross revenues of the Concession Contractor exceed \$1,000,000, the required

AFR Schedules and financial statements must be reviewed by an independent CPA in accordance with the standards and procedures as are applicable for the year of the audit promulgated by the American Institute of Certified Public Accountants (AICPA).

In computing net profits for any purposes of this Concession Contract, the Concession Contractor 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 Concession Contract by means of arrangements for the procurement of equipment, merchandise, supplies, or services from sources controlled by or under common ownership with the Concession Contractor or by any other device including, but not limited to, management fees.

The Concession Contractor shall submit annually, as soon as possible but not later than 120 days after the last day of its fiscal year, a financial statement for the preceding fiscal year or portion of a year, as prescribed by Reclamation in the Financial Report in Exhibit D. The Concession Contractor shall use the format prescribed in Exhibit D.

B. BALANCE SHEET

Within 90 days after the execution of this Concession Contract or its effective date, whichever is later, the Concession Contractor shall submit to Reclamation a balance sheet as shown in Schedule B of Exhibit D as of the beginning date of the term of this Concession Contract.

SECTION 8 - GENERAL PROVISIONS

A. ACCESS TO RECORDS

Reclamation and Comptroller General of the United States, or any of their duly authorized representatives, shall have access to the records of the Concession Contractor as provided by the terms of applicable law.

B. PUBLIC RELEASE OF INFORMATION

Reclamation requires that all information to be submitted by the Concession Contractor pursuant to this Interim Concession Contract be subject to public release by Reclamation to the extent provided by applicable law.

C. SUB-CONCESSIONS

This Interim Concession Contract allows for the continuation of the Sub-concessions services provided in the previous concession contract "B.6.a" for the term of this Interim Concession Contract. Sub-concessions are required to comply with the terms and conditions of this Contract.

"B.6.a Subconcessionaires

The Concessionaire may subcontract the use of land and improvements covered under the agreement and the operation of concessions and facilities authorized; provided, the expressed written permission of the Government has been secured. The Concessionaire shall continue to be responsible for compliance with all conditions of this agreement."

Please note that in the quoted portion "Government" refers to Reclamation and "Concessionaire" refers to the "Concession Contractor."

D. NON-ENTITLEMENT FOR FEDERAL PROCUREMENT PROCESS OR SERVICE

The Concession Contractor 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 Interim Concession Contract.

E. PAYMENT OF TAXES

All taxes or assessments of any nature that may be lawfully imposed by any State or its political subdivisions upon the property or business of the Concession Contractor shall be paid promptly by the Concession Contractor.

F. POLITICAL INFLUENCE AND CONFLICT OF INTEREST

No member of the Judicial, Legislative, or Executive branches of the U.S. Government shall be admitted to any share or part of this Interim Concession Contract or to any benefit that may arise from this Interim Concession Contract, but this restriction shall not be construed to extend to this Interim Concession Contract if made with a corporation or company for its general benefit.

G. DEBARMENT AND SUSPENSION

This Interim Concession Contract is subject to the provisions of 43 CFR; Subtitles A and B, concerning non-procurement debarment and suspension. Reclamation may recommend that the Concession Contractor be debarred or suspended in accordance with the requirements and procedures described in those regulations as they are in effect now or may be revised in the future.

H. AMENDMENTS

This Interim Concession Contract contains the sole and entire agreement of the parties. No oral representations of any nature form the basis of or may amend this Interim Concession Contract. This Interim Concession Contract may be amended only when agreed to in writing by Reclamation and the Concession Contractor.

I. THIRD PARTIES

This Interim Concession Contract does not grant rights or benefits of any nature to any third party.

J. VALIDITY OF PROVISIONS

The invalidity of a specific provision of this Interim Concession Contract shall not affect the validity of the remaining provisions of this Interim Concession Contract.

K. WAIVERS

A waiver by Reclamation or the Concession Contractor of any breach of any of the terms of this Interim Concession Contract by the other party shall not be deemed to be a waiver or elimination of such terms, nor of any subsequent breach of the same type, or of any other term of the Contract. The subsequent acceptance of any payment of money or other performance required by this Interim Concession Contract shall not be deemed to be a waiver of any preceding breach of any term of the Contract.

L. CORRUPTION AND FRAUD

Claims against Reclamation (to the extent subject to 28 U.S.C. 2514) arising from this Interim Concession 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. In the event that a background check of the Concession Contractor's personal conduct and financial capability is determined to be unacceptable, Reclamation may recommend that the Concession Contractor be debarred or suspended in accordance with the requirements and procedures described in those regulations as they are in effect now or may be revised in the future.

M. SIGNS

The installation of any new signs must meet Reclamation sign requirements and be approved by Reclamation in writing. Reclamation may require the removal or replacement of any existing signs. Signs that indicate that something is "For Sale" are strictly prohibited.

N. ADVERTISEMENT

All advertisement and promotional material, regardless of media format, must be approved by Reclamation.

O. REQUIRED REPORTS, DOCUMENTS AND DATA

The Concession Contractor shall supply to Reclamation all reports, documents, and data required by this Interim Concession Contract in accordance with Reclamation Manual Directives and Standards and Policy.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this INTERIM CONCESSION CONTRACT as of the 26th day of MAY, 2009.

UNITED STATES OF AMERICA

By: Michael H. Finney
Contracting Officer, Bureau of Reclamation

CONCESSION CONTRACTOR

By: Sandra K. Mason
Title: Member

EXHIBITS TO THE CONTRACT

- Exhibit A Area of Operation and Assigned Land
- Exhibit B Concession Contractor Facilities Located at Markley Cove Resort
- Exhibit C Reclamation Manual Policy and Directives and Standards
- Exhibit D Annual Financial Report

Exhibit A

AREA OF OPERATION AND ASSIGNED LAND

A. LEGAL DESCRIPTION OF AREA OF OPERATION

The Federal estate is authorized for use by the Concession Contractor for the purposes of this interim concession contract. The following legal description of the concession area assigned to Markley Cove Marina LLC identifies the only areas within Lake Berryessa where it is authorized to conduct business. Markley Cove Marina LLC is not permitted to conduct any aspects of its business, except the provision of authorized tours, transportation, or other activities specifically authorized in writing by Reclamation, in any area not within the boundaries of the following described lands.

