

**COMMONWEALTH OF KENTUCKY
FINANCE AND ADMINISTRATION CABINET
DIVISION OF REAL PROPERTIES**

INVITATION FOR BIDS

**FOR LICENSE
Operation of Halloween Attraction
at
Otter Creek Outdoor Recreation Area (OCORA),
Administered by the Department of Fish and Wildlife Resources
Meade County, Kentucky**

**INVITATION NO: 05122022
BID OPENS: Thursday, May 12, 2022 @ 3:00 p.m. EST**

INSTRUCTIONS TO BIDDERS

(1) Bid must be submitted on the "Form of Proposal" included within and made part of this invitation, appropriately signed and received at the Division of Real Properties, State Properties Branch, Bush Building, 3rd Floor, 403 Wapping Street, Frankfort, Kentucky 40601-2607, no later than the specified "bid opening" date and time.

(2) The Commonwealth of Kentucky reserves the unqualified right to reject any or all bids.

(3) For further information or to obtain a hard copy of the bid package, contact Wendell Harris, Division of Real Properties, Bush Building, 3rd Floor, 403 Wapping Street, Frankfort, KY 40601-

(4) Anyone interested in the results of this bid opening may participate in a conference call at the time listed by dialing 502-782-2663 and entering the participation code 42014.

GENERAL TERMS AND CONDITIONS
INVITATION TO BID
HALLOWEEN ATTRACTION

Section I
SCOPE OF LICENSE

The Commonwealth of Kentucky ("Commonwealth"), Tourism, Arts, and Heritage Cabinet, Department of Fish and Wildlife Resources (KDFWR), is currently seeking bids for operation of a "Halloween Attraction" located at the Otter Creek Outdoor Recreation Area, Brandenburg, Kentucky ("Otter Creek"). To that end, the Commonwealth solicits proposals from private, third-party, entities who wish to accept responsibility for the license, management, operation, and maintenance of a Halloween Attraction for the Fall/Winter 2022) and to operate, maintain, manage, and furnish a first-class, high-quality Halloween Attraction (the "Attraction").

Based on detailed requirements, terms and conditions set forth in this bid package, the Commonwealth solicits proposals from prospective Bidders, who can demonstrate the necessary capability to maintain, operate, furnish, and manage the Attraction at optimum potential for a one-year license term. In consideration of the benefits derived from this Attraction, and revenues derived, the Commonwealth is willing to License to the Successful Bidder the necessary property (described herein under Exhibit B) for an initial License period of one (1) year, beginning the date the License Agreement is signed by the Secretary of Finance or upon approval of successful bid by Secretary of Finance and date of issuance of a right-of-entry to the Successful Bidder, and ending one year thereafter. For the sake of convenience, the License Agreement will be established for a one-year period, with options; although, the successful Bidder shall only occupy and use the premises for an approximate three-month period, from (potentially) September 1, 2022, through November 30, 2022. At the sole discretion of the Commonwealth and when consistent with the best interests of the Commonwealth, the Commonwealth may renew the License Agreement for an additional period not to exceed five (5) years. Terms and conditions, including rent payable to the Commonwealth, may be renegotiated to meet requirements for the renewal period based on prevailing conditions at that time.

Section II
BACKGROUND

Otter Creek Outdoor Recreation Area (OCORA) is a 2,155-acre facility operated by the Kentucky Department of Fish and Wildlife Resources (see Exhibit A). Since the 1940's, this area was operated by Louisville Metro Government as Otter Creek Park. The Park was officially closed by Louisville in January 2007; however, deed restrictions established by US Department of Interior require the area to be continually operated for public recreation purposes. As such, in 2010, a Memorandum of Agreement with ultimate ownership was established, and renewed in 2011, between KDFWR and Louisville Metro to operate OCORA (see Exhibit F).

Otter Creek Outdoor Recreation Area is located at 850 Otter Creek Park Road, Brandenburg, Kentucky 40108. This Recreation Area is located in Meade County, Kentucky approximately 20 miles from Louisville, Kentucky. It is strategically located near two major interstate highways, I-64 and I-65, and the highest population center in Kentucky. Equally important, it is adjacent to the Fort Knox Military Installation, now home for the Army's Human Resource Center. Collectively 40,000 soldiers, family, and civilians are associated with this Center.

KDFWR is managing OCORA to accommodate multi-outdoor recreational opportunities, which will include fishing, picnicking, archery and firearm ranges, as well as approximately 24 total miles of existing trails for hikers, horseback riders, and mountain bike riders. Hunting opportunities will also be offered that are compatible with other existing uses. The Otter Creek Outdoor Recreation Area is subject to Entry Fees and/or Special Activity fees for such outdoor recreational opportunities. The Halloween Attraction clientele will not be subject to these fees. The Otter Creek Outdoor Recreation Area, subject to Meade County Ordinances, does not allow the sale of alcohol on the premises.

Section II SITE VISIT

To assist in proposal process, a site meeting ***may*** be scheduled by this office at least one week prior to the deadline for submissions, and no later than May 5, 2022. Representatives from the Department of Fish and Wildlife Resources and the Department for Facilities and Support Services will be in attendance to answer questions from prospective Bidders.

Although a question and answer session will occur if/when this meeting is scheduled, participants should understand that the final, official answer or position of the Commonwealth on any material points will be stated in writing and distributed to all Bidders by addendum subsequent to the meeting. Bidders are encouraged to submit written questions prior to the meeting. All inquiries should be directed to the Division of Real Properties, Third Floor Bush Building, 403 Wapping Street, Frankfort, Kentucky, 40601 or to Wendell.harris@ky.gov.

