

**AGREEMENT FOR THE
OPERATION and MAINTENANCE OF THE SILOS RECREATION AREA at
CANYON FERRY RESERVOIR
between
BROADWATER COUNTY
and
Canyon Enterprise, Inc.**

THIS AGREEMENT FOR THE OPERATION AND MAINTENANCE OF THE SILOS RECREATION AREA by and between BROADWATER COUNTY, a political subdivision of the State of Montana, and _____, is made this ____ day of _____, 2021.

RECITALS

WHEREAS, the County has entered in an agreement with the United States of America, acting through the Department of the Interior, Bureau of Reclamation (BOR) for the Management, Operation and Maintenance of the Silos Recreation Area at Canyon Ferry Reservoir;

WHEREAS, the real property shown as shown on Exhibit B, attached hereto and incorporated herein, is identified as the Silos Recreation Area;

WHEREAS, the County desires to enter into this Agreement with Manager to manage, operate and maintain the Silos Recreation Area for public recreation and resource uses;

WHEREAS, the County anticipates the negotiation of a new agreement with the United States of America, acting through the Department of the Interior, Bureau of Reclamation for the Management, Operation and Maintenance of the Silos Recreation Area at Canyon Ferry Reservoir, in approximately two years;

NOW, THEREFORE, in consideration of the promises and mutual commitments set forth below the County and Manager agree as follows:

1. **Definitions.** When used in this Agreement, the following terms shall have the following meanings:
 - 1.1 **Agreement** shall mean and include the introductory paragraph, the Recitals and all Articles of this Agreement, and all exhibits and attachments to or incorporated by reference into this Agreement
 - 1.2 **BOR Agreement** shall mean Management Agreement No. R13MA60006 including any amendments, referenced above between the County and the U.S. Department of the Interior, Bureau of Reclamation for the Management, Operation and Maintenance of the Silos Recreation Area at Canyon Ferry Reservoir
 - 1.3 **County** shall mean Broadwater County.
 - 1.4 **Manager** shall mean Canyon Enterprise, Inc.

- 1.5 **Parties** shall mean the County and Manager, collectively.
- 1.6 **SRA** shall mean the Silos Recreation Area at Canyon Ferry Reservoir as depicted in **Exhibit "B"** (attached).
2. **Term.** This Agreement shall commence and be effective on the date of execution and, unless earlier terminated, continue for a period of two (2) years, or until a new or amended BOR Agreement is entered into between the County and the Bureau of Reclamation, whichever is shorter. This Agreement may be extended by mutual written agreement of the County and Manager in the event the BOR Agreement is extended or a new BOR Agreement is entered into by the County.
3. **Manager's Obligations.** Manager shall be responsible for the operation and maintenance of the SRA and shall comply with the following obligations:
- 3.1 Full service operations shall be maintained from May 1st through October 31st, of each year of this Agreement. Manager shall provide onsite staff to clean and maintain facilities, and direct the public use of the SRA to generally accepted standards for campgrounds and marinas. Reduced services shall be maintained from November 1st to April 30th of each year at the SRA on an as needed basis, depending on level of use, however, Manager shall ensure fees are collected during this period and adequate facilities maintained to meet user needs.
- (a) the Manager shall be responsible to direct users, collect fees, provide communication to answer questions, and to operate and maintain the SRA;
- (~~b~~) the Manager, its employees or agents shall not be considered an employee of the County;
- 3.2 Manager shall operate in, and maintain at all times, compliance with the terms and conditions of the BOR Agreement as well as all applicable Local, State, and Federal statutes, laws and regulations, and in the event of a conflict or inconsistency within or between such statutes and regulations, the more stringent requirements shall govern and be applied;
- 3.3 Manager shall facilitate reservations as discussed in Section 4.1, below, and collect and distribute fees as set forth below;
- 3.4 Manager shall perform operation and maintenance functions in accordance with any directives or guidance established by the BOR or the County;
- 3.5 Managers shall prepare and submit, prior to January 5th of each year, to the County for its review and consideration all reports or other documentation as set forth in Exhibit B of the BOR Agreement,