TRACT ONE: A tract of land in Section 31, Township 8 North, Range 2 West, M.D.B.&M., in the County of Napa, State of California; said tract of land being portions of lands described in the Grant Deed from Harry H. Palmer and Minnie F. Palmer to the United States of America recorded August 26, 1953 in Book 421 at page 322 of the Official Records of said county and in the Grant Deed from Dora Belle Bryant to the United States of America recorded July 20, 1954 in Book 448 at page 78 of the Official Records of said county, and described as follows:

Beginning at a point in the northwesterly right-of-way boundary of the relocated State Sign Route No. 128, Legislative Route No. 6, around Lake Berryessa, as said right-of-way is described in indenture between the United States of America and the State of California dated January 6, 1960 and recorded January 25, 1960 in Volume 606 at page 287 of the Official Records of said county; said point of beginning being the northerly terminus of the course recited as North 30° 21' East 303.7 feet in said indenture; said point of beginning also being the southeasterly terminus of that certain course recited as North 29° 09' West 1214.0 feet in said grant deed from Dora Belle Bryant; thence along the boundary line described in said grant deed North 29° 09' West 1214.0 feet; thence leaving said boundary line North 40° 01' East 454.1 feet; thence North 35° 01' West 829.2 feet; thence North 06° 59' East 323.9 feet; thence North 52° 56' East 789.4 feet; thence North 08° 08' East 116.0 feet; thence North 74° 47' East 537.2 feet; thence North 00° 45' West 1,911.3 feet to the north quarter corner of said Section 31; thence South 56° 41' East 1975.0 feet, more or less, to a point in the northwesterly right-of-way boundary of said relocated State Sign Route No. 128; said point being the southerly terminus of that certain course recited as North 27° 04' East 399.5 feet in said indenture; thence along said northwesterly right-of-way boundary the following Twelve (12) courses: (1) thence South 51° 51' West 715.9 feet; (2) thence South 18° 52' East 452.3 feet to the beginning of a non-tangent curve concave to the northwest having a radius of 1425 feet, a radial line through said beginning of curve bears South 62° 55' 30" East; (3) thence southwesterly 161.9 feet along said curve through a central angle of 6° 30' 30"; (4) thence South 33° 35' West 465.1 feet; (5) thence South 77° 37' West 208.6 feet; (6) thence South 43° 31' West 609.1 feet; (7) thence South 23° 21' West 703.5 feet; (8) thence South 56° 25' East 100.0 feet to the beginning of a non-tangent curve concave to the southeast having a radius of 1600 feet, a radial line through said beginning of curve bears North 56° 25' West; (9) thence southwesterly 397.9 feet along said curve through a

central angle of 14° 15'; (10) thence South 19° 20' West 212.6 feet; (11) thence South 46° 49' West 225.7 feet; and (12) thence South 05° 51' West 674.5 feet to the point of beginning.

Containing an area of 116.7 acres, more or less.

B. MAPS OF ASSIGNED LAND

The lands legally described above are assigned for the use of the Concession Contractor as further indicated on the following map(s). The boundaries displayed on the following pages are approximate boundaries based upon the preceding legal description.

MAY 26 2009

Exhibit A Approved Effective: _____

UNITED STATES OF AMERICA

By: *Mubac A. Senega*
Contracting Officer, Bureau of Reclamation

CONCESSION CONTRACTOR

By: *Sandra K. Hagan*
Title: *Member*

Markley Cove Resort Boundary

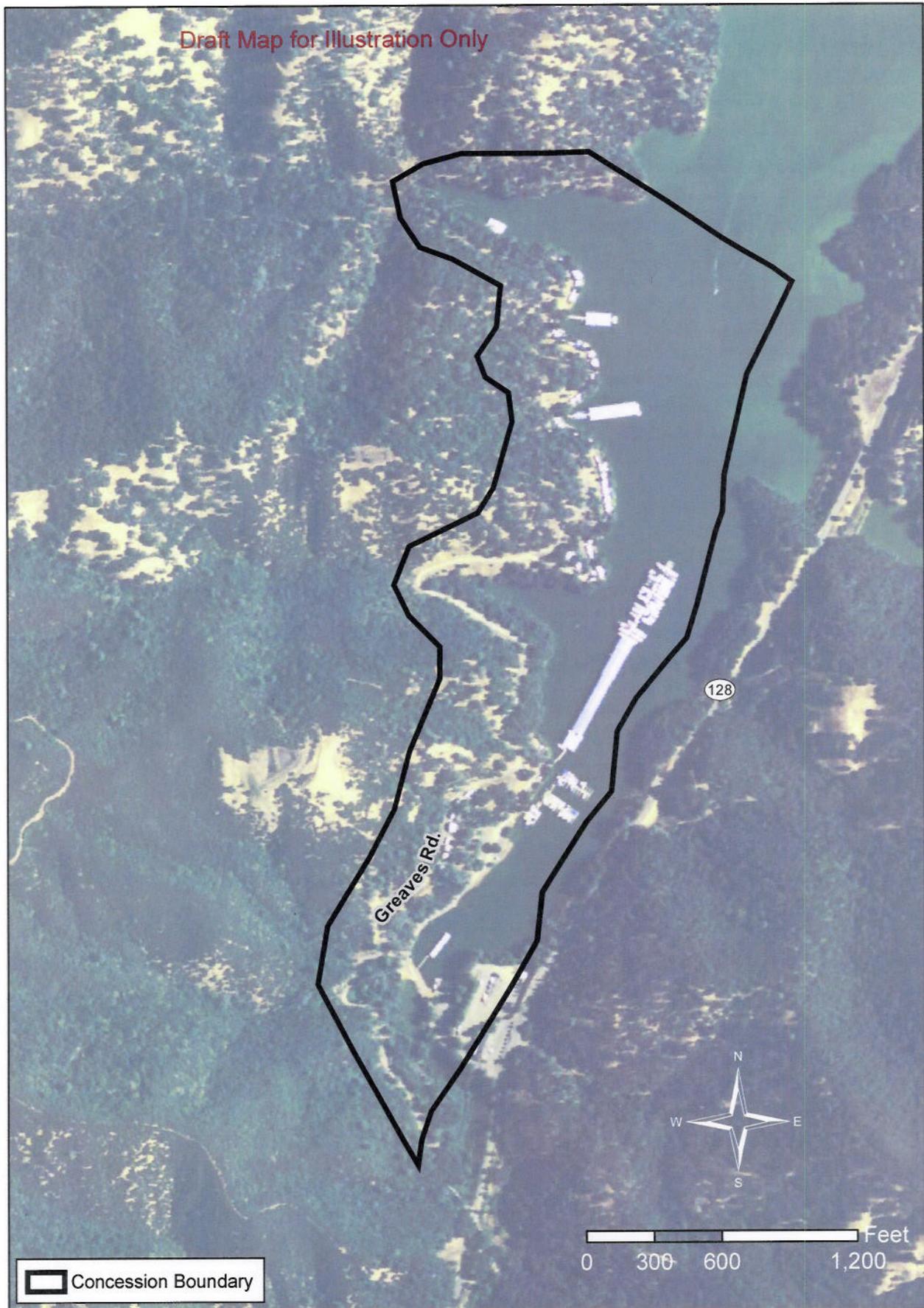


Exhibit B

CONCESSION CONTRACTOR FACILITIES LOCATED AT MARKLEY COVE MARINA AS OF EFFECTIVE DATE OF THIS INTERIM CONCESSION CONTRACT

A. CONCESSION CONTRACTOR FACILITIES

The following Concession Contractor facilities are located at Markley Cove Marina as of the effective date of this Interim Concession Contract.