Section IV BID PACKAGE ADDENDA

This bid package be supplemented or amended at any time by appropriate addenda which will be mailed to all known bid package holders and will be posted to the eProcurement website. Addenda may also be necessary after the receipt date and will be sent to all Bidders who have submitted a proposal. It shall be the Bidder's responsibility to verify all addenda prior to submittal of response by viewing at <https://eProcurement.ky.gov>

Section V
BIDDER RESPONSIBLE FOR PROPOSAL SUBMITTAL

All proposals submitted shall be deemed to have been made with the full knowledge of all of the terms, conditions, provisions, specifications and requirements contained in this bid package and any addenda thereto.

Each Bidder has the responsibility of delivering his/her proposal by the time and at the place prescribed in this bid package. Proposals received prior to the closing for receipt of proposals will remain unopened until the time scheduled for opening proposals. Any proposal, received after the date and time specified in this bid package, may be rejected and returned unopened to the Bidder.

The Commonwealth shall not have any liability to a Bidder due to the failure of such proposal to be properly addressed or marked, or the premature opening of such a proposal due to the improper address. Neither the proposals nor their contents will be made available for public information or inspection until a determination of a Successful Bidder has been made and award is final.

Vendors are cautioned that the Restriction on Communications applies to any Commonwealth employee except as listed below.

Section VI
INQUIRIES – RESTRICTION ON COMMUNICATION

The Commonwealth Buyer named below shall be the **sole point of contact** throughout the procurement process. All communications, oral and written (regular, express, or electronic mail, or fax), concerning this procurement shall be addressed to:

Wendell Harris
502-564-9831
Fax – 502-564-8108
E-mail – Wendell.harris@ky.gov

From the issue date of this bid package until a Bidder is selected and the selection is announced, Bidders are not allowed to communicate with any Commonwealth Staff concerning this bid package except:

- The Commonwealth Buyer (Wendell Harris) cited in this bid package
- Commonwealth representatives during a scheduled Bidders' Conference; or
- Via written questions submitted to the Commonwealth Buyer (Wendell Harris)

For violation of this provision, the Commonwealth shall reserve the right to reject their proposal response.

All inquiries must be submitted no later than ten (10) days prior to receipt of proposals to allow sufficient time for written responses to be routed.

Bidders are cautioned that the Restriction on Communications applies to Commonwealth employees except as listed above.

Section VII

NO PRIOR COMMITMENT OR OBLIGATION OF THE COMMONWEALTH

The issuance of this bid package in no way constitutes an expressed or implied commitment by the Commonwealth to award a License or to pay for the costs incurred in the preparation of a response to this bid package.

The Commonwealth unconditionally reserves the right to withdraw or cancel this bid package and to reject any and all offers at any time and for any reason without recourse. Commonwealth confers no rights upon the Bidder nor obligates the Commonwealth in any manner.

No License resulting from this bid package can be deemed valid and/or binding until properly approved and executed by the Secretary of the Finance and Administration Cabinet.

The Commonwealth may waive minor irregularities or technicalities; however, such waiver shall in no way operate to modify the bid package requirements or provisions if the Bidder is awarded the License.

Section VIII

ISSUING OFFICE

This bid package is being issued by the Division of Real Properties, Finance and Administration Cabinet, on behalf of the Department of Fish and Wildlife Resources. The only authority empowered to sign or obligate the Commonwealth is the Secretary, Finance and Administration Cabinet. Receipt of proposal materials by the Commonwealth or submission of a proposal to the Commonwealth confers no rights upon the Bidder nor obligates the Commonwealth in any manner.

No License resulting from this bid package can be deemed valid and/or binding until properly approved and executed by the Secretary of the Finance and Administration Cabinet.

The Commonwealth may waive minor irregularities or technicalities; however, such waiver shall in no way operate to modify the bid package requirements or provisions if the Bidder is awarded the License.

Section IX
PERFORMANCE

The Otter Creek "Halloween Attraction" is a "Haunted Trail" with props, special effects and actors, which has been offered at Otter Creek Park in prior years, when owned and operated by Louisville Metro Government. All of the equipment and props are to be provided by and at the sole expense of the Successful Bidder. All programming is to be for the public recreational benefit. The premises used for the "Halloween Attraction" is limited to the following areas in OCORA:

The "Special Attraction Trail", stage field, service road, stage and all paved and field parking areas, see Exhibit B. Note: The open field area, located west of the red-lined license boundary, shall only be utilized by the Successful Bidder as overflow parking, when necessary, and shall not be utilized by the Successful Bidder as part of the Halloween Attraction area.

The Successful Bidder will be permitted to set-up as early as **September 1, 2022**. The set-up should begin in the back of OCORA Attraction area and gradually move to the entrance of the OCORA Attraction area. The successful Bidder's set-up will be limited to one and one-half (1-1/2) months. The Department of Fish and Wildlife Resources must review all material associated with the production, prior to set up of the Attraction.

Note: The pond, area around the pond, Nature Center, and 6 10' x 10' cabins are no longer apart of the permitted area for the Halloween Attraction.

Sufficient personnel for security, trash pick-up, ticket sales, parking assistance and the entire operation of the production shall be the responsibility of and provided by and at the sole expense the Successful Bidder. At a minimum, daily trash pick-up and waste receptacle and recycle services must be provided for the duration of the set-up, production and dismantling of the production.

