

**--EXHIBIT D--**

**SAMPLE**

**MAY BE SUBJECT TO REVISIONS**

**LEASE AGREEMENT**

THIS LEASE AGREEMENT, made and entered into and dated for convenience as of the \_\_\_\_\_ day of \_\_\_\_\_, 2018, by the Commonwealth of Kentucky, acting by and through William M. Landrum, III, Secretary of the Finance and Administration Cabinet, in accordance with the provisions of KRS Chapters 45A and 56, for the use and benefit of KDFWR, a public body corporation of the Commonwealth of Kentucky, party of the first part; (hereinafter sometimes referred to as "Lessor"), whose business address is \_\_\_\_\_, Frankfort, Kentucky 40601, and \_\_\_\_\_ [successful bidder], party of the second part, its successors and assigns (hereinafter sometimes referred to as "Lessee"), whose address is \_\_\_\_\_.

**WITNESSETH:**

**WHEREAS**, the Kentucky Department of Fish and Wildlife (KDFWR) owns property located in Meade County off Brandenburg Road which is referenced as the Otter Creek Outdoor Recreation Area ("OCORA"); and,

**WHEREAS**, within OCORA there is a Campground (hereinafter "the Property" and further shown on Exhibit A) which has been operated by KDFWR but it has been determined to be in the best interest of the Commonwealth to lease out the campground operation by issuing a Request for Proposals ("RFP"); and,

**WHEREAS**, RFP#110118 was issued, and the Lessee's proposal submitted in response to the RFP was determined to be the best and most beneficial to the Commonwealth; and,

**WHEREAS**, the Lessor desires that the improved property described in Exhibit A, attached hereto and made a part hereof, be leased to Lessee for the express purpose of operating and maintaining the Property.

**NOW THEREFORE**, in consideration of the foregoing and the agreements, conditions, and covenants contained herein, the parties hereto agree as follows:

**TERMS AND CONDITIONS**

**SECTION 1. Grant of Lease.**

(a) Lessor, upon the terms and conditions hereinafter set forth, does hereby lease unto Lessee certain real property situated in the County of Meade, and Commonwealth of Kentucky, and more particularly described in Exhibit A, attached hereto, made a part hereof, and incorporated herein by reference (hereinafter referred to as the "Leased Premises").

(b). This Lease is entered into between the parties pursuant to the authority of Kentucky Revised Statutes 45A and 56, the provisions of which, in effect on the date hereof, are incorporated by and made a part of this Lease by reference.

(c). This Lease, between the Commonwealth of Kentucky, acting by and through the Finance and Administration Cabinet, on behalf of the Kentucky Department of Fish and Wildlife Resources, and the Lessee, shall include the RFP, any addenda thereto, and the Lessee's proposal submitted in response to the RFP. In the event of conflict in language between the documents heretofore referenced, the provisions and requirements set forth in the RFP, and any addenda, shall govern. However, the Finance and Administration Cabinet reserves the right to clarify any ambiguities in writing with the concurrence of the Lessee, and such written clarification shall govern in case of conflict with the applicable requirements stated in the RFP, any addenda, or the Lessee's proposal. In all other matters not affected by the written clarification, if any, the RFP shall govern.

(d). The Lessor makes no guaranty or warranty, either expressed or implied, with respect to the leased premises. The Lessee is expected to have examined the property and to have formed Lessee's own conclusions as to its suitability for the stated purpose.

**SECTION 2. Term.** To have and to hold the Leased Premises, with all the rights, privileges and appurtenances thereunto for the period commencing on the date of the execution by the Secretary of Finance and Administration Cabinet and expiring **10 (10) years** thereafter, on \_\_\_\_\_, both dates inclusive, unless sooner terminated in accordance with the terms hereof. The Lessee shall not begin any work on the leased premises unless/until the Notice to Proceed is given by the Lessor.

**SECTION 3. Options.** Upon written mutual consent of the parties, this agreement may be extended for up to **two (2), five (5) year renewal options**, subject to the terms and provisions of the Lease.

**SECTION 4. Rent.** The Lessee shall pay to the Commonwealth a minimum, \_\_\_\_\_ percent of gross receipts for the convenience store as well as other subleases, if applicable, with the Lessee being solely responsible for renovations/fit up/reconstruction and maintenance of the leased premises, for the length of the lease term cited in Sections 2 and 3. This Lease Agreement is subject to the following rent schedule:

**The successful Offeror will be subject to one-half (1/2%) percent increase in gross receipts in the following years:**

Years 1-5 = no increase

Years 6-10 = Bid amount (% of gross receipts) + a half percent (½ %)

Years 11-15 (if extended) = Bid amount (% of gross receipts) + one percent (1%)

Years 16-20 (if extended) = Bid amount (% of gross receipts) + one and a half percent (1 ½ %)

All payments owed to the Lessor hereunder shall be made by the 15<sup>th</sup> day of each quarter or a late penalty of 1.5% per month shall be assessed. The Lessee shall include, with each payment, a certified quarterly financial statement.