- including an annual operation and maintenance plan for the upcoming recreational season;
- 3.6 Manager shall keep and maintain logs, books, and records of the SRA related to usage, fees, and maintenance activities, and upon request make such available to the County;
- 3.7 Manager shall maintain for its employees and require all its subcontractors or agents to have in place workers compensation insurance.
- 3.8 Manager shall be responsible for liability arising out of, or connected with its activities, operations and use of the SRA. Manager shall also procure and maintain during the entire term of this Agreement:
- (a) public liability insurance, including automobile coverage, to cover its activities under this Agreement. The limits of such insurance shall be at a minimum of two million dollars (\$2,000,000.00). Manager shall have the County and the United States named as an additional insured on such policy, and that the insurer shall have no right of subrogation against the County or the United States;
- (b) shall provide copies of such insurance to the County at the time this Agreement is executed, as well as by January 31st of each year of this Agreement.
- 3.9 Waste Removal, Recycling, and Restrooms. Manager shall provide, at its expense, litter control and trash removal in all areas of the SRA, and maintain the SRA in a safe and aesthetically acceptable condition for public recreation use. Manager shall properly haul and dispose of all waste, discarded or abandoned items, and debris generated by the operation and maintenance activities. Such waste, debris, etc., shall be disposed of or recycled in a properly permitted disposal or recycling facility outside of the SRA boundaries.
- (a) Manager shall provide and arrange, at its expense, to have sufficient trash or garbage containers placed throughout SRA, to be emptied and cleaned regularly to minimize odors and waste buildup.
- (b) Manager shall develop and implement, at its expense, a recycling and waste reduction plan for the SRA in compliance with the BOR Agreement. The waste reduction plan shall be submitted to the County within 30 days of the effective date of this Agreement, and by January 31st of each successive year.
- (c) Manager shall ensure the restrooms/outhouses are kept in good operational condition and will check them daily for operational issues and ensure toilet paper is adequately available in each restroom/outhouse. Manager shall, at its expense, ensure the outhouses are cleaned to a sanitary condition daily or more often as

needed to preserve public health and will contract for waste removal to an approved facility as needed.

(i) The restrooms/outhouses may be closed by the Manager between January 1st, and March 30th of each year. If Manager elects to keep the restrooms/outhouses open during this period, Manager shall maintain them on a weekly basis.

(d) As needed, County agrees to allow solid waste from SRA to be disposed at the County Transfer Station at a per ton rate agreed upon by the Manager and County.

3.10 Maintenance. Manager shall:

(a) maintain the grass within the SRA by mowing and trimming it on a regular basis to maintain the appearance of the recreational area and to reduce fire hazard.

(b) maintain all structures and facilities within the SRA in reasonably good repair;

(c) install and maintain appropriate signage necessary for the orderly operation of the SRA;

(d) Manager shall protect against the introduction and spread of noxious weeds and other pests, including domestic or feral animals detrimental to natural resources, agriculture or public health and safety; control noxious weeds and pests as necessary. Manager shall control weeds, including spraying, in compliance with County and Bureau of Reclamation requirements.

3.11 Repairs

(a) For repairs to non-dock facilities at the SRA, unless specifically assumed by the County, Manager shall be responsible for all repairs not covered by casualty insurance up to and including the amount of \$3,000;

(i) This amount applies to each repair, and is not a cumulative amount by year or term of the Agreement;

3.12 Docks.

Courtesy Dock. Manager shall ensure the Courtesy Docks are utilized in a manner consistent with the County's expectations that the Courtesy Docks are properly maintained, meet all safety and building codes, are adjusted for fluctuating water levels, and are secure; and in compliance with any requirements in the BOR Agreement. Manager shall maintain the dock in good working condition.

(a) Repairs. The Manager shall be responsible for all dock repairs up to and including the amount of \$3,000;

(i) This amount applies to each repair, and is not a cumulative amount by year or term of the Agreement;

(ii) Except as provided for below, once the Manager has expended \$3,000 for a specified repair, the County shall be responsible for any amount of a specific repair not covered by insurance exceeding \$3,000.

1. In calculating when the County's responsibility is triggered, the \$3,000 obligation of Manager is for specific repairs, and is not a cumulative amount expended by Manager.

(iii) If the damage is caused by the gross negligence on the part of the Manager, then the Manager shall be responsible for the entire cost of the repair.

(iv) If the damage is caused by a third party, Manager shall be responsible for pursuing payment from such third party or insurer.

Floating Docks. Manager shall ensure the Floating Docks are utilized in a manner consistent with the County's expectations that the Floating Docks are properly maintained, meet all safety and building codes, are adjusted for fluctuating water levels, and are secure; and in compliance with any requirements in the BOR Agreement. Manager shall maintain the docks in good working condition and shall ensure a minimum of one boat slip is available for use by the County or its designees.