The Successful Bidder shall not be authorized to construct, erect, or place any structure or other facility upon the premises, or to make any alteration to an existing structure or facility, without the prior written approval of the Department of Fish and Wildlife Resources and the Department of Facilities and Support Services. Requests for same shall be made in writing to the Department of Fish and Wildlife Resources and the Department of Facilities and Support Services.

The Successful Bidder may not remove the structures, improvements, and equipment erected or placed upon the premises without the prior written approval of the Department of Fish and Wildlife Resources. Upon approval from the Department of Fish and Wildlife Resources to remove any structures, improvements, or equipment placed upon the premises, the Successful Bidder must repair any damage to the premises resulting from the removal of the structures, improvements, or equipment.

Such improvements, structures and equipment so placed in or upon or attached to the premises shall remain the property of the Commonwealth, unless such improvements, structures, and equipment can be removed without damage to the Commonwealth's property. Upon the removal of said improvements, structures, and equipment, or any portion thereof, the Bidder shall promptly repair any damage to the licensed premises resulting from the installation or removal of same and return the licensed premises to its original condition, at the Bidder's sole expense. Structures and equipment not removed from the premises at the termination, cancellation or expiration of the resulting license shall become the property of the Commonwealth, which may, at its sole discretion, assess the Bidder the costs of removal or repair incurred by said Commonwealth as a result of the Bidder's failure, howsoever caused, to affect the removal or repair required herein.

Prior to initiating any renovation or alteration or construction to the licensed premises, such renovation or alteration or construction must be approved by the Commonwealth; the Division of Engineering/Finance and Administration Cabinet; and the Department of Housing, Building and Construction/Public Protection and Regulation Cabinet.

Bidder shall comply with all standards set by the State Fire Marshal's Office, and the Kentucky Occupational Safety and Health Standards Board.

Nothing in the this bid package shall in any way be deemed or construed as constituting an order or request by the Commonwealth, expressed or implied, to any contractor, subcontractor, supplier, materialman, or laborer, for the construction of any improvements on, alteration to, or other improvements of the licensed premises; nor as giving the Bidder any right, power or authority to contract for or permit the rendering of any services or furnishing of materials that would give rise to the filing of any mechanic liens against the Commonwealth's property or the Bidder's license hold interest in the licensed premises by reason of work supplied to the Bidder. If a mechanic's or materialman's lien shall be filed against the licensed premises at any time, the Bidder shall immediately notify the Commonwealth in writing of such lien and shall cause the same to be discharged within thirty (30) days after the notice of filing thereof by payment, deposit, bond, or Order of Court of competent jurisdiction or otherwise. If the Bidder, in good faith, disputes the validity or correctness of any lien, then the Bidder shall immediately notify the Commonwealth in writing of such dispute and may refrain from paying or causing the same to be discharged of record, but the Bidder shall diligently proceed to initiate and conduct appropriate proceedings to determine the correctness or validity of such lien. The Bidder shall not be deemed to be in default under resulting agreement while such proceedings are being conducted in good faith by them. However, if the Bidder fails to cause any such lien to be discharged with the period aforesaid or fails to contest the same as provided above, the Bidder shall be deemed to be in default of the resulting agreement, which shall be a basis for termination of said agreement under the "Termination for Default" condition contained herein.

The inability of the Successful Bidder to obtain proper financing, approved in advance by the Commonwealth, by the aforementioned deadlines for commencement of operation shall not constitute a reasonable reason for an extension of time.

The Department of Fish and Wildlife Resources will monitor and inspect on a periodic basis the quality of all services and products offered, to ensure that the image and public perception of this operation is equal to or exceeds that of the Kentucky Department Fish and Wildlife Resources recreational system.

The Successful Bidder shall be responsible for assuring that the Attraction provides services to the best standards prevailing for similar businesses.

All rates and prices charged by the Successful Bidder for goods and services shall be reasonable throughout the entire term of the license and any extension thereof.

The Bidder shall not engage nor permit their employees to engage in any offensive, injurious, or abusive use of the licensed premises. All Halloween attraction services shall be conducted in the highest professional manner that will be a credit to the Commonwealth. Bidder shall always maintain good order and shall keep the licensed premises used by the Bidder in a clean and sanitary condition throughout the entire term of this agreement, whether operating or not.

The Bidder agrees and covenants not to engage in any illicit or unlawful business nor to engage in any illicit social relationships with KDFWR employees, vendors, performing artists, and OCOROA guests or any other entity that would interfere with the business activity contemplated in the resulting agreement or impair the public perception of the good image of the Commonwealth of Kentucky during the term of the resulting license. The Bidder's failure to perform this term or condition shall be deemed to be a material breach of the resulting license agreement.

The Department of Fish and Wildlife Resources shall be responsible for ensuring that such provisions are enforced. Major deviations from these provisions will not be made without the prior written approval of the Division of Real Properties and the Department of Fish and Wildlife Resources. Problems that arise under any aspect of performance should first be resolved between the Bidder and the agency. If such problems and/or disagreements cannot be so resolved, either party in writing should refer them to the Division of Real Properties for settlement.

Section X RECORDS AND REPORTS

The Successful Bidder covenants that, promptly after the close of the Successful Bidder's year of operation (upon conclusion of the Halloween Attraction), it shall, at its own expense, cause an audit to be made of its books and accounts relating to the operation of the

Halloween Attraction. The audit shall be for the just concluded year of operation by an independent firm of certified public accounts of recognized ability and standing, and a copy of the audit shall be submitted to the Department of Fish and Wildlife Resources and the Finance and Administration Cabinet no later than three and one-half months after year's end. Distribution of the audit will be the responsibility of the Department of Fish and Wildlife Resources. The audit firm shall be approved by the Department of Fish and Wildlife Resources.

