

IDAPA RULE IDAPA FEE BOARD ACTION REQUIRED
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AGENDA ITEM
Idaho Park and Recreation Quarterly Meeting
November 8-9, 2023
McCall, ID 83638

AGENDA ITEM: Lake Cascade Marina Proposal Agreement with Tamarack Two, LLC

ACTION REQUIRED: Approve Concession Contract with Tamarack Two, LLC

PRESENTER: Adam R. Zaragoza, Management Services Administrator

PRESENTATION

BACKGROUND INFORMATION:

On August 24, 2021, IDPR issued a request for proposals to develop marina facilities at Lake Cascade State Park. In October 2021, IDPR issued a letter of intent to Tamarack Resort II LLC for the Poison Creek Area. Staff provided the board an update in May 2022 about the ongoing negotiations and design. This agenda item is for the board to take action on the Draft Concession Contract.

Since May 2022, staff has been working with the Bureau of Reclamation (BOR), the Attorney General's office, and Tamarack regarding terms and conditions of the development, and a 20 year concession contract. On September 14, 2023, those terms have been agreed to by the parties.

The draft contract was emailed to BOR on September 18, 2023. BOR has agreed to provide a preliminary approval, with a final approval of the contract after the National Environment Protection Act (NEPA) has been completed. The federal public involvement requirement is to occur this winter, with NEPA to be complete in Spring 2024.

Highlights of the contract are:

- Up to 200 boat slips are allowed
- Tamarack will replace any loss of recreation areas resulting from the development
- Tamarack has agreed to 8% gross receipts to IDPR annually during the contract term
- The contract number will be assigned once fully executed after NEPA is completed

Due to the short window of construction season in Valley County and lead time of construction materials, Tamarack has requested an approval of this draft contract contingent upon final approval from BOR after the NEPA process has been completed. It is understood that all financial risks, materials, or other obligations will be borne by Tamarack II LLC if there are changes from BOR after the NEPA process. IDPR will assume no financial responsibility if there are changes after approval of this draft contract.

STAFF RECOMMENDATIONS:

Staff recommends the Board authorize the Director to sign the Concession Contract with Tamarack II LLC.

Attachments:
Concession Contract with Special Terms and Conditions
60% Aerial Drawings



**STATE OF IDAHO
IDAHO DEPARTMENT OF PARKS AND RECREATION
CONCESSION CONTRACT NO. *****

**FOR THE DEVELOPMENT, OPERATION, AND MAINTENANCE
OF
MARINA FACILITIES
AND
RELATED CONCESSION OPPORTUNITIES
AT THE
POISON CREEK UNIT
OF
LAKE CASCADE STATE PARK**

November 2023

STATE OF IDAHO
IDAHO DEPARTMENT OF PARKS AND RECREATION
CONCESSION CONTRACT NO. ***

This Concession Contract No. *** (“**Contract**”) is dated and effective as of the last signature of the Parties (“**Effective Date**”), and is made by and between the STATE OF IDAHO, IDAHO PARK AND RECREATION BOARD THROUGH THE IDAHO DEPARTMENT OF PARKS AND RECREATION whose mailing address is PO Box 83720, Boise, Idaho 83720-0065 (collectively “**IDPR**”), and TAMARACK RESORT TWO, LLC, a limited liability company duly organized under the laws of the state of Florida, that is authorized to conduct business in the state of Idaho, and whose Idaho mailing address is 331 Village Drive PMB 3000, Tamarack, Idaho 83615-5014 (“**Concessionaire**”). IDPR and Concessionaire are collectively referred to herein as the “**Parties**” and individually as a “**Party**”.

This Contract is made with reference to and incorporation of the following facts:

Whereas, Lake Cascade, formerly known as Cascade Reservoir, was constructed by the United States of America, acting through the Department of Interior, Bureau of Reclamation (“**Reclamation**”) as part of the Payette Division of the Boise Project, authorized on June 30, 1942, for the primary purposes of power generation and irrigation; and

WHEREAS, under the authority of Public Law 89-72, Reclamation is authorized through the Secretary of Interior to arrange for the operation and maintenance of recreation facilities by a non-federal public entity; and

WHEREAS, pursuant to the authorities of Title 67, Chapter 42, Idaho Code, including §§ 67-4212(23) and 67-4213, the State of Idaho does own or manage for public, outdoor recreational purposes under the jurisdiction and control of IDPR, Lake Cascade State Park located on the shores of Lake Cascade in Valley County, Idaho; and

WHEREAS, IDPR is authorized by Idaho Code §§ 67-4204 and 67-4223(7) to grant concessions to proper and desirable parties to provide places of refreshment and entertainment or to provide recreational facilities within state parks; as such, IDAPA 26.01.20.650 provides that: “No person, firm, or corporation may operate any concession, business, or enterprise within lands administered by the department without written permission or permit from the [Idaho Park and Recreation Board].”; and

WHEREAS, on May 26, 2021, Reclamation and the IDPR did enter into the *Bureau of Reclamation Management Agreement for Lake Cascade State Park with State of Idaho, Department of Parks and Recreation, Agreement No. 21-07-11-L5422* (“**Agreement No. 21-07-11-L5422**”), whereby IDPR, as Reclamation’s managing partner, is authorized to administer, develop, operate, and manage certain Lake Cascade lands and facilities for recreation, public use and enjoyment; and

WHEREAS, by way of Agreement No. 21-07-11-L5422, IDPR is authorized to enter into contracts with concessionaires to develop, operate and manage certain Lake Cascade lands and facilities for recreation concessions including restaurants, retail sales, equipment rentals, and marina facilities; and

WHEREAS, it is of mutual interest to IDPR, Reclamation, and Concessionaire that public recreational services at reasonable rates to Park visitors be provided on and over Lake Cascade at the Lake Cascade State Park Poison Creek Unit through the development of marina facilities and well-managed related concession services.

NOW THEREFORE, in consideration of the covenants, conditions, and restrictions to be observed by Concessionaire as set forth in this Contract, and including the above-stated recitals that are intended to be contractual in nature and not mere recitals, the Parties mutually agree, as follows:

1. Definitions. The words and phrases defined in this Contract will have the stated meaning, which apply to both the singular and plural forms of each word, whether capitalized or not capitalized. In the event a defined word in this Contract is materially different from or contradicts a word or phrase defined in a Reclamation Regulation or Policy, the Reclamation Regulation or Policy will control.

1.1 “ADA” means the Americans with Disabilities Act, as defined by Reclamation, including Architectural Barriers Act of 1968 (“**ABA**”); Section 504 of the Rehabilitation Act of 1973, as amended; 43 Code of Federal Regulations Part 17, Subpart E - Nondiscrimination on the Basis of Handicap in Programs or Activities.

1.2 “Board” means the Idaho Park and Recreation Board.

1.3 “Concession” and “**concession services**” mean the authorized business activities and commercial transactions of Concessionaire that support and promote appropriate public recreation opportunities and provide improvements, goods, and services for which reasonable revenues are collected from the Park visitor.

1.4 “Concessionaire” means the non-State and non-Federal individual or entity, authorized to conduct business in the state of Idaho, to which concession rights are granted by this Contract and all employees, agents, owners, members, or other authorized representatives of Concessionaire.

1.5 “**Director**” means the Director of IDPR or the Director’s designee.

1.6 “**Fixtures**” includes all windows, doors, awnings, apparatus, appliances, and equipment, or items used to supply heat, gas, air conditioning, water, light, power, refrigeration, cooking, or ventilation and that are physically attached to an improvement on the Premises.

1.7 “**Gross Receipts**” means all monies and anything else of value received by Concessionaire from the sale, rental, or provision of goods, services, or facilities, or from any other business activity or commercial transaction whatsoever conducted by Concessionaire on or utilizing concession services on the Premises, whether such goods, services and activities are required by this Contract or optional; excepting an allowance of deductions for sales taxes imposed by any governmental entity and collected by Concessionaire.

1.8 “**IDPR**” means the State of Idaho, Idaho Department of Parks and Recreation, an executive department of the State of Idaho, overseen and administered by the Idaho Park and Recreation Board and acting through the Director, the Park Manager, and other authorized employees.

1.9 “**Improvements**” includes all buildings, structures, roadways, sidewalks, utility infrastructure, landscaping, signs, docks, pilings, buoys, and other additions or alterations to the Premises, whether permanent, semi-permanent, or short-term.

1.10 “**Including**” and “**include**” mean including but not limited to.

1.11 “**Mortgage**” or “**Leasehold Mortgage**” mean either, or both, a leasehold mortgage or a security interest in personal property, as permitted under Section 10.

1.12 “**Park**” means the Lake Cascade State Park and the areas of Lake Cascade managed by IDPR pursuant to Agreement No. 21-07-11-L5422, including where the Premises is located.

1.13 “**Park Manager**” means the person, as designated by the Director, responsible for administering, managing, and supervising the Park.

1.14 “**Reclamation**” means the United States of America, acting through the Department of Interior, Bureau of Reclamation, Middle Snake Field Office acting through its Area Manager and other authorized employees.

1.15 “**Reclamation Regulations and Policies**” means and includes Agreement No. 21-07-11-L5422; Reclamation Manual, Policy, *Concessions Management* (LND P02); Reclamation Manual, Policy, *Recreation Program Management* (LND P04); Reclamation Manual, Directives and Standards, *Recreation Program Management* (LND 01-03); Reclamation Manual, Directives and Standards, *Concessions Management by Non-Federal Partners* (LND 04-02); the National Environmental Policy Act (“**NEPA**”), Title VI (Section 601) of the Civil Rights Act of July 2, 1964 (78 Stat. 241); Section 504 of the Rehabilitation Act of 1973, P.L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, P.L. 93-516, and the Rehabilitation, Comprehensive Service, and Developmental Disabilities Act of 1978, P.L. 95-602, 29 U.S.C. §§ 700 et seq.; and the Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 et seq. each of which may be amended from time to time.

1.16 “Vessel” means every description of motorized and non-motorized watercraft intended for, or capable of being used as, a means of transportation on water, including stand up paddle boards, but does not include float houses and diver’s aids operated and designed to propel a diver below the surface of the water.

2. Demise of Leased Premises as Area of Operation. IDPR hereby leases and permits to Concessionaire the right to use and occupy for the specific activities stated in this Contract, the lands and existing improvements identified in the legal description at Attachment A, which is incorporated by reference as part of this Contract, and commonly known as Lake Cascade State Park Poison Creek Unit, located in Valley County, Idaho (“Premises”). Within the Premises, Concessionaire will have the exclusive privilege of providing the specified concession services and designing, constructing, maintaining, and operating all approved improvements.

3. Duration of Contract.

3.1 Term. This Contract shall be for a duration of twenty (20) years (“Contract Term”) from the Effective Date.

3.2 Contingent Renewal. IDPR does not grant Concessionaire the right to renew this Contract or extend the Contract Term for any additional period of time. If, at the termination of the Contract due to the ending of the Contract Term, Concessionaire is interested in continuing to operate the concession, Concessionaire must comply with the following process:

(a) Concessionaire must notify IDPR in writing of its interest to continue operating the concession no less than twelve (12) months prior to the end of the Contract Term.

(b) IDPR will notify Concessionaire in writing, within thirty (30) days, whether the concession will continue to be permitted in the Park.

(c) If the concession services will continue to be permitted, the next concession contract will be awarded on a competitive basis after completion of a request for proposal (“RFP”) process.

(d) During the RFP process Concessionaire will have the following options:

(i) Concessionaire may elect to not participate in the RFP process and will be entitled to remove its improvements in accordance with Section 9.5(c) and (d) and vacate the Premises; or

(ii) If Concessionaire is in good standing under this Contract (*i.e.* not in breach or default), Concessionaire may elect to participate in the RFP process to be considered for the next contract; and

(1) In the event that Concessionaire’s RFP bid is not selected and IDPR intends to allow the new concessionaire to operate a concession using the improvements placed on the Premises by

Concessionaire, then Concessionaire may choose to donate such improvements to IDPR or will be compensated by the new concessionaire in an amount equal to the fair market value of the improvements, as determined by IDPR.

(e) Any new concession contract will be made on the provisions and conditions determined by IDPR and is subject to approval by Reclamation.