Markley Cove Facilities
Infrastructure
Boat Launch Ramp, Primary
Boat Launch Ramp, Secondary
Roads and Parking Lots
Stairs (concrete)
Walkways
Drain Culverts 12"
Drain Culverts 18"
Drain Culverts 24"
Drain Culverts 6"
Electrical Systems (inc. streetlights)
Mobil Home Hook-ups
Pressure Line Main to Ponds 3"
Pressure Line Tank to Main 2.5"
Pressure Line Station to Station 2"
Gravity Line 4"
Pressure Line - Gas Dock to Station 2"
Domestic Water Main 3" - 4"
Domestic Water Main 1.5"
Domestic Water Main, Lake to Plant 2.5"
Dock and Fueling Improvement
Main Access Gate
Access Gate
Chain Link Fence
Fuel Tank
Fuel Dispenser
Gas Dock
Houseboat Pump Station
Docks (Uni-truss/concrete/covered)
Docks (concrete/canvas covered)
Docks (Concrete uncovered)
Courtesy Dock

Houseboat Mooring
Gangways
Gangway
Stairs
Swim Docks
Retaining Walls
Water and Sewage Systems
Sewage treatment
Water Treatment
Building Improvements
Maintenance Building on Dock
Store on Dock
Sewer Lift Shed
Sewer Lift Shed
Sewer Lift Shed
Water System Building
Store/Office w/Patio, Landscaping
Mobile Office
Shop Building

MAY 26 2009

Exhibit B Approved Effective: _____

UNITED STATES OF AMERICA

By: *Michael S. Sinaga*
 Contracting Officer, Bureau of Reclamation

CONCESSION CONTRACTOR

By: *Arndt & Haziw*
 Title: *Member*

Exhibit C

RECLAMATION DIRECTIVES AND STANDARDS

Reclamation Manual

Directives and Standards

Subject: Concessions Management by Reclamation¹

Purpose: Sets forth the directives and standards for planning, development, and management 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

1. 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. **Cooperating Association.** A cooperating association is a nonprofit organization. It is a Federal 501(c) tax-exempt entity incorporated within the State in which it operates, and it is governed by a volunteer board of directors. Cooperating associations assist in enhancing interpretive programs, providing visitor information, funding research, and supporting various resource themes.
- C. **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, roads, or other amenities that are determined by Reclamation to be exclusive use.
- D. **Federal Estate.** The Federal land and water areas under the primary jurisdiction of the Department of the Interior, Bureau of Reclamation.
- E. **Fixed Assets.** Fixed assets are any structures, fixtures, or capital improvements permanently attached to the Federal estate.
- F. **Improvement.** An addition to real property that increases its value or utility or that enhances its appearance.
- G. **Incidental Revenues.** Incidental revenues are generally defined as those revenues generated from the use of Reclamation's project lands and facilities that are incidental to authorized project purposes.

¹ The following directives and standards apply to concessions managed directly by Reclamation. Separate directives and standards address concessions managed by non-Federal partners.

Reclamation Manual

Directives and Standards

Although recreation and concession facilities are authorized project purposes, it has been determined that revenues generated from the use of the Federal estate by concessionaires are to be credited as incidental revenues.

- H. Total Benefits to the Government. Total benefits include:
- (1) **Direct Returns.** These are revenues generated by authorized concession contracts and paid directly to the United States Treasury and credited in accordance with Reclamation Manual (RM), Crediting of Incidental Revenues, PEC 03-01.
 - (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.

2. Existing Concession Contracts.

- A. **Compliance.** Existing concession contracts must be brought into compliance with the Concessions Management Policy and Directives and Standards at the first legal opportunity, for example, if the contract is amended. If a concession contract expires or is terminated because of contract default or for other reasons, any subsequent concession contract must comply with the Concessions Policy and Directives and Standards.
- B. **Unusual Circumstances.** In the event that unusual circumstances prevent Reclamation from issuing a new contract in a timely manner, a one-time, temporary contract may be issued. The temporary contract must comply with the Concessions Management Policy and Directives and Standards and may be issued for a period not to exceed 2 years.

3. Concessions Planning.

- A. **General.** Before issuing a concession prospectus and Request for Proposal (RFP), Reclamation will complete a formal commercial services plan and financial feasibility evaluation.
 - (1) **Commercial Services Plan.** The commercial services plan can be an addendum to a resource management plan or similar planning document. If there is no other planning document, the commercial services plan may stand on its own. At a minimum, the commercial services plan must determine the number of concessions necessary to meet the public needs, the type of facilities and services to be provided, the financial feasibility of the concession(s), and the location(s) appropriate for commercial activities. The complexity of commercial services plans will vary according to location, past visitor use, anticipated revenues, and other factors.

Reclamation Manual

Directives and Standards

- (2) **Financial Feasibility Evaluation.** The financial feasibility evaluation, included in the commercial services plan, will include, at a minimum, a documented determination of the financial viability of the proposed concession operation, including, the estimated fees to be returned to the Government, a justification for the proposed length of the term of the concession contract and the underlying assumptions regarding concessionaire capital investment in the concession.
 - (3) **Planning for New Concessions Contracts.** It is essential that area and regional offices allow adequate time to complete the commercial services planning process, develop an RFP and contract, and receive the Commissioner's Office review and approval of the RFP and contract. In some cases, the planning for new concession contracts(s) must begin several years in advance of the date anticipated the contract(s) will be awarded.
- B. Commercial Services Plan.** Decisions to contract for concessions must be based on the results of the commercial services planning process, which will include public involvement, financial feasibility evaluation, and environmental analysis. During the planning process, the following criteria will be applied to determine appropriate facilities and services:
- (1) Facilities and services must be necessary and appropriate for a broad spectrum of public use and enjoyment.
 - (2) Commercial facilities must not be developed or expanded on the Federal estate if existing facilities, on or off the Federal estate, adequately meet current and projected needs.
 - (3) Facilities and services must reflect the general public's needs rather than the desires of a particular individual or group. Existing concessionaires may provide input through the public involvement process.
 - (4) The financial feasibility evaluation must consider the concession's:
 - (a) Gross revenues (receipts) by operating department (lodging, food, and beverage).
 - (b) Operating expenses:
 - (i) Direct expenses by operating department (including labor and cost-of goods sold).
 - (ii) Unallocated expenses (including utilities and repair and maintenance).
 - (iii) General and administrative expenses (including overhead, officer salaries, office supplies, and travel).
 - (iv) Fixed expenses (including rent, interest, depreciation, and reserve accounts).
 - (v) Franchise fees.