Section XI DEPOSIT

A deposit equal to \$4,000 (approximately 10% of the total anticipated revenue payment) to the Commonwealth shall be due to the Commonwealth no later than **September 1, 2022**.

Section XII METHOD OF AWARD

The license will be awarded for use of the OCORA premises outlined in Exhibit B attached hereto and made a part hereof, for the operation of a Halloween attraction, on a highest bid amount to that responsible, responsive Bidder(s) whose offer conforming to this Invitation to Bid will be most advantageous to the Commonwealth. The Commonwealth reserves the right to reject any and all bids and to waive technicalities. The Bidder's past performance under lease shall be a consideration and may be a factor in the award of the license.

Section XIII LICENSE PERIOD

Upon acceptance of bid, and in consideration of the benefits derived from this Attraction, and revenues derived, the Commonwealth is willing to License to the Successful Bidder the necessary property (described herein under Exhibit B) for an initial License period of one (1) year, beginning the date the License Agreement is signed by the Secretary of Finance or upon approval of successful bid by Secretary of Finance and date of issuance of a right-of-entry to the Successful Bidder, and ending one year thereafter. For the sake of convenience, the License Agreement will be established for a one-year period, with options; although, the successful Bidder shall only occupy and use the premises for an approximate three-month period, from (potentially) September 1, 2022, through November 30, 2022. At the sole discretion of the Commonwealth and when consistent with the best interests of the Commonwealth, the Commonwealth may renew the License Agreement for an additional period not to exceed five (5) years. Terms and conditions, including rent payable to the Commonwealth, may be renegotiated to meet requirements for the renewal period based on prevailing conditions at that time.

The Commonwealth of Kentucky reserves the right to renegotiate any terms and/or conditions as may be necessary to meet requirements for the extended period. The Bidder shall be advised of any proposed revisions prior to the renewal period. In the event

proposed revisions cannot be agreed upon, either party shall have the right to withdraw from either exercising the option or continuing the license in an extended period.

The Bidder's use of the premises and operation of the Halloween Attraction are subject to, and the Bidder shall comply with, all applicable state and federal statutes and regulations.

The Commonwealth makes no guaranty or warranty, either expressed or implied, with respect to the property upon which the Halloween Attraction is situated.

Section XIV
REVENUE PAYABLE TO THE COMMONWEALTH

Bidder shall annually pay to the Commonwealth ***the greater amount of*** a flat sum of \$45,000 ***or*** twenty-seven percent (27%) of gross receipts from ticket sales. Rental payment to the Commonwealth, in the amount of \$45,000, shall be payable on a weekly basis for the corresponding period indicated as follows this paragraph. A deposit equal to \$4,000 (approximately 10% of the total anticipated revenue payment) to the Commonwealth shall be due to the Commonwealth no later than September 1, 2022.

MINIMUM, ACCEPTABLE, BID IS THE GREATER OF \$45,000 OR 27% OF GROSS RECEIPTS DERIVED FROM THE ATTRACTION. THE \$45,000 SHALL BE DUE AND PAYABLE WEEKLY (according to following schedule). SHOULD THE 27% OF GROSS RECEIPTS AMOUNT BE GREATER THAN \$45,000, THEN THE DIFFERENCE SHALL BE PAID NO LATER THAN NOVEMBER 9, 2022:

<u>September 1:</u>	<u>\$4,000.00 (down payment, ½ of which <i>may be refundable upon F&W's determination that Bidder satisfactorily cleaned up/restored premises</i>*)</u>
<u>October 5:</u>	\$10,000.00
<u>October 12:</u>	\$10,000.00
<u>October 19:</u>	\$10,000.00
<u>October 26:</u>	\$13,000.00
<u>Total:</u>	\$45,000.00 Guaranteed Minimum (less \$2,000.00 * for Security/Cleanup to be returned to successful Bidder, upon satisfactorily cleaning up/restoring premises to same condition as prior to Attraction)
<u>November 9:</u>	\$ TBD - Should 27% of gross receipts amount be greater than \$45,000, then the difference of these two amounts is due and payable November 4

The first of the above described revenue payments, based on a percentage of gross

receipts, shall be due to the Commonwealth no later than September 1, 2022.

Section XV
CANCELLATION OF LICENSE

The Commonwealth reserves the right to cancel the license for convenience when requirements under the license no longer exist, or changes in general conditions render the license as not responsive to the needs of the Commonwealth. A written notice will be given to the Bidder(s) at least thirty (30) days prior to such proposed termination date. Upon the termination date specified in the written notice, all privileges of Bidder shall cease, and Bidder shall no longer be permitted to use OCORA structures or premises and shall remove any personal property of Bidder from premises by the cancellation date.

Upon cancellation of the resulting license, the Bidder shall restore the OCORA premises and structures used in Bidder's operation in as good a condition as of the date the license was entered into by the parties. Reasonable wear and tear and damage by the elements is expected.

Section XVI
UTILITIES

There is an electrical service to the proposed licensed site at OCORA, and the meter is in DFWR's name. If the Licensee's operation of the Attraction requires electrical service, then the Licensee shall utilize this meter, and DFWR shall charge the Licensee for the electrical use.

Garbage and trash collection for the premises, including but not limited to areas immediately surrounding the outside of the office/ticket sales area and any ancillary supporting facilities, shall be the responsibility of the Bidder. The Bidder shall store all trash, refuse and garbage in leak proof garbage containers, which the Bidder shall install and keep in repair at the Bidder's sole expense. At a minimum, daily trash pick-up and waste receptacle and recycle services must be provided for the duration of the set-up, production and dismantling of the production. Sufficient personnel for trash pick-up for the entire operation of the production shall be the responsibility of and provided by and at the sole expense the Successful Bidder.