3.3 Stand In-Stead Condition. If Agreement No. 21-07-11-L5422 or any subsequent management agreement between Reclamation and IDPR expires or is terminated for whatever reason, Reclamation shall not stand in-stead for IDPR in this Contract. This Contract will terminate concurrently with the termination of Agreement No. 21-07-11-L5422. At the option of Reclamation, a new concession contract may be issued following Reclamation's public bid process.

4. Rents Paid by Concessionaire to IDPR.

4.1 Rent Amount. Concessionaire shall pay as rent to IDPR eight percent (8.0%) of Concessionaire's gross receipts for every normal season of operation during the Contract Term.

4.2 Payment Date. Each rent due shall be made within thirty (30) days of the conclusion of the normal season of operation, as stated in Section 5.3. If such date falls after the termination of this Contract, the obligation to pay such rent shall survive termination.

4.3 Remitted to IDPR. Every rent payment shall be made by a certified cashier's check to the order of Idaho Department of Parks and Recreation, Lake Cascade State Park and mailed to:

Idaho Department of Parks and Recreation
Attn: Chief Financial Officer
PO Box 83720
Boise, Idaho 83720-0065

4.4 No Excused Payment. No temporary cessation of operations for any reason will excuse Concessionaire from payment of rent.

4.5 Late Payments. Failure to pay rent by the due date will constitute a breach of this Contract. Every late payment shall accrue interest at the legal rate of interest as set in Idaho Code § 28-22-104(1) until paid. Interest will begin to accrue three (3) business days after payment is due.

4.6 Reporting of Gross Receipts. Gross Receipts shall be reported to IDPR on an IDPR Concessionaire Gross Receipts Reporting Form and consistent with Section 5.4. The form shall be submitted to IDPR at the time of each rent payment. The form shall be accompanied by an authorized representative's certification that all gross receipts during the accounting period have been duly and properly reported to IDPR.

4.7 Revision of Rents. At the end of every year during the Contract Term, IDPR will evaluate the overall success of the Concession and determine whether the percentage of gross receipts due will be increased, or a base payment or other consideration added to the rents due from Concessionaire for the next year.

5. Concessionaire's Concession Services, Operations, Limitations.

Concessionaire shall provide concession services each year during the Contract Term, and is authorized to design, construct, maintain, and operate improvements, as follows:

5.1 Required Concession Services.

(a) Development of marina facilities pursuant to Section 6, including improvements and fixtures necessary to provide for vessel docking and launching, marine fuel sales, marine pump out equipment, long-term and short-term slip rentals, rentals of motorized and non-motorized vessels.

(i) Concessionaire may designate up to ten percent (10%) of the total slips that are constructed and operable, for docking of its rental vessels.

(b) Development of a retail space for the sale of food and non-alcoholic beverages consistent with Attachment B – Special Terms and Conditions.

(i) Concessionaire shall engage in best business practices and strive to provide high-quality good and services.

(ii) Concessionaire must provide or install fixtures for the correct storage and preparation of items requiring refrigeration, cooking, or sustained heat. All food items and food service shall comply with requirements of the Idaho Department of Health and Welfare as set forth in the Idaho Food Code, IDAPA 16.02.19, as may be amended.

(iii) The sale, rental, or use by Concessionaire of any food, beverage, or other item in a glass container is strictly prohibited.

(iv) The sale of cigarette, tobacco, vaping products is strictly prohibited.

(c) Development of a retail space for outdoor recreation equipment rentals consistent with Attachment B – Special Terms and Conditions.

(d) Regular maintenance, management, and supervision over the Premises and Concessionaire's employees and representatives.

(i) All employees of Concessionaire must be clean and presentable, and always wear a shirt or uniform with a logo clearly identifying them as employees of Concessionaire and of a color and design distinguishing them from employees of IDPR.

(ii) At all times, Concessionaire through its employees and representatives must conduct themselves in such a manner as to serve the public courteously and efficiently, provide accurate information about the Park and its outdoor recreation and resource opportunities and services, and promote a positive public image for the Park, IDPR, Reclamation, and Concessionaire.

(iii) Concessionaire shall not employ or retain in its services, or permit to remain upon the Premises, any person declared by IDPR to be unfit for such employment or otherwise objectionable.

(e) Concessionaire must always keep the Premises in a clean and sanitary condition. If, at any time, the condition of the Premises is deemed unsatisfactory by the Park Manager, IDPR will charge Concessionaire for all costs, including employee time, incurred to keep the Premises clean and sanitary.

5.2 Authorized Optional Concession Services.

(a) Portable Fueling. Concessionaire may provide fuel for vessels utilizing concessionaire—operated equipment. Related facilities, including above-ground storage tanks and fuel transfer systems must be permitted by Idaho Department of Environmental Quality, the Idaho Central Health District, Reclamation, and other appropriate regulatory authorities.

(b) Guided Activities. Commercially guided recreation activities within the Park, whether accessed through the Premises or elsewhere within the Park, by either Concessionaire or as a subconcession by a third party, including a licensed outfitter and guide. Prior to any guided activities by a subconcession, there must be a contract between Concessionaire and the subconcession for such services, which must be submitted to the Park Manager for review and approval. Every approved subconcession must meet and abide by the terms and conditions of this Contract. Concessionaire's commission or other proceeds received will be included in Concessionaire's Gross Receipts.

(c) Consignment Sales. Concessionaire may broker sales of vessels at the marina on behalf of a private individual or entity. Concessionaire's commission or other proceeds received will be included in Concessionaire's Gross Receipts.

(d) Temporary, Short-Term Special Use Permit. Agreement No. 21-07-11-L5422 authorizes IDPR to issue special use permits. Concessionaire must request, and the Park Manager may issue, a special use permit for special events consistent with IDPR policy, and including the following limitations:

(i) The event or number of visitors engaged may not cause significant ground disturbance.

(ii) The event may not have highly controversial environmental, social, cultural, or political impacts or intentions.

(iii) The Park Manager will submit the request to Reclamation for review and approval prior to issuance of the special use permit to Concessionaire if such approval is required by Section 24(f) of Agreement No. 21-07-11-L5422.

(e) Accessibility Requirements. Every optional concession service and special event that is open to the public must meet Federal accessibility laws and comply with requirements of the ADA and the ABA, including the general obligation to provide an equal opportunity to individuals with disabilities to enjoy the concession services provided.

5.3 Seasons of Operations.

(a) Normal Summer Season of Operations. The normal summer season of operation is considered May 10 through October 1 each year of the Contract Term.

(i) Normal hours of summer operations may occur no earlier than 7:00 a.m. and not to exceed 9:00 p.m. or dusk, daily, whichever occurs first.

(b) Normal Winter Season of Operations. The normal winter season of operations, if applicable, is considered November 30 through April 1 each year of the Contract Term.

(i) Normal hours of winter operations may occur no earlier than 8:00 a.m. and not to exceed 7:00 p.m. or dusk, daily, whichever occurs first.

(c) Conditions on Normal Operations Schedule.

(i) Concessionaire is encouraged to be open for service before and after the normal dates to better serve Park visitors; provided, that concession operations occurring outside the normal season of operations requires prior written approval of the Park Manager.

(ii) At least three (3) months before the beginning of each normal season of operations, Concessionaire shall provide the Park Manager with an operations schedule indicating expected dates and hours of operations, and any special circumstances or events that may result in deviations from the annual operations schedule.

(iii) IDPR reserves the right to require changes in the dates and times of any normal season's operations schedule to ensure adequate service to the public and avoid conflict with other authorized uses occurring within the Park.

(iv) In the event of an emergency or circumstance of short duration that necessitates immediate action, the Park Manager may require, upon reasonable notice under the circumstances, or permit the temporary cessation or other changes to Concessionaire's operations when, in the Park Manager's discretion, such changes are necessary to protect Park resources; to protect the health, safety, and welfare of Park visitors; to avoid conflict with other authorized uses occurring within the Park; or in the event of adverse weather conditions.

(v) After any phase of planned construction is concluded it must be included in the annual operations schedule beginning the next normal season of operations.

(d) Annual Maintenance Plan. Concessionaire must prepare and submit to the Park Manager for approval, and prior to each normal season, an annual maintenance plan for the improvements, facilities, and utility systems.

(e) New or Expanded Concession Services. Any proposal for new or expanded concession services and improvements, in addition to those existing or anticipated to occur at the beginning of this Contract, must be reviewed by Reclamation, have any necessary NEPA documentation and cultural clearances completed, and be mutually agreeable to IDPR and Reclamation before being permitted.

5.4 Annual Review and Recording of Rates for Concession Services.

(a) Control of Rates. Concessionaire agrees that all fees, rates, and prices charged by Concessionaire for rentals, goods, beverages, food, and any concession services furnished or sold on or utilizing the Premises is subject to review and approval by IDPR, which approval will not be unreasonably withheld if such fees, rates, and prices are consistent with Section 5.4(b)(i).

(b) IDPR Review of Rate Schedule. At least three (3) months before the beginning of each normal season of operations, Concessionaire shall provide the Park Manager with a list of all fees, rates, and prices proposed for the upcoming operating season.

(i) Such submission must include all information necessary to determine the quality and quantity of equipment, goods, beverages, food, and services to be furnished, rented, or sold. Prices charged by Concessionaire shall be reasonably related to the quality and quantity of the item(s) and consistent with prices charged by private businesses in Idaho providing comparable services and merchandise.

(ii) If IDPR determines that any price is not so related, IDPR may order that the price be modified. However, IDPR may not require a modification in price that would prevent Concessionaire from realizing a reasonable profit on items or services sold.

(iii) Concessionaire shall keep a schedule for such fees, rates, and prices posted at all times in a conspicuous place on the Premises.

(c) Point of Sale System. Concessionaire shall install and maintain such cash register equipment as will provide a continuous registering tape and show sales breakdown as to major categories of concession services.

(d) Record-Keeping. Concessionaire shall keep true and accurate books and records showing all business transactions in separate records of account, including a sales journal, cash disbursement journal, and general ledger for the concession.

(i) Upon reasonable notice, IDPR shall have the right to examine daily sales records kept on the Premises. IDPR shall have the right to examine all other books and records, including inventory records and certified State of Idaho Sales Tax Return Records; provided that IDPR shall treat such records as confidential and not divulge them to third parties except in the event of litigation.

(ii) IDPR further shall have the right to examine all related books and records at any time within two (2) years of termination of this Contract, or until such time that a final audit is concluded as to Concessionaire's business under this Contract, whichever event occurs first.

(iii) Concessionaire shall install and maintain inventory, bookkeeping, accounting methods, and methods of collection of monies that permit IDPR to accurately compute the gross revenue of all concession services.

(e) Annual Financial Statement and Statistical Data Report. Within sixty (60) day of the end of the normal summer season of operations, Concessionaire shall provide to IDPR and Reclamation an annual financial

statement and a report describing and quantifying all visitation related to its concession services during the prior year.

5.5 Slip Rental Agreement, Term, and User Rotation.

(a) Rental agreement required. A written rental agreement must be entered into between Concessionaire and each vessel owner renting space at the marina. The agreement must include contract provisions addressing the slip rental term; all costs or fees; limitation of one vessel per slip; liability for damages; required vessel registration; vessel compliance with Idaho's invasive species fund and laws; and vessel insurance, either Protection & Indemnity \$300,000 or Commercial General Liability \$1,000,000, per occurrence/aggregate limit, with coverage for towing services, wreckage removal, and pollution/fuel spill. The agreement must contain a provision whereby the vessel owner waives and releases any and all claims against IDPR and Reclamation.

(b) Limitations on term. The slip rental term may be short-term or seasonal, not to exceed more than one summer season of operation at a given time.

(c) List of renters. Concessionaire must maintain a complete and accurate list of all vessel owners renting slips at the marina, including those slips utilized by Concessionaire under Section 5.1. The list will be provided to the Park Manager at least three (3) months before the beginning of each normal summer season of operations.

(d) Renter rotation. A process must be established by Concessionaire, for review and approval by the Park Manager, for rotating slip renters. Such process must be implemented by Concessionaire if the demand for rental space exceeds the number of slips available for rent. Such process must give equal opportunity for rental to every interested vessel owner.