(i) Repairs. The Manager shall be responsible for all dock repairs not covered by insurance up to the amount of \$3,000;

1. This amount applies to each repair, and is not a cumulative amount by year or term of the Agreement.

(ii) Except as provided for below, once the Manager has expended \$3,000 for a specified repair, the County shall be responsible for any amount of a specific dock repair exceeding \$3,000;

1. In calculating when the County's responsibility is triggered, the \$3,000 obligation of Manager is for specific repairs, and is not a cumulative amount expended by Manger.

(iii) If the damage is caused by the gross negligence on the part of the Manager, then the Manager shall be responsible for the entire cost of the repair.

(iv) If the damage is caused by a third party, Manager shall be

responsible for pursuing payment from such third party or an insurer.

3.13 Accidents/Emergencies. Manager shall report to the County, verbally and in a written report, all accidents involving death, serious injury or property damage, hazardous material spills, or other serious incidents within the SRA, and cooperate in the investigation by the County or third parties of such incident. Manager shall further cooperate with the County in reporting any such incident to other appropriate Federal, State, or Local agencies as may be required by federal, state, or local law, rule or regulation.

3.14 Except as specifically agreed to by the County, Manager shall manage and operate the SRA consistent with all the terms and commitments made in its Proposal in Response to the Broadwater County Commission for the Management & Operation of the Silos Recreation Area, dated January 20, 2021, attached as Exhibit E, and hereby incorporated as a material part of this Agreement.

4. **Fees/Reservations.** Manager shall collect fees according to the Schedule of Fees, attached as Exhibit C, from each user or group users of the SRA. Such fees shall be collected during the entirety of the year regardless of whether there is an onsite host. All fee increases must be approved by the County and the Bureau of Reclamation; fee structure must be submitted annually in the Operating and Maintenance Plan.

4.1 Manager shall implement a reservation and fee collection system for those areas that the County determines can be reserved for use. An application, reservation, permitting, and fee collection system shall be developed and maintained by the Manager. If available the Manager may meet this requirement by utilizing the Bureau of Recreation's reservation system, or a comparable system from another private, state or federal agency. Manager shall provide to County and Bureau of Reclamation copies of all fee and fee agreements upon request.

(a) Except as provided below, group usage will be permitted for qualified applicants on a "first come, first served" basis. County and Community sponsored events, (i.e. Canyon Ferry Walleye Festival) will be given priority in the event of scheduling conflicts. Manager shall ensure and verify compliance with the Group Use Rules and Regulations" attached as Exhibit D. Manager shall post copies of such rules and regulations in conspicuous locations within the SRA. Manager shall also ensure that any applicable Bureau of Reclamation special use permit is obtained by the sponsoring entity.

4.2 Manager shall develop and implement a fee collection system that records at a minimum the number of users, group permits issued, and total fees collected. A report of such shall be submitted to the County

on a monthly basis. The fee collection system shall ensure that usage and fee collection is documentable and auditable. Manager shall, unless County determines it is impracticable, implement an optional electronic fee collection system, including the ability to receive onsite fee payments through credit or debit cards.

5. **Consideration.** A 10% fee on gross income from SRA fees and sales shall be paid by Manager to County annually in three installments on July 31, October 31 and February 28. Income for these payments will include income from January 1 to June 30 for the July 31 payment; from July 1 to September 30 for the October 31 payment and from October 1 to December 31 for the February payment. Manager shall submit to the County monthly reports before the 25th of each month between May and October of each year of the Agreement. The information to be reported is the Usage Report on Campsites, Gazebos, Boat Slips, Boat Launches; Revenue Reports; Expenditure Reports, and an Annual Report to accompany final payment in February of each year for the preceding year. Unless expressly stated in this Agreement, Manager shall provide all utilities, services, labor and materials for maintenance, repair and reconditioning of facilities at its own cost and expense.

6. **Boat Launch.** Manager shall operate and maintain the boat launch sites in compliance with the separate agreement related to the boat launch and requiring the use of an electronic kiosk. Manager shall also be responsible for selling annual unlimited boat launch passes and collecting the purchase price set forth in Schedule of Fees contained in Exhibit C.