Section XVII
HOLD HARMLESS

The Successful Bidder shall indemnify and hold harmless the Commonwealth from any and all claims, demands, damages, actions, costs, including attorney fees, and charges which the Commonwealth or the Bidder may have to pay by reason of injury to any person or property or loss of life or property resulting from or in any way connected with the character,

condition or use of the licensed premises or any means of ingress thereto, or egress therefrom, or resulting from the Bidder's operations on the licensed premises, unless such injury or loss arises directly from the negligence of the Commonwealth, any of their departments or agencies, or officers or employees while acting within the scope of their employment.

The Successful Bidder shall, at its own expense, assume defense of such claims and actions for damages arising out of such injuries or losses which may be brought against the Commonwealth by third persons; and shall pay such judgments that may be rendered in such actions, unless such claims or actions for damages and/or judgments arise directly from the negligence of the Commonwealth, any of its departments or agencies, or any of its officers, agents or employees while acting within the scope of their employment.

Section XVIII INSURANCE

Liability Insurance.

The Successful Bidder will be required to obtain, from a reputable insurance company authorized to do business in the Commonwealth, and carry liability of indemnity insurance providing as a minimum:

COMMERCIAL GENERAL LIABILITY, via the Occurrence Form, with a \$1,000,000 Combined Single Limit for any one Occurrence for Bodily Injury, Personal Injury and Property Damage, \$2,000,000 aggregate including:

1. Premises – Operations Coverage
2. Products and Completed Operations
3. Contractual Liability
4. Broad Form Property Damage
5. Independent Contractors Protective Liability
6. Personal Injury

Said insurance shall name the Commonwealth as an additional insured and shall also provide that said policy shall not be subject to cancellation, termination or change without at least thirty (30) days prior written notice to the Commonwealth. Successful Bidder must furnish a copy of its insurance policy to the Department of Fish and Wildlife Resources prior to commencement of operations, and on an annual basis thereafter for the full term of the sublease and any renewals thereof.

After award of the license, the minimum liability amounts of required coverage established under this Section shall be subject to modification by the Commonwealth upon sixty (60) days written notice to the Successful Bidder.

Casualty Insurance

During the term of the license agreement, and any extension thereof, the Successful Bidder shall maintain, at the Successful Bidder's sole expense, fire, and extended coverage insurance, including theft and vandalism, covering the proposed development in an amount equal to its full replacement cost value. Successful Bidder shall also carry and maintain during the term of the license, at Successful Bidder's sole cost and expense, fire and extended coverage insuring all contents and inventories in the premises to the extent of their full insurable value. Certificates of such policies shall be delivered to the Commonwealth within ten (10) days of the beginning of operations at the facilities, and thereafter within thirty (30) days prior to the expiration of the term of each policy, together with evidence of payment thereof by the Successful Bidder. Renewal or additional policies shall be obtained and maintained by the Successful Bidder in like manner and to like extent. All policies of insurance must contain a provision that the company writing the policy will give the Commonwealth thirty (30) days advance written notice of any cancellation or lapse of the effective date or any reduction in the amounts of insurance.

Section XIX RECORDS INSPECTION

The Bidder, the contractor, as defined by KRS 45A.030(10), agrees that the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to the resulting license for the purpose of financial audit or program review. Furthermore, any books, documents, papers, records, or other evidence provided to the Finance and Administration Cabinet, the Auditor of Public Accounts, or the Legislative Research Commission, which are directly pertinent to the resulting license shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 61.878(1)(c) prior or subsequent to the execution of the license. The Secretary of the Finance and Administration Cabinet shall not restrict the public release of any information that would otherwise be subject to public release if a state government agency were providing the service.

Section XX TERMINATION FOR DEFAULT

If at any time during the period in which the resulting License Agreement is in effect, the Bidder defaults on any obligation incurred hereunder, then the Agreement shall be subject to termination by the Commonwealth with no right of recourse remaining in the Bidder. All rights and benefits herein conferred shall be deemed forfeited, and the Bidder covenants that it shall quietly surrender possession of the licensed premises to the Commonwealth, provided however, that before any termination shall occur under this Paragraph, the Bidder shall be given written notice and be allowed thirty (30) days from the date of receipt of such

notice in which to cure such or noncompliance. If said default or noncompliance is cured within the above time period, then the License Agreement shall remain in full force and effect.

The procedure for termination of the License Agreement under this Paragraph shall be as follows:

- The Commonwealth shall deliver, by certified mail, to the Bidder, a “Notice of Termination” which shall specify (i) the reason(s) for termination of the License Agreement; (ii) the extent to which performance under this License Agreement is to be terminated; and (iii) the date upon which termination shall become effective.
- The Bidder shall stop performance under the License Agreement on the date indicated and to the extent specified in said “Notice of Termination”, unless the default or noncompliance is cured within the time period stated in the notice.
- The rights and remedies of the Commonwealth provided in the Paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

Section XXI TAXES

The Bidder shall pay all taxes which may be lawfully imposed by the Commonwealth and its political subdivisions and shall secure and pay for all permits and licenses which may be required by the Commonwealth or a political subdivision.

Section XXII MAINTENANCE OF DEVELOPMENT

During the original license term or any renewal thereof, the Successful Bidder shall keep any and all equipment and personal property in good repair, and not suffer or permit any waste to be committed or anything to be done on the licensed premises that would constitute a nuisance.