(e) Concessionaire's Rental Vessels. Written rental agreements are not required for vessels rented by Concessionaire and docked at the marina pursuant to Section 5.1(a); provided that all such rental vessels shall be insured with Commercial General Liability \$1,000,000 per occurrence/aggregate limit, with coverage for towing services, wreckage removal, and pollution/fuel spill; registered with the state of Idaho; and compliant with Idaho's invasive species fund and laws. Such expenses shall not be deducted from any calculation of gross receipts.

5.6 Utilities. Concessionaire will, at its own expense, be responsible for all extensions, connections, metering, invoiced rates, and other related costs, including all municipal connection fees and any necessary construction permits for all utilities used in connection with the Premises where separate metering is available. All new or improved utilities, including any and all power, must be installed underground and by a licensed contractor.

(a) Concessionaire will be responsible for the initiation, accrual and payment of all utility charges or fees.

(b) Concessionaire will be responsible for the collection, removal and off-site disposal of all garbage, litter, and other solid waste associated with the concession services.

5.7 Taxes. IDPR is not liable for any taxable event related to the concession. Concessionaire shall pay when due all taxes lawfully assessed and levied under the laws of the State of Idaho upon Concessionaire's interest in the Premises, upon improvements constructed or maintained by Concessionaire on the Premises, and upon goods and services sold or rented on the Premises. Concessionaire shall provide IDPR with a valid tax identification number.

5.8 Limitations.

(a) No Concessions Outside Premises. No provision in this Contract may be construed as granting to Concessionaire the privilege of providing concession services on any Park lands outside the Premises.

(b) No Unauthorized Concession. Concessionaire is prohibited from providing additional concession services not identified in this Contract.

(c) No Right of Exclusion. All concession services provided by Concessionaire must be made available to the public. No private exclusive recreational or residential uses of the Premises or improvements is allowed.

(i) Concessionaire acknowledges that the Premises is Park lands open to public use.

(ii) Exclusive use is any use that excludes other public recreation use or users for a period of time not approved in advance by the Park Manager.

(iii) Concessionaire acknowledges that IDPR reserves the right to authorize others to use the Premises; excepting any exclusion that is necessary for the public health or safety, or that will unreasonably interfere with Concessionaire's business operations. IDPR will provide Concessionaire with advance notice of any such proposed use, to allow for Concessionaire's reasonable evaluation of whether and to what extent such proposed use might interfere with Concessionaire's operations.

(iv) All activities related to the Concession will be conducted in a manner that does not disrupt the normal public use of any campground, day use area, picnic shelter, boat launch, boat launch handling dock, parking lot, or roadway. If a conflict between normal public use of such Park facilities and the concession operation is detected, immediate corrective action will be taken by the Concessionaire or when notified by Park staff of the conflict.

(d) No Discrimination. Concessionaire and its employees shall not discriminate against any person because of race, color, religion, sex, national origin, or disability by refusing to furnish such person any accommodation, facilities, services, or privileges offered to or enjoyed by the general public. Nor shall Concessionaire or its employees publicize the accommodations, facilities, services, or privileges in any manner that would directly or inferentially reflect upon or question the acceptability or the patronage of any person because of race, color, religion, sex, national origin, or disability.

(i) In the performance of this Contract, Concessionaire shall not discriminate against any employee or applicant for employment because race, color, religion, sex (including gender identity, sexual orientation, and pregnancy),

national origin, age (40 or older), disability, or genetic information. Concessionaire shall take action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability, or genetic information. Such actions include the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship.

(ii) Concessionaire shall permit access to its records of employment, employment advertisement, application forms and other pertinent data and records by any agency of the State of Idaho designated for the purpose of investigation to ascertain compliance with Title 67, Chapter 59, Idaho Code.

(e) As—Is. Concessionaire accepts the Premises and all improvements, fixtures, utilities, and equipment existing at the beginning of this Contract in its present condition with all faults or hazards, whether patent or latent, and without warranties or covenants, express or implied, regarding the suitability of the Premises for Concessionaire's uses. Concessionaire acknowledges that IDPR shall have no duty to maintain, repair, or improve the Premises or otherwise make them suitable for Concessionaire's use. If any portion of the Premises is destroyed, IDPR shall have no obligation to replace or restore such portion of the Premises.

(f) No Other Enterprises. Industrial and manufacturing enterprises are strictly prohibited.

(g) No Unapproved Subconcession. Any subconcession tiered off this Contract is prohibited and void unless and until the contract between Concessionaire and the subconcession is reviewed and approved by the Park Manager and Reclamation, at Reclamation's discretion.

6. Development of Marina and Related Facilities.

6.1 Construction. Concessionaire shall provide for the engineering, all permitting, and construction of an integrated marina and retail facilities within the Premises, including the following improvements:

(a) Compliance with Reclamation Guidelines. All improvement and facility designs must comply with Reclamation's Recreation Facility Design Guidelines, dated April 2013, and may be submitted for Dam Safety and Infrastructure review and comment at Reclamation's discretion.

(b) Marina Facilities.
(i) Concessionaire must start marina construction no later than the next reasonable construction season after all necessary engineering permits are approved by the necessary regulatory authorities.

(ii) A minimum of one slip and adjacent approach must be designed and constructed to meet ADA and ABA requirements.

(iii) All materials must be of the kind that will not become waterlogged, are resistant to damage by animals, and will not sink or contaminate the water if punctured.

(iv) All engineering and construction plans must be signed and stamped by an engineer licensed in the State of Idaho. All engineering plans shall follow best practices for marina design and construction.

(c) Retail – Rental Facilities.

(i) Any architectural and construction plans must be signed and stamped by a licensed architect in the State of Idaho. All engineering plans shall follow best practices and current building codes as determined by the permitting jurisdiction.

(d) Parking Lot Improvements.

(i) The parking area must have at least 1.5 parking spaces per slip.

(ii) The parking area must be asphalt paved and comply with the local highway district or county design requirements, including storm drainage design, typical sections, parking stall size, inspection, compaction tests, and ADA requirements.

(iii) Concessionaire shall mitigate parking based on applicable rules, regulations, and local ordinances. Concessionaire shall use best practices by either performing a traffic study, or by complying with the management needs of IDPR to mitigate parking for all visitors anticipated at the Premises.

(e) Concessionaire's Expense. Concessionaire will be responsible for reimbursement to Reclamation of all costs arising from NEPA review and Reclamation's permitting of any proposed construction. Unless otherwise agreed to in writing by IDPR prior to construction or modification, Concessionaire shall be responsible for all costs associated with the construction, modification, and maintenance of improvements.

6.2 Public Works Licensed Professionals.

(a) Project Engineer. Concessionaire must retain a public works engineer, licensed by the state of Idaho ("**Project Engineer**"), for all necessary engineering plans and the implementation of those plans.

(b) Project Architect, Optional. Concessionaire may retain an architect who must hold a public works license issued by the state of Idaho ("**Project Architect**"), in addition to, but not in place of, the Project Engineer.

(i) The Project Architect may establish the architectural theme of the whole marina in consultation with IDPR and Reclamation.

(c) Public Works Contractors.

(i) All contractors and any subcontractor for HVAC, electrical, or plumbing used or hired to construct, repair, or reconstruct all or any part of the marina and retail facilities must hold a public works license issued by the state of Idaho.

(ii) Any general contractor used or hired to manage the construction, repair, or reconstruction of all or any part of the marina and related facilities must hold a public works license issued by the state of Idaho.

(d) Pre-Approval of Documents. Any Building Design Drawings, plans, specifications, and other construction documents must all be simultaneously provided to IDPR and Reclamation for review and approval prior to any activities beginning. IDPR's and Reclamation's review will not be unreasonably delayed, or its approval unreasonably withheld.

(e) No Modification without IDPR Approval. No Building Design Drawings, plans, specifications, or other construction documents may be modified without IDPR's and Reclamation's prior written approval, which will not be unreasonably delayed or withheld.

6.3 Improvements and Replacement In—Kind.

(a) Any loss of recreational areas or opportunities in the Park, including parking, camp sites, day use areas, designated swim areas, restrooms, shower-houses, RV dump station, storm drain systems. resulting from construction of the marina or retail improvements shall be replaced, in—kind, by Concessionaire and at Concessionaire's sole expense.

(b) The schedule and specification of such replacements shall be determined by IDPR, with the primary intention of IDPR's revenue from such recreational opportunities not being negatively impacted.

(i) Lost revenue will be tracked by IDPR, primarily through its on—line reservation system or other reasonable methods as determined by IDPR.

(ii) Any loss of revenue caused to IDPR by Concessionaire's construction activities shall be paid for by Concessionaire at the conclusion of any impacted season of operation. Such reimbursement shall continue season to season until all replacement construction is completed and the recreating public is able to fully utilize the impacted Park land.

(c) Concessionaire shall work with local water and sewer districts to construct potable water, irrigation, sewer, and any associated improvements necessary for the operations of restrooms, shower-houses, or other public facilities within the Premises.

(d) IDPR shall assume maintenance and operations of the "In Kind" replaced or added facilities upon inspection and receipt of approval by proper building officials.

(e) IDPR may, in its sole discretion, accept an annual cash deposit from Concessionaire in lieu of Concessionaire's construction of replacement in-kind. Any such funds shall be utilized by IDPR for its designation and development of replacement recreational opportunities within the Park.

(f) Upon receipt and approval of the construction documents, as provided in Section 6.2(d) or (e), and a construction schedule provided by Concessionaire, IDPR will provide Concessionaire with an initial assessment of

whether and to what extent it anticipates a related loss of any recreational areas or opportunities in the Park.

6.4 Additional Requirements.

(a) Compliance with All Agencies. Concessionaire will be responsible for any and all necessary engineering and construction permits from local, state, and federal authorities, including Reclamation, Valley County, City of Cascade, and local health districts.

(i) All permits shall include utilities necessary for the safe operation of the improvement.

(ii) Copies of all permits must be provided to IDPR prior to any construction activities beginning.

(b) IDPR Pre-Approval of Construction Activities. Scheduling and construction activities must be reviewed and approved by IDPR at least fourteen (14) days prior to such activity occurring. If such construction activity will have a negative impact on any Park campgrounds, including the removal of any camp site from public use, Concessionaire shall provide notice of such activity no later than ten (10) months prior to such activity occurring.

(c) Duty to Maintain and Preserve. Concessionaire shall, at its own expense, maintain the Premises and all improvements thereon in clean, healthful, and safe condition, in accordance with applicable state, federal, and local laws and regulations, including historic preservation laws and building code requirements and in a condition harmonious in form, line, color and texture with the surrounding landscape and comparable to other improvements within the Park.

(i) If, after fourteen (14) day's written notice of the need to repair, Concessionaire fails to undertake repairs necessary to maintain any improvement, IDPR shall have the right to perform such maintenance or repairs and Concessionaire shall promptly reimburse IDPR for the cost thereof.

(d) Emergency Repairs. In the event of any emergency such as vandalism, fire, wind, flooding, hail, or other event, which threatens damage to the Premises or harm to the public, IDPR may immediately act to respond to such emergency and mitigate any potential damage to the Premises. IDPR shall notify Concessionaire of any emergency circumstances, action, or repair, and shall request that Concessionaire make further repairs necessitated by such emergency. Concessionaire shall reimburse IDPR for all reasonable repairs made pursuant to this emergency provision.

(e) No Liens. Concessionaire shall not allow or suffer any liens of any kind to be effected on or enforced against the Premises or any improvement, including any mechanics' liens or material suppliers' liens for any work done or materials furnished on the Premises at Concessionaire's instance or request. Concessionaire shall ensure that full payment is made for all materials joined or affixed to the Premises pursuant to this Contract and to all persons who perform labor on the Premises.

7. Insurance. Concessionaire must obtain at its own expense insurance coverage that complies with all limits, terms, and conditions set forth in this Contract. Concessionaire shall not provide required or optional concession services, construct improvements or fixtures, or transact business on the Premises until satisfactory evidence of all required insurance is provided to IDPR and Reclamation.