LB Concession Prospectus – PART 6 Exh. L – Directives & Standards (LND 04-01)

Reclamation Manual

Directives and Standards

- (c) Earnings before interest, depreciation, taxes, and amortization. (EBIDTA is a standard accounting value representing net operating income)
 - (d) Capital investment costs:
 - (i) Working capital.
 - (ii) Furniture, fixtures, and equipment.
 - (iii) Ongoing capital replacement.
 - (iv) New facility development costs.
 - (e) Cash flow analysis.
 - (f) Other appropriate factors that influence the concession's business opportunity (including length of season, rates, visitation, inflation, cost of capital, and appropriate target rate-of-return to concessionaire).
- (5) Facilities and services must be compatible with Reclamation project purposes.
 - (6) Facilities, services, or sites considered to be exclusive use will not be allowed and should not be considered as a part of any commercial services planning alternative. Existing exclusive use facilities, services, and sites must be removed when a contract expires or, if possible, sooner.
 - (7) Potential impacts to natural and cultural resources must be considered in the development of facilities and services.
 - (8) Facilities must be harmonious in form, line, color, and texture with the surrounding landscape.
 - (9) The planning process will consider whether existing concession facilities should be relocated because: (a) they would serve the public better at a different location, (b) they are situated in an area that is topographically limited (steep slopes, soils subject to erosion, limited space for expansion, or the site cannot accommodate the demand) and cannot provide the best public services and facilities, or (c) the financial feasibility evaluation determines that combining one or more existing concessions would create a more financially stable concession.
 - (10) If existing fixed assets are proposed to be retained as a part of any new concession operation, they must first be formally evaluated to determine if their existing condition and useful life is sufficient to last through the duration of any new contract. If the evaluation determines that any fixed asset would have to have significant maintenance or would need to be replaced during the term of the new contract, then the fixed asset must be removed prior to issuing a new contract.

Reclamation Manual

Directives and Standards

- (11) Concession contracts and operations must comply with all applicable laws, rules, regulations, Executive Orders, and policies.

4. Concessions Contracting.

- A. **General Application.** These directives and standards will apply to existing concessions contracts only if agreed to by both Reclamation and the concessionaire. Existing contracts may not be renewed, nor can the length of the term be extended. Existing contracts that are amended or modified within the current term must adhere to these Concessions Management Directives and Standards. New or replacement contracts will be awarded on a fully competitive basis.
- B. **Request for Proposals (RFP).** An RFP will be issued to actively solicit offers from interested parties. To allow for a wide distribution, the RFP will be published in the appropriate media and the following approach will be applied:
- (1) **Fair Competition.** To ensure fair competition before and during the RFP process, meetings to discuss the RFP with existing or potential concessionaires or other outside parties must not be conducted. It is appropriate to have meetings with existing concessionaires to deal with ongoing operational or contractual issues and programs. The RFP should include a schedule of meetings in which all interested parties can discuss requirements of the RFP. Other meetings requested by individual interested parties must be declined.
 - (2) **Equal Access to Information.** All information must be equally available to all interested parties during the RFP process.
 - (3) **Written Explanation.** Following release of an RFP, explanations or clarifications will be provided only in writing and must be sent to all parties who already have received the RFP and to any parties who are to receive it in the future.
 - (4) **Existing Concessionaires.** Existing concessionaires must respond to the RFP as a bidder to be considered for the new contract. If any existing concessionaire has a contract that includes a "Preferential Right of Renewal," the RFP must state that, if selected, the concessionaire's contract will be subject to all terms and conditions as outlined in the RFP. The RFP must also state how the preferential right of renewal will be applied in the bid process. No preferential right of renewal will be authorized for new, modified, or amended concession contracts.
- C. **Review of Proposals.** A panel composed of Reclamation "subject matter experts" (e.g., financial, recreation, and concession experts) will be convened to review submitted proposals. If Reclamation desires, it may contract with external experts to analyze offers. The panel will forward a recommendation to the selecting official. The selecting official will provide selection criteria and a crediting plan to the panel.
- D. **Contract Terms and Conditions.** The following items should be specifically addressed in concession contracts:

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- (1) **Standard Contract Language.** Reclamation's standard concession contract language will be used to ensure compliance with all applicable laws, rules, regulations, Executive Orders, and Concessions Management Policy and Directives and Standards. Standard contract language can be found in the Concessions Management Guidelines. (See paragraph 5E.)
- (2) **Interim Operator.** Reclamation may select an interim operator if a contract is not in place at the time the existing contract expires or is terminated. Interim contracts will generally follow the existing contract provisions; however, contract terms and conditions must be modified to reflect current policies and directives and standards. Reclamation may select the existing concessionaire as the interim operator if the existing concessionaire is performing in a satisfactory manner. The interim operation will not exceed 2 years. A new contract must be awarded as expeditiously as possible.
- (3) **Required and Authorized Visitor Services.** Contracts must outline the specific types of services, facilities, and activities that a concessionaire is **REQUIRED** to offer. The contract should also specify any other services or activities the concessionaire is **AUTHORIZED** to offer. It must be clear that those required services are not optional and must be provided. Any service, facility, or activity not identified in either category is not authorized without a contract amendment or written authorization from the contracting official (Regional Director or delegate).
- (4) **Sale and Transfer.** 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.
 - (b) **Change of Original Contract Terms.** 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.
- (5) **Default and Nonperformance.** Clauses addressing default, penalty, and termination will be included in all concession contracts. The review and evaluation process will be critical to help determine if a concessionaire is in default or not meeting the terms of the contract. [See paragraph 4D(27).] The contract will also allow Reclamation to require a surety or performance bond at any time, collect penalties and administrative costs for default and nonperformance, and terminate the contract.

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- (6) **Length of Term.** The term of all contracts will be limited to the shortest period practical and will be based primarily on the investment required of the concessionaire, as determined through the financial feasibility evaluation. The term of a contract requiring minimal or no new capital investment should generally not exceed 5 years. When substantial investment is required, the term will be based on the financial feasibility evaluation to ensure that concessionaires receive a reasonable return on their investment. New contracts cannot contain renewal clauses.
- (7) **Subconcessions.** Subconcessions are not permitted.
- (8) **Concessions Building and Improvement Program.** All designs for construction must be approved by Reclamation and must comply with applicable environmental regulations and building code requirements, including those for accessibility and historic preservation. In areas where State or local construction standards are not available, Reclamation may provide appropriate standards. Where required and before construction, the concessionaire must obtain all required building permits from the local authorities. All the concessionaires' facilities will be harmonious in form, line, color, and texture with the surrounding landscape.
- (9) **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.
- (10) **Interpretation and Thematic Programs.** Contracts should require concessionaires, to the extent possible, to support Reclamation's educational efforts through such actions as developing interpretive and area thematic messages in printed material (menus, marketing, correspondence, etc.), using outdoor signs, and, as appropriate, developing formal programs.
- (11) **Operation and Maintenance Plan.** Concessionaires will prepare an annual operation and maintenance plan, which must be approved by Reclamation. Concession contracts must clearly state what the plan will contain. Reclamation's Concessions Management Guidelines provide a list of operation and maintenance items that should be considered for inclusion in the plan. (See paragraph 5E.)
- (12) **Preference for Renewal.** Concession contracts will not include a preference right of renewal.
- (13) **Reimbursement for Fixed Assets Constructed by Concessionaires.** Concession contracts will specify whether fixed assets located on the Federal estate by a concessionaire will remain on the Federal estate or be removed at the end of the contract.
 - (a) **Assets That Remain With the United States.** Title to all capital investments will be held by the United States and not the concessionaire. Concessionaires do not automatically have