Section XXIII REMOVAL OF PERSONAL PROPERTY UPON EXPIRATION OR TERMINATION FOR DEFAULT

All of the Successful Bidder’s equipment (excluding fixtures), supplies, and materials shall be removed from the licensed premises, at successful Bidder’s sole expense, fifteen (15) days after the last day of the Halloween Attraction. Failure to remove personal property from the Licensed Premises shall also be deemed a lack of compliance with “satisfactory” clean-up/restoration, as described on Pages 10 and shall result in forfeiture to the Commonwealth of the \$2,000 security deposit.

Section XXIV
EMPLOYMENT PRACTICES

The Successful Bidder shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age (except as provided by law), marital status, political affiliation, or disability. The Successful Bidder must take affirmative action to ensure that employees, as well as applicants for employment, are treated without discrimination because of their race, color, religion, status, political affiliation, or disability. Such action shall include, but is not limited to, 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. Successful Bidder agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this clause.

The Successful Bidder shall, in all solicitations or advertisements for employees placed by or on behalf of the Successful Bidder, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, and the implementing rules and regulations prescribed by the Secretary of Labor and with Title 41, Code of Federal Regulations, Chapter 60. The Successful Bidder shall comply with related Commonwealth laws and regulations.

The Successful Bidder shall comply with regulations issued by the Secretary of Labor of United States in Title 20, Code of Federal Regulations, Part 741, pursuant to the provisions of Executive Order 11785 and the Federal Rehabilitation Act of 1973. The Successful Bidder shall comply with the Civil Rights Acts of 1964 and any amendments thereto, and the rules and regulations thereunder, and Section 504 of Title V of the Vocational Rehabilitation Act of 1973 as amended and the Kentucky Civil Rights Act.

Section XXV
PERMITS AND LICENSES

The Successful Bidder shall procure all necessary permits, licenses, and certificates which are required by state and local laws, and abide by all applicable laws, regulations, and ordinances of all federal, state, and local governments.

The Successful Bidder shall conform to operational standards of the Otter Creek Outdoor Recreation Area (see attached Exhibit 'E') and to all bona fide rules, procedures pertaining to same, as may be promulgated by the Department of Fish and Wildlife Resource, as well as the prime Lease Agreement and MOA and restrictions in the deed by which LMG acquired the property.

Section XXVI
RIGHT OF ENTRY

The right is hereby reserved to the Commonwealth, its officers, agents, and employees, to enter upon the Attraction premises at reasonable times to inspect the premises, operation and equipment, or for any purposes in connection with work necessary to the benefit of the Commonwealth.

Section XXVII
ASSIGNMENT

The Bidder shall not voluntarily, involuntarily or by operation of law assign, sublet, or otherwise transfer the License Agreement or any interest created therein, to any other person, association, partnership, corporation, or other entity without first obtaining in each and every instance the Commonwealth's prior written consent. Any attempt to assign, sublet, or otherwise transfer the License Agreement, or any interest created therein, without such consent shall be void. If an assignment, sublet, or transfer is made with the consent of the Commonwealth, then the Bidder shall not be relieved from the performance of all terms, covenants, and conditions of the License Agreement. If the Commonwealth to any such assignment, subletting, or transfer once gives consent, such consent shall not operate as a waiver of the necessity for obtaining the Commonwealth's consent to any subsequent assignment, subletting, or transfer. No assignment will be effective or binding against the Commonwealth until such time as the assignee executes an amendment, signed by all parties, reflecting such assignment.

Section XXVIII
INDEPENDENT CONTRACTOR STATUS

The Bidder shall be held to be an independent contractor and all persons employed by him/her in the exercise of the privileges granted therein shall be employees, agents and servants of Bidder only and not the OCORA.

Section XXIX
MODIFICATIONS/CHANGES

No modification or change of any provision in this bid shall be made, or construed to have been made, except with the prior written agreement of both parties through an amendment to the License Agreement executed by all parties. Memoranda of Understanding and correspondence shall not be construed as amendments to the license.

If any provision of the license is declared or found to be illegal, unenforceable, or void, then both the OCORA and the Bidder shall be relieved of all obligations arising under such provision. If the remainder of the license is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.

Section XXX
ATTORNEY'S FEES

In the event that either party deems it necessary to take legal action to enforce any provision of the sublease, and in the event the Commonwealth prevails, the Bidder agrees to pay all expenses of such action, including attorney's fees and costs at all states of litigation as set by the court or hearing officer. County of venue shall be Franklin.

Section XXXI
OFFER OF GRATUITIES

By submission of proposal, the Bidder certifies that no member of or delegate of Congress, nor any elected or appointed official or employee of the Commonwealth of Kentucky has or will benefit financially or materially from this procurement. Any sublease arising from this procurement may be terminated by the Commonwealth if it is determined that gratuities of any kind were either offered to or received by any of the aforementioned officials or employees from the Bidder, his agents, or employees.

Section XXXII
ENTIRE AGREEMENT

This bid package represents the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral, between the parties hereto relating to the subject matter hereof and shall be independent of and have no effect upon any other agreement.

Section XXXIII
PROTECTION OF USE, PROPERTY, EMPLOYEES AND PUBLIC

The Bidder shall continuously maintain adequate protection of all his/her work from damage and shall protect the Commonwealth's property from injury or loss arising in connection with this sublease. Bidder shall make good any such damage, injury, or loss. Bidder shall adequately protect adjacent property as provided by law and the sublease documents.