7.1 Required Limits. For the duration of the Contract Term, Concessionaire must maintain insurance in amounts that are not less than the following:

(a) Commercial General Liability (“CGL”) with a limit of not less than \$2,000,000 each occurrence, and \$2,000,000 annual aggregate, if defense is outside the limits. If defense is inside the limits, the limit must be \$3,000,000 each occurrence, and \$3,000,000 aggregate. If necessary, a commercial umbrella or excess policy may be used to meet the limits required, providing the CGL is listed on the underlying insurance in the umbrella or excess policy, and the umbrella or excess policy meets the qualifications for an acceptable carrier.

(b) Automobile Liability including owned, non-owned, and hired liability with a limit of not less than \$1,000,000 each occurrence, and \$1,000,000 aggregate. If necessary, a commercial umbrella or excess policy may be used to meet the limits required, providing the Automobile Liability is listed on the underlying insurance in the umbrella or excess policy, and the umbrella or excess policy meets the qualifications for an acceptable carrier.

(c) Business property insurance covering all improvements, fixtures, and personal property of Concessionaire in, on, or at the Premises. Policy limits shall be sufficient to cover the value of all Concessionaire-owned property in, on, or at the Premises, and shall cover all risks to such property.

(d) Workers Compensation Insurance in amounts as required by Idaho law, and Employer’s Liability with a limit of \$100,000 Bodily Injury by Accident-each Accident, \$100,000 Bodily Injury by disease-each employee, \$500,000 Bodily Injury by Disease-policy limit.

7.2 Additional Insureds Endorsement; No Right of Subrogation. All insurance, except for Workers Compensation, must be endorsed to name the “State of Idaho, the Idaho Department of Parks and Recreation” and the “United States of America, Bureau of Reclamation” as additional insureds. Concessionaire will provide IDPR with a certified endorsement naming all additional insureds. The certified endorsement must also provide that the insurer has no right of subrogation against the State or the United States. None of the foregoing additional insureds will be liable for the payment of premiums or deductibles of any policy.

7.3 Subject to Approval; Notice. The required insurance is subject to IDPR’s approval, but any acceptance of insurance by IDPR will in no way limit or relieve Concessionaire of the duties and responsibilities stipulated in this Contract. Concessionaire must provide IDPR with a correct copy of all certificates of insurance; certified endorsements applicable to the insurance required; and all

notices relating to insurance coverage including notices of cancellation, renewal, amendments, potential exhaustion of aggregate limits, and denials of coverage.

7.4 Primary Basis. The coverage provided by the required policies must be issued on a primary basis, non-contributory with other insurance coverages. Policies may contain deductibles, but such deductibles may not be deducted from any damages due to IDPR or Reclamation.

7.5 Insurer's Qualifications. Any insurance carrier must have an AM Best's Rating of A-VII, or better, and be licensed and authorized to transact business in Idaho.

8. Indemnification.

8.1 Concessionaire shall indemnify, defend, and save harmless IDPR and Reclamation, their officers, agents, employees, and volunteers from and against any and all liability, claims, damages, losses, expenses, actions, settlements, attorneys fees, and suits whatsoever caused by, arising out of, or in connection with acts or omissions by Concessionaire and its employees, agents, contractors, and sub-contractors under this Contract, or any failure to comply with any State or Federal law, regulation, or rule.

8.2 Upon receipt of a tender of indemnity and defense, Concessionaire shall immediately take all reasonable actions necessary, including providing a legal defense for IDPR and/or Reclamation, to begin fulfilling its obligation to indemnify, defend, and save harmless. Concessionaire's indemnification and defense liabilities described herein shall apply regardless of any allegations that a claim or suit is attributable in whole or in part to any act or omission of the IDPR or Reclamation under this Contract. However, if it is determined by a final judgment that IDPR's or Reclamation's negligent act or omission is the sole proximate cause of a suit or claim, neither shall be entitled to indemnification from Concessionaire with respect to such suit or claim; and either, in its discretion, may reimburse Concessionaire for reasonable defense costs attributable to the defense provided by any Special Deputy Attorney General, for IDPR, appointed pursuant to Section 8.3.

8.3 Any legal defense provided by Concessionaire to IDPR under this Section must be free of any conflicts of interest, even if retention of separate legal counsel for IDPR is necessary. Any attorney appointed to represent IDPR must first qualify as and be appointed by the Attorney General of the State of Idaho as a Special Deputy Attorney General pursuant to Idaho Code §§ 67-1401(13) and 67-1409(1).

9. Termination.

9.1 Termination by IDPR. Each provision and condition of this Contract is material, and uncured default will be a breach by Concessionaire and shall be grounds for termination of the entire Contract by IDPR. Any material violation by

Concessionaire of any law, rule, or regulation now in force, or as may be amended or adopted by the Board, shall be grounds for termination of this Contract. The determination of whether a violation constitutes a material violation subjecting this Contract to immediate termination shall rest solely in the discretion of the Director

(a) Notice of Violation. IDPR will provide written notice to Concessionaire of any violation and will allow Concessionaire thirty (30) days from service of the notice to cure the violation. The Director's determination that the Concessionaire's manner and operation of the concession does not satisfy the requirements of this Contract will be grounds for violation and termination.

(b) Notice of Termination. Any violation that has not been cured within thirty (30) days of receipt of the notice of violation shall subject this Contract to termination for cause at the sole discretion of the Director. Notice of termination shall be in writing and shall be effective upon service.

(c) Immediate Termination; No Opportunity to Cure. If, in the Director's sole discretion, it is determined that Concessionaire has acted in a way that endangers public safety or could result in an immediate public crisis, this Contract may be immediately terminated without advance written notice or an opportunity to cure.

(d) Reinstatement. Not later than thirty (30) days following the termination of this Contract for cause, the Concessionaire may submit to the Director a written request for reinstatement setting forth good cause why the Contract should be reinstated. At the Director's sole discretion, this Contract may be reinstated upon Concessionaire's payment of a reinstatement fee of Four Hundred Dollars (\$400.00), payment of IDPR's administrative costs associated with enforcing this Contract which is hereby designated to be Fifty Dollars (\$50.00) per day from the date of notice of violation until the violation is cured, and upon such other terms and conditions as the Director deems appropriate.

9.2 Termination by Reclamation. Reclamation shall have the right to terminate this Contract for cause.

9.3 Termination by Concessionaire. Concessionaire may terminate this Contract by giving one (1) year written notice to IDPR of its intent to terminate.

9.4 Holding Over.

(a) If Concessionaire holds over after the termination of this Contract with the express or implied consent of IDPR, such holding over shall be deemed to be a month-to-month tenancy of the Premises and shall otherwise be subject to the terms of this Contract.

(b) During such month—to—month tenancy, Concessionaire shall pay a monthly rent amount equal to one—fourth (1/4) of the prior normal summer season of operation's rent, as calculated pursuant to Section 4. Payment shall be made on or before the first day of each month in the manner set forth in Section 4.3.

9.5 Transition Upon Termination.

(a) Payment of Rent Due. Upon termination, the annual rent for the year in which termination occurs (i.e., the specified percentage of gross receipts received up to the date of termination), as well as any unpaid annual rent from

previous years, shall be considered at once due and payable by Concessionaire without notice by IDPR. Concessionaire's obligation to pay all rent due under this Contract shall survive termination of this Contract until all rent is paid in full.

(b) Personal Property. At the termination of this Contract, Concessionaire shall, weather permitting, remove from the Premises or otherwise dispose of in a manner satisfactory to IDPR all personal property belonging to Concessionaire, and restore the Premises to as good a condition as the same were in on the Effective Date by not later than the *later to occur* of the following dates: (i) thirty (30) days after the termination of this Contract; or (ii) if the termination occurs between November 1 and April 30, the immediately following May 30 (the "Removal Deadline"). If removal and restoration is not completed prior to the Removal Deadline, IDPR may, at its election, perform the work and bill Concessionaire for the costs incurred. Concessionaire shall pay such bill within thirty (30) days of receipt.

(c) Improvements and Fixtures. Concessionaire's sole right upon termination is to remove improvements and restore the Premises to the conditions existing on the Effective Date. Unless the Parties agree otherwise in writing prior to the Removal Deadline, if Concessionaire does not act on the right of removal all improvements and fixtures constructed or installed by Concessionaire during the Contract Term shall be considered the property of IDPR, with no further compensation due to Concessionaire, regardless of whether IDPR intends to allow similar business operations upon the Premises.

(d) Option to Require Removal. At IDPR's option, Concessionaire shall, upon termination of this Contract, be required to remove from the Premises or otherwise dispose of in a manner satisfactory to IDPR, those improvements and fixtures constructed or installed by Concessionaire that are not acceptable to IDPR.

(i) If IDPR elects to require Concessionaire to remove any improvements or fixtures, Concessionaire shall do so and restore the Premises to as good a condition as the same was on the Effective Date. If removal and restoration is not completed prior to the Removal Deadline, IDPR may, at its election, perform the work and bill Concessionaire for the costs thereof. Concessionaire shall pay such bill within thirty (30) days of receipt.

(ii) If IDPR elects to not require Concessionaire to remove any or all improvements and fixtures, Concessionaire may choose to donate such improvements to IDPR, or Concessionaire will be compensated in an amount equal to the fair market value of the improvements, as determined by IDPR.

(e) Bankruptcy. A material breach of this Contract shall be deemed to occur if Concessionaire files a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act or if involuntary proceedings under any

bankruptcy act or insolvency act be instituted against Concessionaire or if a trustee or receiver is appointed of any property of Concessionaire.

(i) If, upon bankruptcy or insolvency of Concessionaire, IDPR does not elect to terminate this Contract pursuant to Section 15.1.1, any use, assignment, or disposition of buildings, improvements, appurtenances, and fixtures existing upon the Premises by a trustee or receiver shall be subject to the terms of this Contract.

(f) Going Concern. Blue Sky, Business Values. Concessionaire waives any claim that it is entitled to compensation from IDPR for going concern, good will, blue sky, business values, trade name, or other intangible property upon termination of this Contract, regardless of whether IDPR intends to continue similar business operations upon the Premises or offer an opportunity to a successor concessionaire to operate a similar business upon the Premises.

(g) No Obligation with Reclamation. No financial obligation or risk will reside with Reclamation for reimbursement for improvements or fixtures at the termination of this Contract.

10. No Sublease; No Liens; Pre-Approved Assignment; Pre-Approved Mortgage on Leasehold Interest.

10.1 No Sublease. No part of Concessionaire's interest may be sublet, transferred, or parceled out, including Concessionaire-owned improvements or facilities.

10.2 No Liens. Concessionaire shall not permit or suffer any lien of any kind or nature to be placed on or enforced against the Premises, the leasehold interest, or any improvements thereon, including tax liens, judgment liens, mechanics' liens, or material suppliers' liens. Concessionaire shall ensure that full payment is made for all labor performed at its instance and for any and all materials joined or affixed to the Premises and for any improvements.

10.3 Assignment. This Contract shall not be assigned, sold, or transferred to any other party without the prior written consent and approval of the Board and Reclamation. Any person or entity that owns a controlling interest in Concessionaire shall not assign or otherwise sell or transfer any rights or responsibilities under this Contract, nor sell or otherwise assign or transfer (including mergers, consolidations, reorganizations or other business combinations) a controlling interest in such operations, this Contract, or controlling interest in Concessionaire's ownership as defined herein, without the prior written consent and approval of the Board.

10.4 Application for Assignment of Concession Lease.

(a) An application for assignment of concession lease form must be completed and submitted to the Park Manager for initial review and processing.

(i) Concessionaire will advise the proposed assignee that IDPR must be notified of the proposed transaction contract, and that it is subject to review and approval by the Board.

(ii) The transaction contract between Concessionaire and its assignee must be a valid legal instrument, properly executed and acknowledged, stating the number of this Contract, a legal description of the Premises, the name and address of the assignee, the interest transferred, the consideration, and any type of overriding royalty that may be paid by the assignee to Concessionaire.

(iii) A fully executed, unredacted copy of the transaction contract must be filed with IDPR along with IDPR's application for assignment of concession lease form, processing fees, and all requested documents.

(b) Concessionaire shall request in writing the Board's approval of the proposed transaction and shall promptly provide all documents related to the transaction, including all information necessary to evaluate the fitness and ability of the assignee to carry out the terms of this Contract in a satisfactory manner.