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a right to compensation from the United States in fixed asset improvements upon contract expiration or termination. However, at the option of Reclamation, and when appropriated funds are available, Reclamation may purchase a concessionaires remaining assets that have not been amortized and the amount paid to the concessionaire will not exceed cost less depreciation.

- (b) **Approval of Improvements.** Any new investment in fixed asset improvements by the concessionaire must be approved, in writing, by Reclamation before commencement of construction. This written approval will specify (i) the amount of money to be spent to construct or rehabilitate the fixed asset, (ii) the allowed depreciable life of the improvement (according to the IRS schedule), and (iii) the construction details and schedule.
 - (c) **Assets That Remain to be Purchased by a New Concessionaire.** Upon expiration, termination, or sale or transfer of a concession contract some fixed assets may not have been fully amortized. If Reclamation determines the fixed assets are still needed for the concession operation, the unamortized value must be purchased by the new concessionaire and based on the original cost less depreciation.
- (14) **Area of Operation.** Each contract will authorize and define only the physical area necessary to conduct the business activities allowed by the contract. The contract must include a legal description and a detailed map. Concession boundaries will be surveyed by Reclamation and must be easy to recognize by the visiting public.
- (15) **Additional Facilities or Services.** A concessionaire may request contract amendments for limited additional facilities or services that meet public needs and were not identified in the RFP. A major expansion of facilities or services is not permitted. Additional facilities or services are not allowed without advance approval by Reclamation.
- (16) **Total Benefits to the Government.** Reclamation will determine and recover fair compensation, including direct returns and direct and indirect benefits, for the use, rights, and privileges granted under a concession contract. The concession contract will specify the direct returns and direct and indirect benefits.
- (a) **Thresholds.** Targeted thresholds of total benefits will be developed to determine the optimal combination of payments. These will be used in advertisements, RFPs, and renegotiations to seek appropriate benefits to the Government and the public.
 - (b) **Direct Returns (Disposition of Fees).** The appropriate disposition of recreation or concession fees depends on the land status and authority used to collect the fees. Fees collected under the authority of the Land and Water Conservation Fund Act are to be deposited in the Recreation, Entrance, and User Fee Account, which is a special account for Reclamation established in the United States Treasury. For specific information, refer to the RM, Crediting of Incidental Revenues, PEC 03-01. Except as provided otherwise in

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a project specific authorization, fees collected pursuant to Reclamation law will be disposed of as follows:

- (i) Fees generated by concessions or recreation activities on withdrawn project lands are deposited in the Reclamation Fund.
 - (ii) Fees generated by concessions or recreation activities on lands acquired for project purposes are deposited in the Reclamation Fund, to the credit of the project.
- (17) **Utility Services Provided by Reclamation.** The value 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. If the financial feasibility evaluation determines that it would not be feasible for the concessionaire to pay rates which would compensate Reclamation for its total capital and operating costs, Reclamation must determine the utility service rates that would be feasible and applied. Utility services include, but are not limited to, electricity, power, water, waste disposal, gas, and communication systems.
- (18) **Exclusive Use.** Exclusive use facilities are not authorized in new concession contracts. If existing concession contracts are amended, a new provision must be included that requires exclusive use to be phased out as soon as possible, before the contract expires. A mandatory timetable for this phase out must be included in the amended contract. The concessionaire and a person hired to guard the concessionaire's investment may reside on the Federal estate, with the written approval of the contracting officer.
- (19) **Sale of Personal Property.** 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.
- (20) **Rates and Merchandise.** Rates charged by concessionaires for all facilities, services, and merchandise will be based on charges for comparable facilities, services, facilities, and merchandise provided by the private sector in similar situations. Approved rates will ensure a fair return to the concessionaire and a reasonable charge to the public. Reclamation will approve such rates or rate schedules when the concessionaire proposes to change rates. Any rates in excess of comparable rates must be thoroughly justified and supported in writing by the concessionaire and approved by Reclamation.
- (21) **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.
- (22) **Insurance Program.** Concessionaires must have an insurance policy that will indemnify the United States and meet applicable State requirements. All liability policies will provide that the

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insurance company will have no right of subrogation against the United States and will provide that the United States is named as an additional insured. Reclamation must be provided with a certificate of insurance by the insurance agent to confirm that the above requirements are met before development begins or operations commence. The concessionaire must also provide Reclamation with a copy of each insurance renewal certificate throughout the term of the concession contract. The Regional Director or delegate will establish a minimum insurance requirement based on the facilities and services offered by individual concessions.

- (23) **System of Recordkeeping.** Concessionaires will complete Reclamation's Annual Financial Report (AFR) form and provide any other financial information that may be requested. The annual financial reports will conform to the standard AFR form, without exception or modification.
- (24) **Food Sanitation.** Concessionaires' food services will comply with Federal, State, and local food handling and sanitation laws, rules, and regulations.
- (25) **Advertising and Signs.** Use of the Reclamation seal, logo, or name must be approved by Reclamation before it is displayed in advertisements or on signs. Outdoor signs or other forms of advertising must not be displayed on the Federal estate without the approval of Reclamation.
- (a) The Reclamation logo or name will be obvious at all entrances to all concessions.
- (b) Concessionaires will be required to notify the public that they are authorized by Reclamation to conduct business on the Federal estate. All promotional material, regardless of media format (i.e., printed, electronic, broadcast), provided to the public by the concessionaire in connection with the services provided under the concession contract must be approved in writing by Reclamation. At a minimum, all such information will identify the concessionaire as an authorized concessionaire of the Bureau of Reclamation, Department of the Interior.
- (26) **Statistical Data.** Concessionaires will furnish information as specified in Reclamation's Recreation Use Data Report on an annual basis or as otherwise requested.
- (27) **Concessions Review and Evaluation.** Reclamation's Concessions Management Guidelines contain instructions on how to determine an appropriate rating and how to ensure that the concessionaire is in compliance with the terms of the contract. There are two types of review, the "local review" and the "external review."
- (a) **Local Review.** The local review will be conducted by the Reclamation office directly responsible for oversight of the concession. The local review will be conducted at least twice annually. One of the inspections must be conducted during the high use season. The combined reviews will determine the annual performance rating. The review will include, at a minimum, items listed in the Concessions Management Guidelines. The possible ratings are Satisfactory, Marginal, or Unsatisfactory. A copy of the completed review and

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rating will be sent to the regional office and the concessionaire and entered into the Recreation Use Data Report. The local Reclamation office will maintain all concession program management files and records.