The Bidder shall take all necessary precautions for the safety of employees on the work site and shall comply with all applicable provisions of the state's workers' compensation laws and all federal, state and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the work is being performed. The Bidder shall designate a responsible member of his/her organization on the work as safety officer, whose duty shall be to enforce safety regulations. The name and position of the person so designated shall be reported to the architect by the Bidder.

The Bidder shall take all necessary precautions for the safety of employees on the work site and shall comply with all applicable provisions of the state's workers' compensation

laws and all federal, state and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the work is being performed. The Bidder shall designate a responsible member of his/her organization on the work as safety officer, whose duty shall be to enforce safety regulations. The name and position of the person so designated shall be reported to the architect by the Bidder.

Section XXXIV
FORCE MAJEURE

The Bidder will not be liable to the Commonwealth if failure to perform the agreement arises out of causes beyond the control and without the fault or negligence of the Bidder. Such causes may include, but are not restricted to, acts of God, fire, quarantine restriction, strikes and freight embargoes. In all cases, the failure to perform must be beyond the control and without fault or negligence of the Bidder. The Bidder will take all possible steps to recover from such occurrences.

Section XXXV
COMMONWEALTH'S PROPERTY

The Successful Bidder shall be responsible for the proper care and custody of any Commonwealth property furnished for the Successful Bidder's use in connection with the performance of the resulting license agreement. This responsibility includes the repair and/or replacement due to loss, damage, or negligence, normal wear and tear expected.

Section XXXVI
CHANGE OF VENUE

The laws of the Commonwealth of Kentucky shall govern this bid and the resulting License Agreement. Any legal proceeding against the Commonwealth or the departments regarding this agreement or any resultant agreement shall be brought in Commonwealth of Kentucky administrative or judicial forms. Venue will be in Franklin County, Commonwealth of Kentucky.

In the event that either party deems it necessary to take legal action to enforce any provision of this Agreement and in the event the Commonwealth prevails, the Bidder agrees to pay all expenses of such action, including attorneys' fees and costs at all states of litigation, as set by the court or hearing officer.

Section XXXVII
ADDITIONAL TERMS/CONDITIONS

Additional items/services, terms and/or conditions that come within the scope of the license agreement and are found to be needed by the department may be added to the license with the mutual consent of the Bidder and department.

FORM OF PROPOSAL (SEALED BID)

TO: Finance and Administration Cabinet
Department for Facilities and Support Services
Division of Real Properties
Bush Building, 3rd Floor
403 Wapping Street
Frankfort, Kentucky 40601-2607

INVITATION NO. 05122022
BID OPENING DATE: Thursday, May 12, 2022
BID OPENING TIME: 3:00 p.m. EST

BID FORM

MINIMUM, ACCEPTABLE, BID IS THE GREATER OF \$45,000 OR 27% OF GROSS RECEIPTS DERIVED FROM THE ATTRACTION. THE \$45,000 SHALL BE DUE AND PAYABLE WEEKLY (according to following schedule). SHOULD THE 27% OF GROSS RECEIPTS AMOUNT BE GREATER THAN \$45,000, THEN THE DIFFERENCE SHALL BE PAID NO LATER THAN NOVEMBER 9, 2022:

<u>September 1:</u>	<u>\$4,000.00</u> (down payment, 1/2 of which <i>may be refundable upon F&W's determination that Bidder satisfactorily cleaned up/restored premises*</i>)
<u>October 5:</u>	\$10,000.00
<u>October 12:</u>	\$10,000.00
<u>October 19:</u>	\$10,000.00
<u>October 26:</u>	\$13,000.00
<u>Total:</u>	\$45,000.00 Guaranteed Minimum (less \$2,000.00 * for Security/Cleanup to be returned to successful Bidder, upon satisfactorily cleaning up/restoring premises to same condition as prior to Attraction)
<u>November 9:</u>	\$TBD - Should 27% of gross receipts amount be greater than \$45,000, then the difference of these two amounts is due and payable November 3

The first of the above-described revenue payments, based on a percentage of gross receipts, shall be due to the Commonwealth no later than September 1, 2022.

Prices quoted in this bid package shall remain firm for the initial period of the resulting license. After this time, prices are subject to revision, which may be either increases or decreases. Said revisions may be requested in writing. The requesting party must furnish documented evidence substantiating the validity of the request. The party to whom the request is presented must notify the requesting party of his decision within 30 days after receipt of the request or satisfactory supporting documentation whichever occur later. In the event the requested revision is refused, the requesting party shall have the right to withdraw from the license, without prejudice. Provided, however, that the Bidder must continue service, at the bid-specified price, until a new license can be established (usually about 60 days).

=====

Subject to the General Terms and Conditions and Authentication Of Bids and Affidavit Of Non-Collusion and Non-Conflict Of Interest, I propose to pay to the Commonwealth of Kentucky the following amount:

I PROPOSED TO PAY THE COMMONWEALTH THE GREATER AMOUNT OF \$ _____ OR ____% OF GROSS RECEIPTS DERIVED FROM THE OPERATION OF THE HALLOWEEN ATTRACTION @ OCORA, PAYABLE ACCORDING TO THE ABOVE SCHEDULE OF PAYMENTS.