(c) The Board in exercising its discretionary authority will, among other matters, take into consideration any business experience and management qualifications of the proposed assignee, the experience of the assignee with similar operations, and the ability of the assignee to operate the concession authorized by this Contract in the public interest and under the regulation of IDPR.

(d) The Board may impose on any assignee, as a condition of approving the assignment, the modification of any provision of this Contract.

(e) If the application for assignment of concession lease is approved, the assignee, its insurer(s), and its surety(ies) will be bound by this Contract to the same extent as if the assignee were the original concessionaire, irrespective of any conditions in the transaction contract to the contrary.

(f) The assignor shall remain liable for all rents due and any damages accruing prior to the effective date of the approved assignment. The assignor shall remain liable for any provisions of this Contract that survive termination unless a written release is subsequently granted and executed by the Director, which release will be in the Director's sole discretion.

(g) In the event the Board approves assignment of this Contract, IDPR will be paid an amount equivalent to ten percent (10%) of the purchase price paid by the assignee.

(h) Failure of Concessionaire to comply with all provisions of Section 10 will constitute a material breach of this Contract, for which this Contract may be terminated immediately without regard to the procedures for termination set forth in Section 9. IDPR will not be obligated to recognize any right of any unapproved assignee.

10.5 Leasehold Mortgage. Concessionaire shall not mortgage, pledge, hypothecate or otherwise transfer Concessionaire's interest in this Contract, or any portion thereof, including any Concessionaire—owned improvements or fixtures on the Premises, without the prior written consent of the Director. Concessionaire shall use mortgage or deed of trust forms provided by IDPR, and shall submit completed forms, related documents, and any required fee to IDPR for review and approval. The term of a mortgage agreement shall not be longer than the Contract

Term and shall terminate if this Contract is terminated for any reason. IDPR may approve or reject a leasehold mortgage in the Director's sole discretion.

10.6 Limited Consent. Any approval by the Board will be held to apply only to the specific transaction. That approval will not be construed as a waiver of any duty of Concessionaire, or its assign, including Concessionaire's obligation to obtain the Board's prior written approval of any other assignment, mortgage, or encumbrance, or as a modification or limitation of any right of IDPR.

11. Rights Reserved by IDPR. IDPR expressly reserves to itself all rights not expressly granted to Concessionaire under this Contract. Such reserved rights include, the following:

11.1 Right to Grant Other Concessions. IDPR reserves the right to grant concession privileges to other persons on any portion of the Park that is outside the Premises; whether or not those concession services are similar to that of Concessionaire. Provided, that in the event IDPR determines to grant concession privileges in any portion of the Park outside the Premises and that is similar to the concession permitted by this Contract, then Concessionaire shall have the opportunity to apply to provide such concession services through an agreement offered by IDPR and under such terms and conditions as IDPR may then prescribe.

11.2 Property Rights Retained. This Contract does not convey any fee simple property rights either in real or personal property to Concessionaire.

11.3 Rights of Access. IDPR retains rights of ingress, egress, and access over, under, and across the Premises for IDPR and its permittees, contractors, and assigns.

12. Compliance with Laws, Rules, Regulations, and Policies.

12.1 Administration by IDPR. This Contract will be administered by IDPR in accordance with the laws of Congress governing the Premises; the Reclamation Regulations and Policies, as may be amended; IDPR rules and policies, as may be amended; and applicable Idaho Code statutes, as may be amended.

12.2 Compliance by Concessionaire. Concessionaire, in exercising the privileges granted by this Contract, must comply with all Reclamation Regulations and Policies, as may be amended; all applicable IDPR rules and policies, as may be amended, including IDAPA 26.01.20 – *Rules governing the Administration of Park and Recreation Areas and Facilities*; and all other applicable state laws, and local ordinances and regulations.

(a) Compliance with all Reclamation Regulations and Policies does not obviate the need to obtain state or local permits required by law for the design, construction, operation, and maintenance of authorized improvements, fixtures, and utilities and as required to legally perform Concessionaire's business activities.

12.3 Federal Approval; Compliance with Executive Orders.

(a) Federal Approval. This Contract is subject to the approval of Reclamation and may be terminated by Reclamation for cause.

(b) Executive Orders. Concessionaire, in exercising the privileges granted by this Contract, must comply with all applicable executive orders issued by the President of the United States, as may be interpreted and amended during the Contract Term, including the following:

(i) Employment of United States Employees and Family Members. Employees or family members of the applicable agency of the United States may not be owners, partners, board members, corporate officers, general managers, or employees of Concessionaire, nor may they have any financial interest in Concessionaire's business, or company if Concessionaire is a duly organized entity.

(ii) Minimum Wage. Concessionaire shall comply with the requirements of Executive Order No. 14026 (April 27, 2021, as may be amended, or modified pursuant to judicial order) and all related regulations of the U.S. Department of Labor, requiring that Concessionaire's employees be paid the minimum wage published by the Secretary of Labor, excepting those employees involved exclusively in connection with seasonal recreational services or seasonal recreational equipment rental for the general public on federal lands. Provided further, that employees connected with the provision of lodging or food services relating to the provision of such seasonal recreational services shall be paid the minimum wage required under Executive Order No. 14026. *See* <https://www.dol.gov/agencies/whd/government-contracts/eo14026>.

(iii) Sick Leave. Concessionaire shall comply with the requirements of Executive Order 13706 (Sept. 2015, as may be amended), and all related regulations of the U.S. Department of Labor, requiring that Concessionaire provide qualified employees up to seven days of paid sick leave annually, including paid leave allowing for family care. *See* <https://www.dol.gov/agencies/whd/government-contracts/sick-leave>.

(iv) Antiretaliation. It shall be unlawful for any person to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to Executive Order 13658 or 29 CFR part 10, or has testified or is about to testify in any such proceeding.

(v) Labor Standard Disputes. Disputes related to the application of any Executive Order applicable to this Agreement shall not be subject to the general disputes clause of this Agreement. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 10. Disputes within the meaning of this Agreement clause include disputes between Concessionaire (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(vi) Notice. Concessionaire must notify all workers performing work on or in connection with a covered contract of the applicable minimum wage rate under the Executive Order. With respect to service employees on contracts covered by the Service Contract Act and laborers and mechanics on contracts covered by the Davis-Bacon Act, Concessionaire may meet this

requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers performing work on or in connection with a covered contract whose wages are governed by the FLSA, Concessionaire must post a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by employees.

13. Notice. Notices required or contemplated under this Contract must be in writing. Notices will be deemed given and delivered when hand-delivered; deposited in the United States Mail, and mailed by regular or certified mail, postage prepaid, and correctly addressed to the other Party and Reclamation. Notices must be mailed to the following respective addresses, or such other addresses as a Party may, by notice to the other Party and Reclamation, designate. Any such notice may, in the alternative, be sent by electronic transmission to a below-designated facsimile number or email address, or to such other facsimile number or email address as may, by notice, be designated. If any type of “undeliverable” message is received by the Party transmitting an email, delivery shall be presumed to not have occurred. If a Party shows that the person assigned to an email address was no longer employed by the Party at the time of transmittal, delivery shall be presumed to not have occurred. Either Party may change the place for giving notice by written notice to the other Party and Reclamation. Notices shall be sent, as follows:

IDPR

Idaho Department of Parks and Recreation
c/o Lake Cascade Park Manager
P.O. Box 83720
Boise, ID 83720-0065

Concessionaire

Tamarack Resort Two, LLC
c/o Scott Turlington
Tamarack Resort, President
311 Village Drive PMB 3000
Tamarack, Idaho 83615

Reclamation

Snake River Area Office
Bureau of Reclamation
230 Collins Road
Boise, Idaho 83702

14. Additional Contract Provisions.

14.1 Authority and Indemnification of Authority. The Parties each represent and warrant that they possess full and complete authority to covenant

and agree as provided in this Contract. The signatories for IDPR and Concessionaire respectively represent and warrant that such signatory possesses the authority to covenant and agree as provided in this Contract. The signatory for Concessionaire represents and warrants that such signatory possesses the authority and has been authorized by the company, corporation or association to enter into this Contract, whether by resolution of a governing board, upon the instruction by an authorized officer, managing member, as authorized in the bylaws of the corporation or association on whose behalf the signatory is executing this Contract, or otherwise. In the event any person or entity asserts any interest in or the right to pursue any of the Concessionaire's claims released in this Contract, the Concessionaire shall promptly and fully defend and indemnify IDPR and Reclamation against any and all such claims.

14.2 Time of Essence. Time is expressly declared to be of the essence of each and every term, covenant, condition, duty, and obligation of this Contract.

14.3 Force Majeure. If Concessionaire is delayed, hindered, or prevented from performing any act required under this Contract by reason of any act of God; failure of electricity or any utility; fires; floods; drought; unusually severe weather; poor water quality, including algae blooms, bacteria, or other pollution; restrictive government laws or regulations, including government actions related to any epidemics, pandemics, or quarantines; strikes; lockout; labor trouble; inability to procure materials; freight embargoes; war; riot; insurrection; escalation of hostilities; or any other reason beyond the Concessionaire's control making performance impossible, then performance of that act, and that act only, shall be excused for the reasonable period of the delay upon proper and satisfactory proof presented to IDPR. IDPR must be notified within five (5) days of any force majeure event. In that event, the period for the performance of the act shall be extended for a reasonable period equivalent to the period of the delay. Concessionaire shall work diligently to eliminate the delay and immediately notify IDPR when the reason for the force majeure event has ceased. Neither Concessionaire's financial condition nor the failure of any third party with whom Concessionaire contracts shall be an event of force majeure excusing the performance of any act required by this Contract. IDPR shall have no liability for any damages Concessionaire incurs as a result of any force majeure event.

14.4 Noxious Weed Control.

(a) Cooperation and Costs. Concessionaire shall cooperate with IDPR or any other agency authorized to undertake programs for control or eradication of noxious weeds. As may be necessary, Concessionaire shall take measures to control noxious weeds on the Premises, except those resulting from activities beyond Concessionaire's control. Costs for control of noxious weeds on the Premises shall be the responsibility of Concessionaire.

(b) Weed Free. Prior to moving equipment onto the Premises, Concessionaire shall use reasonable efforts to ensure that all equipment is free of noxious weeds and their seeds as defined by the Idaho Department of Agriculture

and any local Coordinated Weed Management Area. Cleaning of contaminated equipment and vehicles shall not take place in the Park.

14.5 Public Records. Pursuant to Idaho Code §§ 74-101 *et seq.*, information or documents received from Concessionaire may be open to public inspection and copying unless specifically exempt from disclosure. Concessionaire shall clearly designate individual documents as “exempt” on each page of such documents and shall indicate the statutory basis for such exemption. IDPR will not accept the marking of an entire document as exempt. In addition, IDPR will not accept a legend or statement on one (1) page that all, or substantially all, of the document is exempt from disclosure. Concessionaire shall indemnify and defend IDPR against all liability, claims, damages, losses, expenses, actions, attorney fees, and suits whatsoever for honoring any designation by Concessionaire, or for Concessionaire’s failure to designate individual documents as exempt. Concessionaire’s failure to designate as exempt any document or portion of a document that is released by IDPR shall constitute a complete waiver of any and all claims for damages caused by any such release.

14.6 Survival. Any provision of this Contract that expressly or by implication comes into or remains in force following the termination of this Contract (for any reason) shall survive the termination of this Contract for the period set forth in such provision, or if no period is set forth in such provision, for the period that is coextensive with the applicable statute of limitations. Notwithstanding anything to the contrary in this Contract, any indemnification obligations shall survive the termination of this Contract.

14.7 Governing Law and Forum. This Contract shall be construed in accordance with and governed by the laws of the State of Idaho. The Parties consent to the jurisdiction and venue of the Idaho State District Court located in Ada County in the event of any dispute with respect to this Contract or the Premises.

14.8 Legal Fees. In the event either Party initiates a legal proceeding under this Contract, the prevailing party in that legal proceeding will be entitled to such additional sums as the court may award for reasonable attorney fees (including fees from the Office of the Attorney General of the State of Idaho) and costs (including appraisal fees and expert fees) incurred in such proceeding.