- (b) **External Review.** The external review will be conducted and documented by a team of technical specialists who are not employees of the office directly responsible for oversight of the concessions. At a minimum, contracts with a term of 5 years or less will be reviewed once, midterm; contracts with a term exceeding 5 years will be reviewed every 5 years. A copy of the review will be sent to the area and regional offices and the concessionaire. The external reviews will examine, at a minimum:
- (i) The extent to which the concession operation meets Reclamation's Concessions Management Policy, Concessions Management Directives and Standards, and Concessions Management Guidelines.
 - (ii) The extent to which the concession activities are consistent with resource management plans and commercial services plans.
 - (iii) The extent to which the concessionaire is in compliance with the contract provisions, especially with respect to building improvements, operations, prices charged by concessionaires, fees returned to the Government, and annual financial reporting to Reclamation.
 - (iv) The quality and condition of the facilities and services related to the health and safety of the employees and the visiting public.
 - (v) The recordkeeping system(s) used by the local Reclamation office to determine that the concessionaire uses generally accepted accounting practices.
 - (vi) The recordkeeping system(s) used by the local Reclamation office to conduct quarterly and annual reviews.
 - (vii) The local Reclamation office records regarding the annual reviews and annual rating.
- (c) **Corrective Actions.** If either the local or external review identifies operational or administrative deficiencies in the operation of a concession, a timetable must be established by the area office and approved by the Regional Director or delegate to correct these deficiencies. The contract must specify the actions that will be taken for marginal or unsatisfactory ratings. The possible actions will include suspension of all or part of the concession operation or termination of the concessions contract.
- (d) **Disputes.** Disputes between Reclamation and the concessionaire are to be resolved through informal negotiations and discussions. In the event that such disputes fail to reach resolution, either party may request a formal, nonbinding arbitration process. Each party

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selects one member for the arbitration panel and, together, these two members will select the third (neutral) panel member. The panel will treat each party equally and fairly. Recommendations must be made by a majority of the panel members. If either party disagrees with the arbiter's recommendation, he or she may file an appeal with the Secretary of the Interior under 43 CFR, Part 4, Subpart G. The Secretary's determination is final and binding.

- (e) **Officials Not to Benefit.** No member of the executive, legislative, or judicial branches of the Federal Government may be a party to any concession contract or receive any benefits from a concessions contract.

5. Miscellaneous.

- A. **RFP and Contract Review.** All RFPs and concession contracts must be reviewed and approved by the Commissioner's Office. The following sequence of steps must be followed:
- (1) Area or regional offices must submit the proposed RFP and contract along with supporting information to the Commissioner's Office. The supporting information must include appropriate planning documentation and financial feasibility evaluation.
 - (2) The Commissioner's Office will establish a review team appropriately suited to the complexity and scope of the RFP and the contract. The team will evaluate the RFP and the contract for sufficiency and compliance with the Concessions Management Policy and Concessions Management Directives and Standards.
 - (3) The Commissioner's Office will return the approved RFP and contract, or return the RFP and the contract for modification and resubmittal if necessary.
- B. **Training.** All Reclamation offices are responsible for ensuring that Reclamation personnel involved with concessions have received training commensurate with their responsibilities.
- C. **Nonprofit Organizations.**
- (1) In certain circumstances, it may be appropriate for cooperative associations or nonprofit organizations to sell goods or provide visitor services to meet Reclamation's goals and objectives. All cooperative association arrangements must be approved by Reclamation if the cooperative associations operate within a concession.
 - (2) The cooperative association will be responsible for maintaining its accounting system, and the system cannot be combined with the annual financial report submitted by a concessionaire. Nonprofit organizations will also be given very clear allowances and restrictions identifying the type of business they are authorized to conduct and the type of goods or services they may provide. Just as with concessionaires, nonprofit organizations are prohibited from providing

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items or services not specifically authorized. All nonprofit organizations must provide written proof of their nonprofit status.

- D. **Employment of Reclamation Personnel or Family Members².** Reclamation employees or family members(s) 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 activities concerning preparing specification formulation, contract award, or operational administering a concession may not participate in that activity if the employee or a family member is involved in any phase or operation of that concession. Any Reclamation employee responsible for any phase of a concession contract will be excused from duties related to the contract if the employee or a family member is involved in the competition for the contract or the Reclamation employee or a family member may benefit financially from the award of the contract.
- E. **Concessions Management Guidelines.** The Concessions Management Guidelines contain additional information that will assist Reclamation offices in complying with the Concessions Management Policy and the Concessions Management Directives and Standards.

² Guidance on this issue should be obtained from an ethics counselor in the servicing Reclamation Personnel/Human Resources Office.

EXHIBIT D

ANNUAL FINANCIAL REPORT

CONCESSION CONTRACTOR ANNUAL FINANCIAL REPORT GENERAL INSTRUCTIONS

The Annual Financial Report (AFR) instruction booklet was prepared by Reclamation to help the preparers of the AFR complete the enclosed schedules. For each schedule, a corresponding page is attached that explains (by line item) the information that needs to be provided in the schedule. Many of the required schedules are similar to statements frequently prepared as part of GAAP financial statements, however, please note that some of the AFR Schedules require more detail with respect to information. For example, Schedules F and G require detailed information for the revenues and expenses for based on the type of activity. If the Bidder's financial statements prepared in compliance with GAAP also use a similar categorization for required information, such statements may be submitted in lieu of the AFR Schedules.

If the Concession Contractor has operations conducted by the same entity that are not related to the Concession Contract, or if multiple Concession Contracts are being operated by the same entity, then the Concession Contractor must submit complete financial statements for the entity that present the financial condition of the Concession Contractor, PLUS the required set of AFR Schedules for each Concession Contract, PLUS such worksheets and schedules as are necessary to document the reasonableness of the allocation of any fixed overhead, officer salaries or similar items.

A. WHO MUST FILE

All Concession Contractors must file a Concession Contractor Annual Financial Report corresponding to each year of operation. Concession Contractors operating in more than one area under the same contract shall prepare a separate report for each area in which the operations are located.