BIDDER:

**AUTHENTICATION OF BID AND AFFIDAVIT OF
NON-COLLUSION AND NON-CONFLICT OF INTEREST**

I hereby swear (or affirm) under the penalty for false swearing as provided by KRS 523:040:

1. That I am the Bidder (if the Bidder is an individual), a partner, (if the Bidder is a partnership), or an officer or employee of the bidding corporation having authority to sign on its behalf (if the Bidder is a corporation);
2. That the attached bid or bids covering Kentucky Division of Real Properties **Invitation No. 05122022** have been arrived at by the Bidder independently and have been submitted without collusion with, and without any agreement, understanding, or planned common course of action with any other Bidder of materials, supplies, equipment, or services described in the Invitation To Bid designed to limit independent bidding or competition;
3. That the contents of the bid or bids have not been communicated by the Bidder or its employees or agents to any person not an employee or agent of the Bidder or its surety on any bond furnished with the bid or bids and will not be communicated to any such person prior to the official opening of the bid or bids;
4. That the Bidder is legally entitled to enter into the contracts with the Commonwealth of Kentucky and is not in violation of any prohibited conflict of interest, including those prohibited by the provisions of KRS 45A.330 to .340, 45A.990, 164. 390 or KRS 11A.040 of the Executive Branch Code of Ethics; and,
5. That I have fully informed myself regarding the accuracy of the statements made above.

NOTICE

1. Any agreement or collusion among Bidders or prospective Bidders that restrain, tend to restrain, or is reasonably calculated to restrain competition by agreement to bid at a fixed price, or to refrain from bidding or otherwise, is prohibited.
2. Any person who violates any provisions of KRS 45A.325 shall be guilty of a felony and shall be punished by a fine not less than five thousand dollars (\$5,000.00), nor more than ten thousand dollars (\$10,000.00), nor be imprisoned not less than one (1) year, nor more than five (5) years, or both such fine and imprisonment. Any firm, corporation, or association which violates any of the provisions of KRS 45A.325 shall, upon conviction, be fined not less than ten thousand dollars (\$10,000.00), nor more than twenty thousand dollars (\$20,000.00).
3. Anyone interested in the results of this bid opening may participate in a conference call at the time listed by dialing 502-782-2663 and entering the participation code 42014.

IMPORTANT: MUST SIGN OFFER BELOW

SIGNATURE: _____

SIGNED BY: _____

FIRM: _____

ADDRESS: _____

City _____ State _____ Zip Code _____

AREA CODE: _____ TELEPHONE: _____ Email: _____

DATE: _____

**SWORN STATEMENT REGARDING CAMPAIGN FINANCE LAWS
PURSUANT TO KRS 45A.110 AND KRS 45A.115**

The undersigned hereby swears or affirms, under the penalty prescribed by law for perjury, that neither he/she, individually, nor, to the best of his/her knowledge and belief, the corporation, partnership, or other business entity which he/she represents in connection of the campaign finance laws of the Commonwealth of Kentucky, and that the award of a contract to him/her, individually, or to the corporation, partnership, or other business entity which he/she represents, will not violate any campaign finance laws of the Commonwealth.

BIDDER:

(Signature)

(Title)

(Name of Company)

State of _____)
County of _____) SS

The foregoing statement was sworn to me this _____ day of _____,
20____, by _____.

Notary Public

My Commission expires: _____.

**STATEMENT OF FINAL DETERMINATION
OF VIOLATIONS PURSUANT TO KRS 45A.485**

Pursuant to KRS 45A.485, the Bidder shall reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the Bidder within the previous five (5) year period of the provisions of KRS Chapters 136, 139, 141, 337, 338, 341, and 342.

For the purpose of complying with the provisions of KRS 45A.485, please list any final determination(s) of violation(s) of KRS Chapters 136, 139, 141, 337, 338, 341, and 342, which have been rendered against the Bidder within the five (5) years preceding the award of this contract. Please include the date of the determination and the state agency issuing the determination. (Please use extra sheets if necessary.)

KRS Violation

Date

State Agency

The Bidder is further notified that KRS 45A.485 requires that for the duration of this contract, the Bidder shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341, and 342, which apply to the Bidder's operations. KRS 45A.485 further provides that the Bidder's failure to reveal a final determination of a violation of KRS Chapters 136, 139, 141, 337, 338, 341, and 342, or failure to comply with the above-cited statutes for the duration of the contract, shall be grounds for the Commonwealth's cancellation of the contract, and the Bidder's disqualification from eligibility to bid or submit proposals to the Commonwealth for a period of two (2) years.

Signature

ATTACHMENTS

Exhibit A General Otter Creek Outdoor Recreation Area Map



Otter Creek ORA
map.pdf

Exhibit B Otter Creek Outdoor Recreation Area Map, including footprint of Halloween Attraction.



Halloween Event
Limits Map.pdf

Exhibit C Campaign Finance Affidavit

<http://planroom.ky.gov/ElectronicForms/CampaignFinanceAffidavit.dot>

Exhibit D Minority Business Availability/Unavailability Forms



*MINORITY
BUSINESS FORMS.

Exhibit E Kentucky Administrative Regulations pertaining to Otter Creek
Outdoor Recreation Area

Public Use of OCORA:

<http://www.lrc.ky.gov/kar/301/003/012reg.htm>

Permit Structure at OCORA:

<http://www.lrc.ky.gov/kar/301/003/022reg.htm>

Deer Hunting Seasons:

<http://www.lrc.ky.gov/kar/301/002/178reg.htm>

Small Game & Furbearer Hunting:

<http://www.lrc.ky.gov/kar/301/002/049reg.htm>

Exhibit F Prime Lease Agreement and MOA



Otter Creek fully executed Lease -
Otter Creek - fully executed MOA 161

For hard copy of BID PACKAGE or any of the attachments, please contact:

Wendell Harris

Division of Real Properties

Wendell.Harris@ky.gov

502-564-9831