14.9 Cumulative Remedies. Arising from this Contract, IDPR shall have all rights and remedies which this Contract and the laws of the State of Idaho may provide, in law or in equity. All rights and remedies accruing to IDPR shall be cumulative; that is, IDPR may pursue all rights that the law and this Contract afford to it, in whatever order IDPR desires and the law permits, without being compelled to resort to any one remedy in advance of any other.

14.10 No Waiver. A waiver by IDPR of any breach of any term, covenant, or condition of this Contract shall not be deemed to be a waiver of any past, present, or

future breach of the same or any other term, covenant, or condition of this Contract. The acceptance of Rent by IDPR hereunder shall not be construed to be a waiver of any violation of any terms or conditions of this Contract. No payment by Concessionaire of a lesser amount than is due according to the terms of this Contract shall be deemed or construed to be anything other than a partial payment on account of the most recent Rent payment due, nor shall any endorsement or statement on any check or letter accompanying any payment be deemed to create an accord and satisfaction.

14.11 Joint Liability. If Concessionaire consists of more than one person or entity, such persons and entities shall be jointly and severally liable for each term, condition, covenant, duty and obligation of this Contract.

14.12 Relationship of Parties. Nothing contained in this Contract shall be construed as creating any relationship between the Parties other than that of landlord and tenant; and nothing contained in this Contract shall be construed to create any other relationship between the Parties, including any relationship of principal-agent, master-servant, employer-employee, partnership or joint venture.

14.13 Promotion. Except as allowed with IDPR's prior written approval, Concessionaire shall not use the name of IDPR, State of Idaho, or Reclamation; or the fact that any of Concessionaire's operations are conducted in whole, or in part, on the Premises in any advertisement or prospectus promoting the sale of stock. The reflection of this Contract as an asset of Concessionaire on the accountings, financial records and statements shall not constitute a breach of this paragraph.

14.14 Entire Agreement. This Contract (including all Attachments, as may be amended) contains the entire agreement between the Parties concerning the subject matter hereof and supersedes any and all prior agreements. The execution of this Contract has not been induced by either Party, or any agent of either Party, by representations, promises, or undertakings not expressed herein and, further, there are no collateral agreements, stipulations, covenants, promises, inducements, or undertakings whatsoever between the respective parties concerning this Contract except those which are expressly contained herein.

14.15 Written Modifications. Except as provided herein, no modification, extension, assignment, release, discharge, change, or waiver of any provision of this Contract shall be of any force, effect, or value unless signed in writing by the Director.

14.16 Severability. In the event any provision of this Contract shall be held invalid or unenforceable under applicable Idaho law, the validity, legality, or enforceability of the remaining provisions, and the application thereof, shall not in any way be affected or impaired. In such event, the remaining provisions of this Contract shall be interpreted as closely as possible to provisions held invalid or unenforceable.

14.17 Headings. Headings in this Contract are for convenience and reference only and shall not be used to interpret or construe any term of this Contract.

14.18 Counterparts. This Contract may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

[The remainder of this page is intentionally left blank.]

In Witness Whereof, the Parties hereto have caused this Contract to be duly executed on the day and year written below.

STATE OF IDAHO, IDAHO PARK AND RECREATION BOARD by and through the IDAHO DEPARTMENT OF PARKS AND RECREATION

Date: _____
SUSAN E. BUXTON, Director

STATE OF IDAHO)
)ss.
County of Ada)

On this _____ day of _____, 2023, before me, a Notary Public in and for said State, personally appeared SUSAN E. BUXTON, known to me to be the Director of the State of Idaho, Department of Parks and Recreation, that executed the within instrument, and acknowledged to me that the Idaho Department of Parks and Recreation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year last above written.

(seal)

Notary Public
Residing at: _____
My Commission Expires: _____

TAMARACK RESORT TWO, LLC, a Florida limited liability company, whose principal address is 8211 West Broward Blvd, Ste 230, Plantation, FL 33324, and whose Idaho mailing address is 311 Village Drive PMB 3000, Tamarack, ID 83615-5014.

TAMARACK RESORT TWO, LLC,
a Florida limited liability company

Date: _____
MARTIN PICO, Manager

STATE OF FLORIDA)
)ss.
County of _____)

On this ____ day of _____, 2023, before me a notary public in and for said State, personally appeared MARTIN PICO, known or identified to me to be the manager of TAMARACK RESORT TWO, LLC, a Florida limited liability company, the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by official seal the day and year first above written.

(seal) _____
Notary Public
Residing at: _____
My Commission Expires: _____

**ATTACHMENT A
Concession Premises
Description and Map**

Sheet Notes:

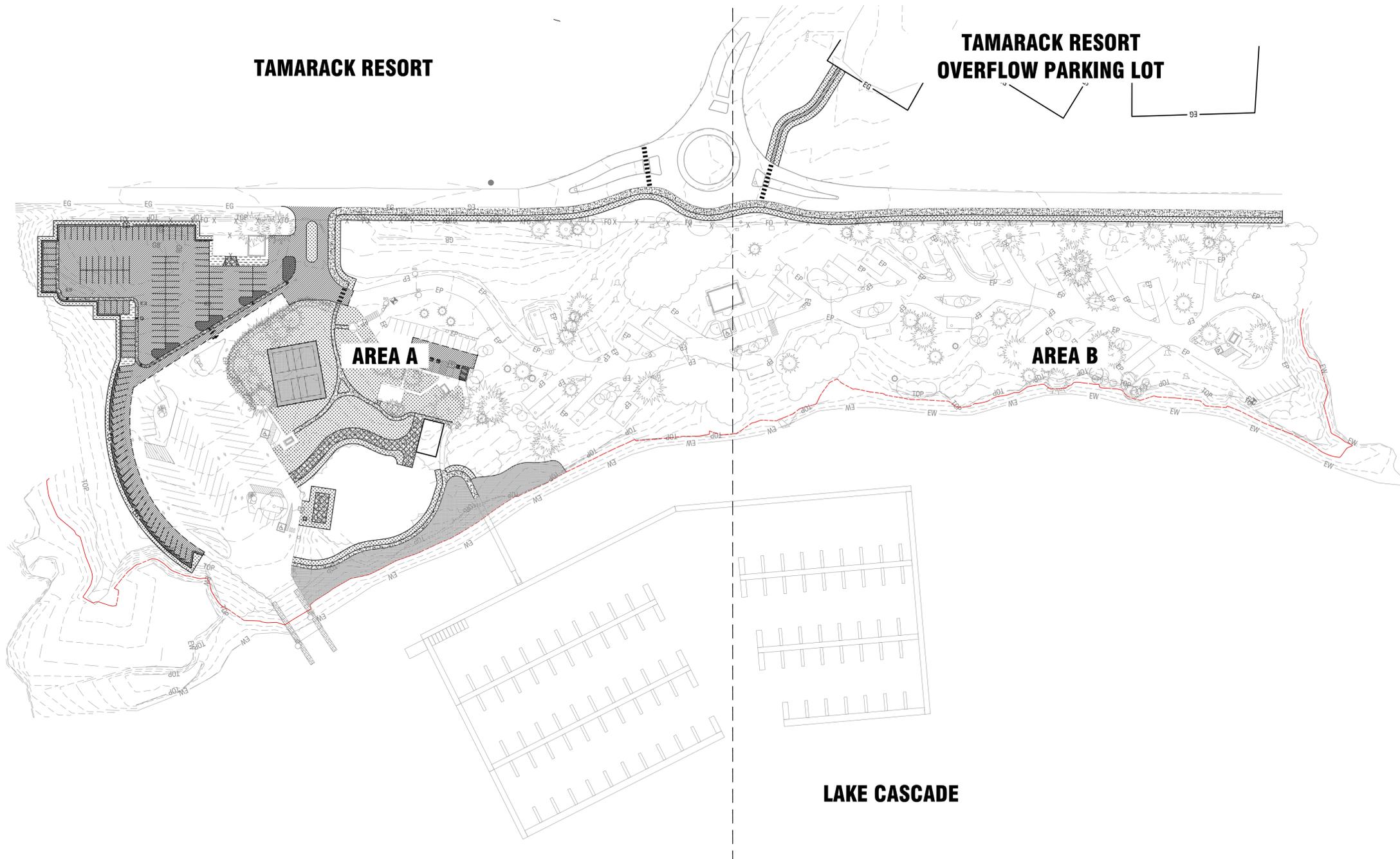
- A. TWO OVERALL SHEETS ARE PROVIDED, THE EXISTING CONDITIONS SHEET, C1.00, AND THE MATERIALS PLAN OVERALL, C2.00. ALL OTHER SHEETS ARE DIVIDED INTO AREA A AND AREA B AS DEPICTED ON THIS SHEET. REFER TO THE OVERALL PLANS FOR AREA ORIENTATION AND THEN THE DRAWING SERIES (X.01 OR X.02, FOR EXAMPLE, FOR MORE SPECIFIC IMPROVEMENTS ACROSS THE PROJECT SITE.)
- B. THE FULL POOL ELEVATION ADJACENT TO PROPOSED IMPROVEMENTS IS IDENTIFIED ON DRAWINGS. THIS FULL POOL ELEVATION OF 4828.0' WAS CONFIRMED BY THE BUREAU OF RECLAMATION'S WATER OPERATIONS TEAM VIA EMAIL ON 08/30/2023. ALL SITE WORK TO BE PERFORMED, WHEN PRACTICAL, FROM THE UPSLOPE SIDE OF THIS FULL POOL ELEVATION.

Legend

--- FULL POOL ELEVATION OF 4828.0' AS IDENTIFIED BY THE BUREAU OF RECLAMATION ON 8/30/2023.

Project Calculations:

EXISTING PARKING	
EXISTING STANDARD PARKING STALLS:	37
EXISTING ADA PARKING STALLS:	3
PROPOSED PARKING	
PROPOSED STANDARD PARKING STALLS (ON-SITE):	151
PROPOSED ADA PARKING STALLS (ON-SITE):	4
RETAINED STANDARD PARKING STALLS (ON-SITE):	31
RETAINED ADA PARKING STALLS (ON-SITE):	3
RETAINED TRAILER PARKING STALLS (ON-SITE):	30
PROPOSED OVERFLOW LOT STANDARD PARKING STALLS (OFF-SITE):	118
TOTAL:	
300 STANDARD PARKING STALLS	
7 ADA PARKING STALLS	
30 TRAILER PARKING STALLS	



POISON CREEK MARINA IMPROVEMENTS
Tamarack Resort

2070 W Mountain Road
Donnelly, ID 83615

Revisions	
1.	



Project No.:	12165
Date of Issuance:	11/01/2023
Project Milestone:	02

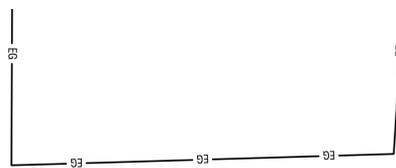
Materials Plan - Overall

C2.00



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TAMARACK RESORT OVERFLOW PARKING LOT



Sheet Notes:

- A. CONTRACTOR SHALL COMPLY WITH THE CONSTRUCTION NOTES ON SHEET C0.00.
- B. CONTRACTOR TO VERIFY LISTED DIMENSIONS PRIOR TO CONSTRUCTION.
- C. ALL DIMENSIONS ARE TO FACE OF CURB, EDGE OF WALK, EDGE OF PAVEMENT, EDGE OF FOUNDATION, EDGE OF WALLS, CENTER OF WHEEL STOP OR CENTER OF POST.
- D. THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS, DISTANCES AND GRADES IN THE FIELD AND BRING ANY DISCREPANCIES TO THE ATTENTION OF THE OWNER'S REPRESENTATIVE FOR A DECISION PRIOR TO COMMENCEMENT OF WORK.
- E. PROVIDE JOINTS AS SHOWN ON PLANS. JOINTS ARE AN INTEGRAL PART OF THE DESIGN AND SHALL NOT VARY FROM PATTERNS AND LOCATIONS SHOWN. CONTRACTOR SHALL REMOVE ANY FLATWORK THAT DOES NOT CONFORM TO THE DESIGN.
- F. ALL WALKS AND FLATWORK SHALL BE ESTABLISHED IN THE FIELD FOR REVIEW AND APPROVAL. THE CONTRACTOR SHALL LAY OUT THE AREA OR FORM WORK FOR REVIEW BY THE OWNER'S REPRESENTATIVE. AFTER REVIEW AND NECESSARY MODIFICATIONS AS DIRECTED BY THE OWNER'S REPRESENTATIVE, THE CONTRACTOR SHALL PROCEED WITH CONSTRUCTION. IF APPROVAL IS NOT OBTAINED, THE CONTRACTOR IS RESPONSIBLE FOR REMOVAL OF ANY UNAUTHORIZED FIELD ADJUSTMENTS.
- G. TRANSITION OF CURVES TO OTHER CURVES AND CURVES TO TANGENTS SHALL BE SMOOTH AND CONTINUOUS.
- H. SIDEWALK CROSS SLOPE CANNOT EXCEED 2%. NO TOLERANCES ALLOWED.