B. WHEN AND WHERE TO FILE

Concession Contractors must file an AFR within the time period specified in the authorizing document (contract or permit). Concession Contractors shall submit one signed original and one copy to the Contracting Officer administering the area. Failure to submit the complete and accurate Schedules timely shall be considered a significant default of this Contract. In the event that the Concession Contractor determines that a significant possibility exists that a previously submitted AFR schedule contains a material error, then the Concession Contractor must notify Reclamation within 30 calendar days. In the event that the Concession Contractor is in default with its vendors, or has been threatened with a lawsuit, or has been sued, Concession Contractor must notify the Contracting Officer within 5 business days.

C. WHERE TO GET REPORT FORMAT

Concession Contractors may obtain the Concession Contractor Annual Financial Report format from the Contracting Officer or base the reports on the format found in this Exhibit J.

D. ROUNDING

All entries should be rounded to the nearest dollar and \$0.50 should be rounded to the next highest dollar.

E. REQUIREMENT FOR AUDIT AND REVIEW

All supplemental schedules must be fully completed and submitted by the Concession Contractor. If a Concession Contractor's annual gross revenues equal or exceed \$250,000, the Primary Schedules (Schedules A through F, I, and P of the Concession Contractor Annual Financial Report, below) must be reviewed by an independent CPA in accordance with all applicable standards recognized by the American Institute of Certified Public Accountants. If annual gross revenues equal or exceed \$1,000,000, the Primary Schedules must be audited by an independent CPA in accordance with the same standards mentioned above.

If the Concession Contractor's gross revenues are less than \$250,000, the Concession Contractor is required to complete only Schedules A, B, C, D, E, F, G, H, I, J, K, N, O, P, Q, R, and S. In all events, the AFR Schedules submitted by the principal executive officer and the principal financial officer must include certifications that:

- The signing officers have reviewed the report
- The report does not contain any material untrue statements or material omission or be considered misleading
- The financial statements and related information fairly present the financial condition and the results in all material respects
- The signing officers are responsible for internal controls and have evaluated these internal controls within the previous year (within the previous ninety days for entities with more than \$10,000,000 in gross revenues) and have reported on their findings
- A list of all deficiencies in the internal controls and information on any fraud that involves employees who are involved with internal activities
- Any significant changes in internal controls or related factors that could have a negative impact on the internal controls



UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Bureau of Reclamation
Use Only
Date Received:

CONCESSION CONTRACTOR ANNUAL FINANCIAL REPORT

Concession
Contractor: _____

Area: _____

(Contract or Permit No.)

(Effective Date)

(Expiration Date)

Corporation

Limited Liability Corporation

Partnership

Sole Proprietorship

Primary and Supplemental Schedules

- Schedule A – Statement of Income
- Schedule B – Balance Sheet
- Schedule C – Depreciable Fixed Assets
- Schedule D – Statement of Cash Flows
- Schedule E – Notes to the Financial Statements
- Schedule F – Details of Gross Revenues
- Schedule G – Departmental Income and Expenses
- Schedule G1 – Departmental Income and Expenses (Continuation Sheet)
- Schedule H – Indirect Operating Expenses
- Schedule I – Computation of Government Fees
- Schedule J – Information on Corporate Owners, Officers, and Partners
- Schedule K – Supporting Schedule
- Schedule L – Additions to and Disposals of Fixed Assets
- Schedule N – Reserve Account Annual Reconciliation
- Schedule O – Reserve Account Expenditures
- Schedule P – Operational and Miscellaneous Financial Statistics
- Schedule P1 – Operational and Miscellaneous Financial Statistics (continuation sheet)



CONCESSION CONTRACTOR'S CERTIFICATION

I certify that this report (including accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete report.

(Concession Contractor's Signature)

(Title)

(Date)

(Mailing Address)

(Telephone number)

(E-Mail Address)

(FAX number)

SCHEDULE A – STATEMENT OF INCOME

- Line 1. Enter the amount shown on Schedule G, Column A, Line 2.
Line 2. Enter the amount shown on Schedule G, Column A, Line 3.
Line 3. Subtract Line 2 from Line 1 and enter the amount.
Line 4. Enter the amount shown on Schedule G, Column A, Line 8.
Line 5. Subtract Line 4 from Line 3 and enter the amount.
Line 6. Enter the amount shown on Schedule G, Column A, Line 27.
Line 7. Subtract Line 6 from Line 5 and enter the amount.
Line 8. Enter the amount shown on Schedule H, Line 10.
Line 9. Enter the amount shown on Schedule H, Line 32.
Line 10. Enter the amount shown on Schedule I, Line 31.
Line 11. Add Lines 8 through 10.
Line 12. Subtract Line 11 from Line 7 and enter the amount.
Line 13. Enter the amount paid or accrued for the rental of facilities. This category will include mostly rental of facilities outside the area boundary. It will exclude the cost to rent equipment, which should be included in the amount entered on Line 6.

Line 14. Self-Explanatory.
Line 15. Self-Explanatory.
Line 16. Self-Explanatory.
Line 17. Enter the amount shown on Schedule C, Column G, Line 6.
Line 18. Enter the total year's amortization charge for all classes of intangible assets.
Line 19. Enter the description of other fixed expenses and amounts for these fixed expenses not shown elsewhere.
Line 20. Enter the description of other fixed expenses and amounts for these fixed expenses not shown elsewhere.
Line 21. Add Lines 13 through 20 and enter the amount.
Line 22. Subtract Line 21 from Line 12 and enter the amount.
Line 23. Enter the total amount of all interest and dividend revenue accrued and earned during the year.
Line 24. Enter the total amount of all gains and losses resulting from the sale of assets.
Line 25. Enter the total amount of all compensation received from subcontractors.
Line 26. Enter the description and income from sources not shown elsewhere.
Line 27. Add Lines 23 through 26 and enter the amount.
Line 28. Subtract Line 27 from Line 22 and enter the amount.
Line 29. Self-Explanatory.
Line 30. Self-Explanatory.
Line 31. Add Lines 29 and 30 and enter the amount.
Line 32. Subtract Line 31 from Line 28 and enter the amount.