(a) Annual Boat Launch Passes. Manager shall record information related to the sale of each pass and total fees collected. A report of such information and, as set forth below, fees collected shall be submitted to the County by the 25th of each month. The fee collection system shall ensure that usage and fee collection is documentable and auditable. The fees shall be allocated, as follows, on an annual basis by the County:

(i) Manager shall pay to County 60% of the boat launch fees collected to pay for administrative costs, and ongoing maintenance and repair costs to the following SRA boat launch areas: . Such payment will be made on or before November 30th of each year. If additional fees are collected after that date, they shall be included in the February payment.

(b) Fee collection shall occur at the following boat launch sites:

- (i) Broadwater Bay,
- (ii) Engineers Bay,
- (iii) Sgt. Floyd Bay,
- (iv) Seamans Bay

7. **Law Enforcement/Water Testing.** The Parties understand the Bureau of Reclamation provides or contracts for law enforcement services for the south end of Canyon Ferry Lake, including the SRA. Manager shall perform all required water testing.
8. **Equal Opportunity/Non-Discrimination.** Manager agrees that it will comply with the Equal Opportunity Requirements set forth in Exhibit D to the BOR Agreement, and that Manager and its employees or agents will not discriminate because of race, color, age, religion, sex, or national origin against any person by refusing to furnish such person any accommodation, facility, service, or privilege offered to or enjoyed by the public. Manager or its employees or agents shall not publicize accommodations, facilities, services, or privileges in any manner that would directly or inferentially reflect upon or question the acceptability of the patronage of any person because of race, color, age, religion, sex, or national origin.
9. **Force Majeure.** If any party is prevented in whole or in part from performing its obligations under this Agreement by unforeseeable causes beyond its reasonable control and without its fault or negligence ("Affected Party"), then the Affected Party shall be excused from whatever performance is affected by such force majeure condition, but only to the extent the performance is actually affected and provided that the Affected Party provides written notice to the other parties of the force majeure condition(s) within five (5) calendar days from the onset of such force majeure condition. Failure of the Affected Party to provide timely notice shall constitute a waiver of the force majeure condition and claim by the Affected Party.
10. **Default/Breach.** The Manager shall be deemed to be in default and breach of this Agreement if:
 - 10.1 Manager fails to make any required payments to the County or the County Trust as provided in this Agreement;
 - 10.2 Manager fails to comply with any obligation, duty, or covenant contained in or incorporated into this Agreement.If any default or breach of this Agreement related to payment to the County continues unremedied for a period of 30 days after written notice by the County, or for a period of 10 days for other defaults or breaches, then County may terminate this Agreement
11. **Notices.** Any notice, demand, or request authorized or required by this agreement shall be deemed to have been given, when mailed, postage prepaid, faxed or delivered to:
 - 11.1 County: Board of County Commissioners
Broadwater County Courthouse
515 Broadway

Townsend, Montana 59644

with copies to: Broadwater County Attorney

11.2 Manager: Canyon Enterprise, Inc.
 1380 Wolverine Lane
 Bozeman, MT 59718

The designation of the addressee or the address may be changed by giving notice in the same manner as provided in this article for notices.

12. **Headings.** The section headings in this Agreement are for convenience or reference only and shall not be used to modify, amend, interpret, or construe any provision of this Agreement.
13. **Governing Law; Venue.** This Agreement shall be interpreted and construed in accordance with, and governed by, the laws of the State of Montana. Venue for any action shall be in Broadwater County, Montana.
14. **Assignment Limited.** The provisions of this Agreement shall apply to and bind the successors and assigns of the Parties hereto, but no assignment or transfer of this Agreement or any right or interest therein, shall be valid until approved in writing by each of the Parties.
15. **Amendment.** This Agreement may be amended, modified, supplemented, or superseded only by mutual agreement of the Parties hereto exhibited by a written instrument duly signed by the Parties.
16. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which shall be deemed to constitute one and the same instrument.
17. **Execution Copies.** The Parties may execute duplicate original documents, one of each original shall be provided to each Party hereto.
18. **Indemnification.**
 - 18.1 Manager agrees to assume liability for all liabilities, obligations, losses, damages, or judgments (including without limitation penalties and fines), claims, actions, suits, costs, and expenses (including without limitation attorneys' fees and experts' fees) of any kind and nature whatsoever on account of fire or other peril, bodily injury, death or property damage, or claims for bodily injury, death or property damage of any nature whatsoever, and by whomsoever made, in any way connected with or arising out of the activities of the Manager, its employees, agents or contractors under this Agreement.