Legend

--- FULL POOL ELEVATION OF 4828.0' AS IDENTIFIED BY THE BUREAU OF RECLAMATION ON 8/30/2023.

Keynotes:

- 1. EXACT ALIGNMENT OF THIS PATHWAY TO BE COORDINATED WITH LANDSCAPE CONTRACTOR TO MINIMIZE REMOVAL OF TREES 4" CALIPER AND GREATER. FIELD ADJUST AS NEEDED.
- 2. PROPOSED BEACH AND PATHWAY ALIGNMENT DIMENSIONS PROVIDED BY A RUNNING BASELINE AT 30-FT INTERVALS PARALLEL TO THE SOUTH EDGE OF THE PROPOSED DOCK. ALL DIMENSIONS DEPICT THE DISTANCE FROM THE FULL POOL ELEVATION (4828.0' LINE) TO THE LAKE-SIDE EDGE OF THE PROPOSED PATHWAY OR EDGE OF THE PROPOSED BEACH.



POISON CREEK MARINA IMPROVEMENTS Tamarack Resort

2070 W Mountain Road
Donnelly, ID 83615

Revisions	
1.	

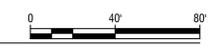


Project No.: 12165
Date of Issuance: 11/01/2023
Project Milestone: C2

Layout Plan - Area B

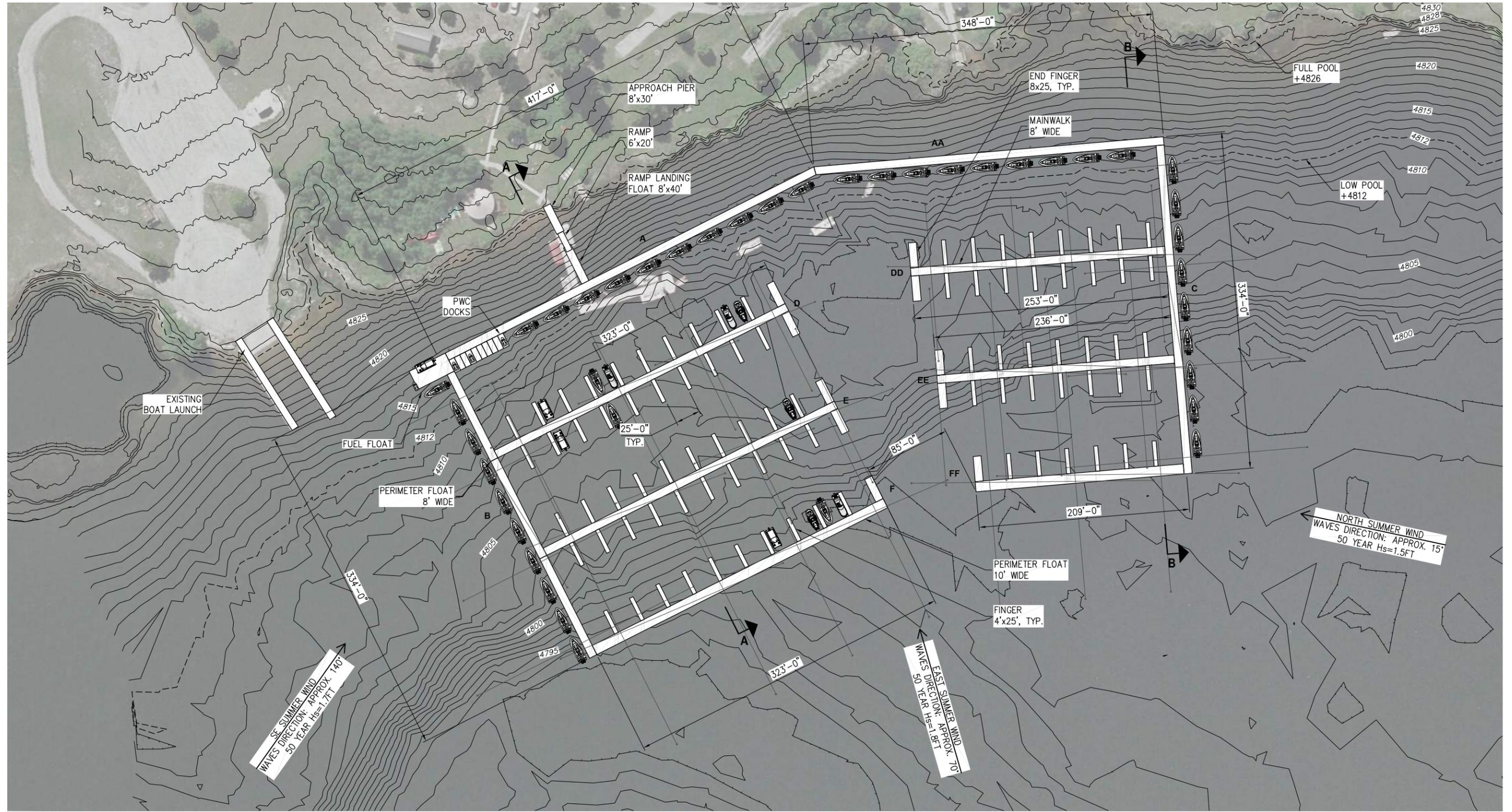
C2.12

Layout Plan - Area B
Horizontal Scale: 1" = 40'



ALL DIMENSIONS ARE TO FACE OF CURB, EDGE OF WALK, EDGE OF PAVEMENT, EDGE OF FOUNDATION, EDGE OF WALLS, CENTER OF WHEEL STOP OR CENTER OF POST.
 THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS, DISTANCES AND GRADES IN THE FIELD AND BRING ANY DISCREPANCIES TO THE ATTENTION OF THE OWNER'S REPRESENTATIVE FOR A DECISION PRIOR TO COMMENCEMENT OF WORK.
 PROVIDE JOINTS AS SHOWN ON PLANS. JOINTS ARE AN INTEGRAL PART OF THE DESIGN AND SHALL NOT VARY FROM PATTERNS AND LOCATIONS SHOWN. CONTRACTOR SHALL REMOVE ANY FLATWORK THAT DOES NOT CONFORM TO THE DESIGN.
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 TRANSITION OF CURVES TO OTHER CURVES AND CURVES TO TANGENTS SHALL BE SMOOTH AND CONTINUOUS.
 SIDEWALK CROSS SLOPE CANNOT EXCEED 2%. NO TOLERANCES ALLOWED.

9/21/23 Drawings 2023\234014 Tamarack Poison Creek Marina\60% Submittal\234014-F1.01.dwg



PHASE 3	
190	25 FT SLIPS
10	PWC FLOATS
PLUS SIDE TIE MOORAGE	

P N D
ENGINEERS, INC.
3240 Eastlake Avenue E.
Seattle, Washington 98102
P: 206.624.1387
www.pndengineers.com

Draft 60% Design
2023-09-25.

PND ENGINEERS, INC. IS NOT RESPONSIBLE FOR SAFETY PROGRAMS, METHODS OR PROCEDURES OF OPERATION, OR THE CONSTRUCTION OF THE DESIGN SHOWN ON THESE DRAWINGS. WHERE SPECIFICATIONS ARE GENERAL OR NOT CALLED OUT, THE SPECIFICATIONS SHALL CONFORM TO STANDARDS OF INDUSTRY. DRAWINGS ARE FOR USE ON THIS PROJECT ONLY AND ARE NOT INTENDED FOR REUSE WITHOUT WRITTEN APPROVAL FROM PND. DRAWINGS ARE ALSO NOT TO BE USED IN ANY MANNER THAT WOULD CONSTITUTE A DETRIMENT DIRECTLY OR INDIRECTLY TO PND.

REVISIONS		
REV	DATE	DESCRIPTION

PROJECT:		TAMARACK POISON CREEK MARINA	
TITLE:		FLOAT SITE PLAN	
DESIGNED BY:	JK	PROJECT NO:	234014
DRAWN BY:	GD	DATE:	SEPTEMBER 2023
CHECKED BY:		SCALE:	NOTED
SHEET NO:			F1.01

ATTACHMENT B
Special Terms and Conditions

A. Required Services and Improvements:

1. Marina facilities of up to 200 slips; up to 12 dock cleats for temporary, day use tie downs; up to 6 anchored moorage buoys for short-term rental; marina pump out station.
 - a) Public swim area(s) designated by signage that meets U.S. Coast Guard, Valley County, and IDPR standards.
 - b) Designated public sand sport and beach area(s).
 - c) Installation of “swim at your own risk” signage describing the area and its potential risks. These signs must include, at a minimum:

“SWIM AT YOUR OWN RISK – NO LIFEGUARD”
“WARNING! WATER DEPTH MAY EXCEED 8 FEET”
“NO GLASS CONTAINERS OR PETS ON BEACH”

All sign letters must be in high color contrast to their background (*e.g.* red letters on white background) and must be clearly visible from all approaches. Lettering must be easily read from fifty (50) feet. This may require more than one set of signs to adequately cover beach and swim areas within the Premises.

- d) Adequate and accessible bathroom facilities for employee and public use.
 - e) Concessionaire employees on-site must be currently certified in CPR and trained in basic first aid.
 2. Food and Non-Alcoholic Beverages with No Glass Containers. The sale of both food and non-alcoholic drinks from the following locations:
 - a) Waterfront bungalow (*i.e.* shoreline structures).
 - b) Existing upland food truck(s).
 - c) With rental vessels, vehicles, or guided activities.
 3. Outdoor Recreation Rentals.
 - a) Summer recreation motorized and non-motorized vessels, watersport lessons, and other equipment, including fishing equipment, other water related recreational items, beach chairs, or shade umbrellas.
 - b) Summer slip and mooring rentals pursuant to an approved rental agreement. At Concessionaire’s discretion, single-day or hourly slip or mooring rentals do not require the vessel owner’s proof of insurance under Contract Section 5.5.