Statement of Income		SCHEDULE A	
		This Year	Last Year
Departmental Income			
1.	Gross Revenues (Schedule G, Column A, Line 2)	_____	_____
2.	Returns and Allowances (Schedule G, Column A, Line 3)	_____	_____
3.	Net Sales (Schedule G, Column A, Line 4)	_____	_____
4.	Cost of Sales (Schedule G, Column A, Line 8).....	_____	_____
5.	Gross Profit (Schedule G, Column A, Line 9).....	_____	_____
6.	Total Direct Expenses (Schedule G, Column A, Line 27).....	_____	_____
7.	Departmental Income (Loss) (Schedule G, Column A, Line 28).....	_____	_____
Indirect Operating Expenses			
8.	Undistributed Departmental Expenses (Schedule H, Line 10).....	_____	_____
9.	General and Administrative Expenses (Schedule H, Line 32)	_____	_____
10.	Franchise Fees (Schedule I, Line 31).....	_____	_____
11.	Total Indirect Operating Expenses	_____	_____
12.	Total Income (Loss) from Operations Before Fixed Expenses	_____	_____
Fixed Expenses			
13.	Rent.....	_____	_____
14.	Property Taxes	_____	_____
15.	Business/Liability/Property Insurance.....	_____	_____
16.	Interest Expense	_____	_____
17.	Depreciation (Schedule C, Column G, Line 6).....	_____	_____
18.	Amortization	_____	_____
19.	Other (Identify)* _____	_____	_____
20.	Other (Identify)* _____	_____	_____
21.	TOTAL FIXED EXPENSES	_____	_____
22.	INCOME (LOSS) BEFORE INCOME TAXES AND OTHER INCOME OR EXPENSES.....	_____	_____
Other Income (Expenses)			
23.	Interest and Dividend Income.....	_____	_____
24.	Gain (Loss) on Sale of Property	_____	_____
25.	Commissions/Fees/Compensation from SubConcession Contractors (Schedule I, Line 24)	_____	_____
26.	Other (Identify)* _____	_____	_____
27.	TOTAL OTHER INCOME (EXPENSES)	_____	_____
28.	INCOME (LOSS) BEFORE INCOME TAXES	_____	_____
Income Taxes			
29.	Federal	_____	_____
30.	State and Local	_____	_____
31.	TOTAL INCOME TAXES	_____	_____
32.	NET INCOME (LOSS).....	_____	_____

* All "Other" items over \$10,000 should be identified on Schedule K (Supporting Schedule).

SCHEDULE B – BALANCE SHEET

- Line 1. Self-Explanatory.
Line 2. Self-Explanatory.
Line 3. Self-Explanatory.
Line 4. Self-Explanatory.
Line 5. Enter the amounts receivable from shareholders, officers, and related entities. This amount must be fully explained in Schedule E, Notes to the Financial Statements.
Line 6. Self-Explanatory.
Line 7. Self-Explanatory.
Line 8. Enter the description and total amount of other current assets not shown elsewhere.
Line 9. Add Lines 1 through 8 and enter the amount.
Line 10. Enter the amount shown on Schedule C, Column G, Line 4, if Schedule C is submitted.
Line 11. Enter the amount shown on Schedule C, Column G, Line 8, if Schedule C is submitted.
Line 12. Subtract Line 11 from Line 10 and enter the amount.
Line 13. Self-Explanatory.
Line 14. Self-Explanatory.
Line 15. Add Lines 12 through 14 and enter the amount.
Line 16. Self-Explanatory. Should equal Schedule N, Line 13.
Line 17. Enter the description and amount of other assets not shown elsewhere.
Line 18. Add Lines 16 and 17 and enter the amount.
Line 19. Add Lines 9, 15, and 18 and enter the amount.
Line 20. Enter the amounts payable from shareholders, officers, and related entities. This amount must be fully explained in Schedule E, Notes to the Financial Statements.
Lines 21-25. Self-Explanatory.
Line 26. Enter amounts such as advance deposits for services not yet rendered (e.g., river trips and lodging).
Line 27. Enter the description and amounts for other current liabilities not shown elsewhere.
Line 28. Add Lines 20 through 27 and enter the amount.
Line 29. Self-Explanatory.
Line 30. Enter the description and amounts for all other long-term liabilities not shown elsewhere.
Line 31. Add Lines 29 and 30 and enter the amount.
Line 32. Add Lines 28 and 31 and enter the amount.
Line 33. To be filled out by Sole Proprietorships or Partnerships but **NOT** Corporations.
Lines 34-37. To be filled out by Corporations but **NOT** Sole Proprietorships or Partnerships.
Line 38. Sole Proprietorships and Partnerships enter the amount from Line 33. Corporations enter the total of Lines 34, 36, and 37 less Line 35.
Line 39. Add Lines 32 and 38 and enter amount.

NOTE: LINE 19 MUST EQUAL LINE 39. IF THE ASSETS REPORTED BY THE CONCESSION CONTRACTOR ARE USED FOR BOTH IN-AREA AND OUT-OF-AREA REVENUE, THE ASSETS REPORTED ON THE BALANCE SHEET SHOULD BE PROPORTIONAL TO THE AMOUNT OF SALES GENERATED IN THE AREA. THE BASIS FOR THIS ALLOCATION SHOULD BE EXPLAINED IN SCHEDULE E, "NOTES TO THE FINANCIAL STATEMENTS."

Balance Sheet

SCHEDULE B

	ASSETS	This Year	Last Year
Current Assets			
1.	Cash	_____	_____
2.	Marketable Securities	_____	_____
3.	Inventories – Merchandise	_____	_____
4.	Accounts Receivable	_____	_____
5.	Notes Receivable – Related Party	_____	_____
6.	Notes Receivable – Other	_____	_____
7.	Prepaid Expenses	_____	_____
8.	Other (Identify) _____	_____	_____
9.	TOTAL CURRENT ASSETS	_____	_____
Fixed Assets			
10.	Depreciable Fixed Assets (Schedule C, Column G, Line 4)	_____	_____
11.	Less: Accumulated Depreciation (Schedule C, Column G, Line 8)	_____	_____
12.	Net Depreciable Fixed Assets (Schedule C, Column G, Line 9)	_____	_____
13.	Construction in Progress	_____	_____
14.	Interest During Construction	_____	_____
15.	TOTAL FIXED ASSETS	_____	_____
Other Assets (Identify)			
16.	Reserve Account (Schedule N, Line 13)	_____	_____
17.	Other (Identify) _____	_____	_____
18.	TOTAL OTHER ASSETS	_____	_____
19.	TOTAL ASSETS	_____	_____
LIABILITIES			
Current Liabilities			
20.	Notes Payable – Related Party	_____	_____
21.	Notes Payable – Other	_____	_____
22.	Accounts Payable	_____	_____
23.	Current Maturities on Long-Term Debt	_____	_____
24.	Government Franchise Fee Payable	_____	_____
25.	Accrued Liabilities	_____	_____
26.	Advance Deposits	_____	_____
27.	Other (Identify) _____	_____	_____
28.	TOTAL CURRENT LIABILITIES	_____	_____
Long-Term Liabilities			
29.	Long-Term Debt, Less Current Maturities	_____	_____
30.	Other (Identify) _____	_____	_____
31.	TOTAL LONG-TERM LIABILITES	_____	_____
32.	TOTAL LIABILITIES	_____	_____
EQUITY			
33.	Partner’s or Proprietor’s Capital	_____	_____
34.	Common and Preferred Stock	_____	_____
35.	Less: Treasury Stock	_____	_____
36.	Additional Paid – In Capital	_____	_____
37.	Retained Earnings	_____	_____
38.	TOTAL EQUITY	_____	_____
39.	TOTAL LIABILITIES AND EQUITY	_____	_____