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

19. **Termination.** This Agreement may be terminated by either party by giving 90 days written notice to the other party prior to May 1st of each year. The County may immediately terminate this Agreement by providing Manager with such notice in writing if in the opinion of the County such termination is necessary for an unremedied default or breach of this Agreement, or to protect the County's compliance with the BOR Agreement, the SRA, or prevent or respond to an emergency situation related to the services being provided by the Manager.

Upon termination of this Agreement, all rights of the Manager contained in this Agreement shall cease, and County shall be entitled to the possession of the premises, and may use such force as may be reasonably required to recover the premises. The provisions of this section shall not be deemed exclusive and the County reserves any and all rights, including to pursue any legal or equitable remedies available under State or Federal law, including those for specific performance and damages.

20. **Attorneys' Fees.** In the event any dispute arising from this Agreement results in litigation, each party shall bear its own attorneys' fees and costs, regardless of outcome.

21. **Payments.** Unless other arrangements are made any payments made by the Manager to the County will be submitted to the address contained in Section 11.1.

IN WITNESS WHEREOF, the Parties execute this Agreement on the date written above.

Broadwater County

Canyon Enterprise, Inc.

Printed Name: _____
Title: _____

Printed Name: _____
Title: _____

EXHIBIT A
(BOR/County Agreement)

Current March 11,2013 Bureau of Reclamation Contract No. R13MA60006 provided as
separate Exhibit A attachment.

EXHIBIT B
(SRA Legal Description/Map)

Legal Description: Real Property Shown on in SW ¼, Sec 26, and NW ¼, T. 8N., R 1E.
MPM

**Exhibit C
Schedule of Fees**

Daily per User Fee: \$12.00 - per day single occupancy (two vehicles with one camping unit/RV)

\$24.00 - per day double occupancy (three vehicles with two camping units/RVs)

Daily per Group Fee and Gazebo Rental (Day Use):

Group Size:	Day Use Only (Noon until 10:00 p.m.)
Under 30 individuals	\$25.00
30 to 50 individuals	\$50.00
51 to 100 individuals	\$75.00
Over 100 individuals	\$100.00

Group Fees, Overnight Use:

\$25.00 per group, plus an additional \$10 per RV unit per night.

Overnight use in a Group Use Area is until 11:00 a.m. the last day of the stay. Failure to depart by 11:00 a.m. on the last day shall subject the user to additional Day Use fee based on the number of people in the group.

Amenity Fees for Electricity or Water Hookup:

Those utilizing electricity at SRA shall pay an additional fee per vehicle, camper, boat slip or recreational vehicle per day to be determined by the County.

Amenity Fee: \$5.00 Electricity

Amenity Fee: \$5.00 Water

Boat Launch:

Daily: \$5.00 per day

Annual Launch Fee: \$50.00 (unlimited launches for that year)

Boat slip Rental-

Daily- \$15.00 per day for 20' slip, \$20.00 day for 25' slip

Monthly- \$300 per month for 20' slip, \$420.00 per month for 25' slip

Season- \$675.00 - \$1200.00 (depending on number of days over 89 days)

Exhibit D
Broadwater County Group Use Rules and Regulations for the Silos
Recreation Area

The following activities in the recreation area are prohibited. Failure to comply with these rules may result in you being asked to leave.

1. Discharge of firearms, explosives, or fireworks. Includes: air guns, bow & arrows, and spud guns. Excludes: bow fishing within reservoir water line.
2. Willful injury to, defacement or destruction of public buildings, structures, signs, equipment or other property.
3. Willful injury to, destruction or removal of trees, shrubs, flowers, vegetation, soils, gravel, cultural artifacts, or rocks.
4. Littering the grounds, putting trash or dumping holding tanks into latrine vaults. A dumping station is available at Townsend Canyon Ferry Lake KOA.
5. Use of loud, profane or abusive language or playing loud music.
6. Operation or parking of any vehicle on or in areas other than established roadways and designated parking areas.
7. Discharge of waste waters from toilets, baths, showers or sinks onto the ground.
8. Building a fire outside of a fire ring when a fire ring is provided.
9. Allowing pets to roam free. Pets must be physically constrained by a leash or structure. It is your responsibility to clean up after your own pet.
10. Operation of any motorized land vehicle at a speed in excess of 15 m.p.h.
11. Failure to obey quiet hours from 10:00 PM to 8:00 AM.

Exhibit E
**Canyon Enterprise, Inc.'s Proposal in Response to the Broadwater
County Commission for the Management and Operations of the Silos
Recreation Area, dated January 20, 2021**