- i. Mooring of Concessionaire's equipment to IDPR docks is prohibited.
 - ii. Mooring balls must meet U.S. Coast Guard standards.
 - iii. The placement of regulatory buoys within the Premises' waterfront area are the responsibility of Concessionaire and are subject to approval by Valley County Sheriff's Office.
 - iv. All Federal, County, and State boating laws must be complied with by Concessionaire, its employees, and all operators of rented vessels.
 - v. Concessionaire must comply with the requirements of Idaho Code § 67-7078, Personal Watercraft Liveries.
 - c) Winter recreation motorized and non-motorized vehicles, and other equipment, including ice-fishing equipment, or snow-related recreational items.
 - i. Concessionaire may use the southwest corner of the Premises parking lot to park motorized and non-motorized rental vehicles.
 - ii. All Federal and State vehicle laws and rules of the road must be complied with by Concessionaire, its employees, and all operators of rented vehicles.
 - iii. All of Concessionaire's winter motorized vehicles utilizing the Premises or accessing the Park or Lake Cascade through the Premises must display a current Idaho State Parks Passport, annual Motor Vehicle Entrance Fee ("MVEF") pass, daily MVEF pass (collectively "valid parking pass(es)") and be correctly registered and insured.
- 4. Retail Sales: Summer and winter retail items, including vessel and vehicle fuel, clothing, water bottles, sundry items, bait and tackle, fishing licenses if as an approved vendor for Idaho Department of Fish and Game, and valid parking passes if as an approved vendor for IDPR.
- 5. Poison Creek Unit Parking Lot and Campground Alterations:
 - a) As stated in Contract Section 6.1(d), Concessionaire's development of the day use parking area servicing the concession services must have at least 1.5 parking stalls per 1 slip based on the maximum number of slips that the marina will contain. Such development will be in addition to the existing 30 boat trailer parking stalls, 37 single vehicle parking stalls, and 3 ADA accessible parking stalls.
 - i. The Park Manager will designate three (3) parking stall in the parking area adjacent to the Poison Creek Unit shelter and

- waterfront area for use by Concessionaire's employees. Concessionaire is responsible for installing and maintaining signs designating the stalls after approval by the Park Manager.
- ii. All customers and additional employees of Concessionaire may park in other available parking stalls. Every such vehicle must properly display a valid parking pass, and are subject to fee collection surcharge under IDAPA 26.01.20.151 if a parking pass is not displayed.
 - iii. Overnight parking is subject to availability and will not be allowed unless the vehicle displays current proof of fee payment for the overnight use of the parking area.
- b) As stated in Contract Section 6.1(d)(iii), Concessionaire must mitigate parking based on applicable statutes, rules, regulations, and local ordinances. Subject to approval by IDPR, which will not be unreasonably withheld, such mitigation may include Concessionaire providing parking on Concessionaire-owned property across West Mountain Road.
- i. Concessionaire and IDPR may modify this Attachment B in accordance with Contract Section 14.14 to determine provisions for such use, including the requirement of a valid parking pass, installation of information kiosks or parking pass kiosks, etc.
- c) As stated in Contract Section 6.3, Concessionaire must replace any loss of recreational areas or opportunities resulting from the development of the marina and related improvements.
- i. IDPR will control and derive the income from the reservation and rentals of both in-kind replacement and additional RV slips.
 - ii. IDPR will maintain authority through IDAPA 26.01.20, consistent with all visitors to the Park.
 - iii. All restrooms, shower houses, and other public facilities constructed by Concessionaire will be accessible to the public.
 - iv. IDPR will assume maintenance and operations of such improvements and facilities upon receipt of inspection and approval by the required building official(s).
 - v. The construction of in-kind facilities must be completed within four (4) years of the Effective Date. If construction of in-kind facilities is not completed within those four years, Concessionaire will pay to IDPR a one-time capital fee of the capital cost for those facilities (to be calculated at then-current market prices) plus any

loss of revenue incurred by IDPR during such timeframe from Concessionaire's removal of the recreational areas (to be determined by comparable reservation proceeds derived by IDPR).

B. Additional Optional Services and Facilities:

1. Concessionaire may provide transportation services to Tamarack Resort homeowners and customers to and from the main resort and the Premises, boat launch, or other Park areas. Any vehicle utilized for such transportation services must properly display a valid parking pass but is exempt from IDPR's Commercial Motor Coach Entrance Fee.
2. Tamarack Resort branding may be allowed on Park facilities, signs, and the Premise with prior written approval by the Park Manager. All advertisements for the concession must be reviewed and approved by the Park Manager prior to their use in any medium including print, internet, and radio or television. No advertisement is permitted to be posted on any informational or restroom bulletin boards, or elsewhere within the Park.
3. The adjacent Poison Creek Unit day use shelter, boat ramp, and campground are not associated with the Premise. Concessionaire's use of the shelter, ramp, campground, and any other Park amenities not addressed in the Contract or this Attachment B, requires prior approval from IDPR in writing, and will be subject to applicable IDPR fees.
4. Other future developed retail or restaurant improvements only with phased pre-approvals in writing by IDPR and BOR.

C. Alcohol Sales: The sale of alcohol on the Premises is permitted from any location listed in this Attach. B, Section A.2.(a), (b) and (d) that also sells food, and is subject to the following requirements and restrictions:

1. Board approval for the sale of beer, wine, or other alcoholic beverages is subject to any conditions imposed by the Board related to that approval. The Board will not be requested to approve the sale of beverages containing more than fourteen percent (14%) alcohol.
2. Concessionaire must have a valid alcohol beverage license issued by the Idaho State Police that allows the handling and sale of alcohol on the Premises, as dictated by the license.
3. Concessionaire and its employees must comply with all state and local laws, rules, and ordinances regarding the handling and sale of alcohol.
4. The sale of any beverage in a glass container is prohibited.

5. Other than discreet signage on the premises, Concessionaire shall not advertise the sale of alcoholic beverages without the prior written approval of the Park Manager.
6. IDPR reserves the right to impose reasonable Park regulations on the sale or consumption of alcohol not in conflict with the rules administered by the Alcohol Beverage Control Division of the Idaho State Police.
7. The sale of alcoholic beverages may be terminated at any time by IDPR if it determines that such sale creates management problems or negatively impacts the Park visitor experience.

D. Utilities:

1. Concessionaire may utilize Park electrical utilities at the waterfront bungalow until metering is complete.
 - a) Concessionaire is responsible to complete the appropriate meter connection from the service panel provided by IDPR. Completing this connection and obtaining the necessary electrical permits is the responsibility of Concessionaire.
 - b) Until the meter connection is completed Concessionaire will pay the Park \$200 each normal season of operation for such electrical use.
2. Concessionaire will be responsible for capital costs and the establishment of all domestic water connections and wastewater disposal connections with North Lake Recreational Sewer and Water District.
3. Concessionaire and IDPR will negotiate mutually acceptable terms and execute a separately binding contract regarding the provision of irrigation water to the Poison Creek Unit of the Park by Tamarack Resort Two, LLC, or any related entity owning or operating any domestic well from which such water would be drawn. An agreement in principle regarding that contract's material terms is a condition precedent to the Board's final approval of this Contract.
4. Concessionaire must appropriately dispose of trash and is responsible for the proper handling and disposal of all garbage and litter generated as a result of any concession services.

E. Additional Concessionaire-Specific Provisions:

1. Concessionaire may provide IDPR seasonal housing units within its existing or future employee housing facilities if such units provide, at a minimum, a secure and locking door, restroom facilities, and adequate utilities for the tenant's quiet enjoyment of the unit. Concessionaire may require a rental contract with each IDPR employee, which will be produced to IDPR upon request.

- a) IDPR and Concessionaire each reserve the right to conduct pre- and post-occupation inspections of the housing units. IDPR will schedule any inspection to occur at a date and time that is also available for an authorized representative of Concessionaire.
 - b) Utilization of each unit may be during the normal summer season of operations, as needed by IDPR.
 - c) The availability and rental rate for each occupied unit will be agreed upon between the Parties by February 1 of each year, will include provided utilities, and will not exceed the rate Concessionaire charges its employees for tenancy.
 - d) The agreed rental rates for each year may be deducted from that year's normal summer season of operation's rent amount due from Concessionaire to IDPR.
 - e) IDPR may require a separate rental agreement from its occupying employees.
2. At the termination of this Contract for any reason, Concessionaire's option for reimbursement for the following improvements and related fixtures constructed or installed on the Premises during the Contract Term will be limited to the following:
- a) The marina, including mooring buoys and regulatory buoys; permanent and semi-permanent buildings.
 - b) The method for valuation at time of termination will be the market value as of the date of termination. Market value is defined in as "the most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms for which the specified improvements should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest and assuming that neither is under undue duress."
 - c) IDPR may with approval of the Board and adequate appropriation, but under no circumstances will be required to, compensate Concessionaire for these listed improvements. Such improvements and facilities must vest in IDPR, be purchased by a new concessionaire (if applicable), or be removed from the Premises by Concessionaire.
3. At the termination of this Contract for any reason, Concessionaire will not be reimbursed for its capital or maintenance costs on the Premises for other

- improvements and related facilities, including parking area improvements; installation of bathrooms, shower houses or other public facilities and related utilities; installation of RV slips and related utility hook-ups; installation of irrigation facilities; fuel improvements; marina pump out station improvements; new or improved pedestrian trails and bridges; landscaping services or materials; sand sport areas; or other use and site amenities.
4. IDPR will under no circumstance be responsible for the costs, maintenance or operations of improvements Concessionaire may make to Concessionaire's real property, even if they add value to the concession services.
 5. Since the concession services are dependent upon a valid lease from IDPR and derive the majority of their value from their location within the Park, the Board does not recognize going-concern, goodwill, blue sky, business values, trade name, or other intangible property in its discretionary purchase of concessionaire-owned property either during or at the end of this Contract.

F. Bonds Require by the Board:

1. *Performance Bond.* Concessionaire must provide and maintain for the length of the Contract a service contract performance bond to be paid to IDPR in the event IDPR terminates the Contract for Concessionaire's failure to provide the required services. The amount of the bond must be \$43,976.24, which is an amount equivalent to one year's expected annual rent payment.
2. *Remediation Bonds.* Because the Contract provides for removal of Concessionaire-constructed improvements upon the termination the Contract, Concessionaire must provide and maintain for the length of the Contract a remediation bond covering the estimated costs of removing all improvements and facilities listed in this Attach. B, Section E.1, and restoring the Premises to the condition existing before the Contract, with such bond to be executed in the in the event Concessionaire does not comply with removal and restoration provisions in the Contract.

G. Additional Conditions Relating to the United State Bureau of Reclamation and the Idaho Code:

1. Hazardous Materials:
 - a) Concessionaire may not allow contamination or pollution of Federal project lands, waters, or project works of Reclamation; and for which

IDPR has the responsibility for care, operation, and maintenance by its employees or agents and Concessionaire; and shall take reasonable precautions to prevent such contamination or pollution by third parties.

- b) Concessionaire shall comply with all applicable Federal, State, and local laws and regulations, and Reclamation policies and instructions, existing or hereafter enacted or promulgated, concerning any hazardous material that will be used, produced, transported, stored, disposed of on or in Federal project lands, waters, or project works of Lake Cascade State Park.
- c) "Hazardous material" means any substance, pollutant, or contaminant listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. ~9601, et seq., and the regulation promulgated pursuant to that Act. In addition, it shall include thermal pollution, refuse, garbage, sewage effluent, industrial waste, petroleum products, mine tailings, mineral salts, misused pesticides, pesticide containers, or any other pollutants.
- d) Upon discovery of any event, which may or does result in contamination or pollution of Federal project lands, water, or project works of Lake Cascade, Concessionaire shall initiate emergency measures to protect health and safety and the environment if necessary and shall report such discovery with full details of the actions taken to IDPR and to Reclamation's Designated Representative. Reporting shall be within a reasonable time period, but not to exceed twenty-four (24) hours of the time of discovery if it is an emergency, and the next working day if it is a non-emergency.
- e) Violation of any of the provisions of this Section, upon which Concessionaire does not take immediate corrective action as determined by IDPR or by Reclamation's Designated Representative, may constitute grounds for termination of the Contract and shall make Concessionaire liable for the cost of full and complete remediation and restoration of any Federal resources or facilities that are adversely affected as a result of the violation.
- f) In the event of any hazardous material spill, Concessionaire, in addition to the above-stated requirements, shall comply with IDAPA 58.01.02.850, which by this reference is incorporated herein as if fully set forth. Concessionaire's duty to comply with IDAPA 58.01.02.850

shall include compliance with any amendments thereto that may occur during the duration of the Contract.

- g) Concessionaire shall not use any pesticides upon the Premises without the prior written approval of IDPR and Reclamation.
2. Upon issuance, Concessionaire will comply with the instructions from Reclamation on its implementation of the Secretary of Interior's June 8, 2022, Secretary's Order No. 3407, *Department-Wide Approach to Reducing Plastic Pollution*. Order No. 3407 prioritizes action to reduce the amount of single-use plastic products, defined as, "plastic items intended to be disposed of immediately after use, including plastic and polystyrene food and beverage containers, bottles, straws, cups, cutlery, and disposable plastic bags."
3. Pursuant to Idaho Code § 67-2359, Concessionaire certifies that it is not currently owned or operated by the government of China and will not for the duration of the Contract be owned or operated by the government of China. The terms of this paragraph defined in Idaho Code § 67-2359 shall have the meaning defined therein.

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