**SECTION 5. Maintenance and Escrow Requirements.** The Lessee is fully responsible, at its sole expense, for all maintenance of its leased premises.

In order to insure that the Lessee shall be sufficiently liquid to indemnify the Commonwealth against all those costs and expenses that may incur to maintain and repair the property, the Lessee agrees that, throughout the term of the Agreement, the Lessee shall deposit monthly in a demand deposit account (hereinafter "account") in a Kentucky bank on the 15th business day of each month, **\$250.00**, for the purpose of providing to the Lessee a working maintenance account. The parties agree with respect to such account that:

The Lessee may withdraw from the account at any time that funds are available on the condition that the KDFWR Secretary, or his/her designee, countersigns the check or other instrument to withdraw proceeds from the aforesaid account. The Lessee shall be deemed by the resulting agreement to be authorized to draw from the above account as needed for the reimbursement of maintenance expenses throughout the year, with the prior written approval of the KDFWR Secretary, or his/her designee. Accompanying each request for reimbursement, the Lessee must provide legitimate estimates for repairs and/or maintenance to the facilities with proof of payment to each of the Lessee's contractors.

As to the operation of the account, the parties hereto agree:

(a) That the account shall be an interest bearing account and that the amounts either deposited in or accruing upon said account shall be considered a cost or an expense of maintaining the leasehold;

(b) That the account shall be maintained jointly in the names of the Commonwealth of Kentucky, Kentucky Department of Fish and Wildlife, Secretary or his/her designate, and Lessee with copies of bank statements sent to the Finance Cabinet's Division of Real Properties;

- (c) Withdrawals from the account shall be made only upon the signatures of the representatives of parties, only to reimburse the Lessee during each calendar year for those maintenance costs accompanied by verifiable receipts for those maintenance costs, incurred during that year as agreed to by the Commonwealth, which agreement shall not be unreasonably withheld; or to reimburse Commonwealth for maintenance costs incurred as a result of the Lessee's failure to perform such maintenance. Refusal by the Lessee to authorize a withdrawal from the account to reimburse the Commonwealth for maintenance costs incurred under this section shall constitute a material breach of this Agreement;
- (d) Money from the account shall not be utilized to pay salaries, overhead, or operating expenses;
- (e) The account, and the requirement for same, shall exist during the entirety of the term of the agreement and any extensions thereof;
- (f) That it is the intention of the parties that distributions shall be made from the account for reimbursement to the Commonwealth for all costs and expenses it shall have incurred to maintain or repair the components of the facility at the failure of the Lessee to perform such necessary maintenance or repair;
- (g) The Lessee is fully responsible for all maintenance regardless of the balance of the account;
- (h) One hundred and eighty (180) days prior to the expiration of the term of the lease and any extensions thereto, and after the fulfillment of the requirements of this section, the Lessee must provide a site study with appropriate testing to be conducted by an independent third party with the Commonwealth of Kentucky listed as a beneficiary to the report to show there are no environmental hazards found on the site. If results indicate there are no environmental hazards or unfavorable structural issues with any improvement, at the time of expiration of the term of the lease and any extensions thereto, the entirety of the contents of the account shall be returned to the Lessee.

**Use of Leased Premises; Construction of Improvements.**

- (a) The Lessee shall use and occupy the Leased Premises solely for the renovation/fit up/reconstruction, operation, and maintenance of a campground operation. The parties hereto agree that the premises are to be leased in their 'as is' condition.

(b). If applicable, as soon as practical, but no longer than [REDACTED], the Lessee shall submit for prior written approval all plans and specifications for the Project to the Finance and Administration Cabinet/KDFWR. The Lessee will also obtain prior written approval from all local, state, and federal regulatory agencies. Plans and specifications for the Project shall be submitted to and approved by all local, state, and federal regulatory agencies, including, but not limited to, the Finance and Administration Cabinet, Division of Engineering; and the KDFWR, prior to beginning construction. The Lessee shall not be authorized to construct, erect, or place any structure or other facility upon the premises without the prior written approval of Finance and Administration Cabinet and the KDFWR. Requests for same shall be made in writing to the KDFWR.

(c). All construction, alterations, renovations, repairs to the premises shall be subject to all applicable building codes of the Commonwealth of Kentucky and the Americans with Disabilities Act (ADA). This shall include any and all building inspections, which are required by law to be performed prior to commencement of the Project.

(d). Any alteration, renovation, major repair, or other improvements, which the Lessee desires to make to the premises, shall receive the prior written approval of the KDFWR, and the Finance and Administration Cabinet. Upon receiving a written request from the Lessee for permission to make alterations, renovations, major repairs, or other improvements to the premises, the KDFWR and the Finance and Administration Cabinet, shall, within a reasonable amount of time of receipt thereof, either approve or disapprove said request in writing. This request must include copies of any and all construction/renovation plans.

(e). The KDFWR shall routinely monitor all construction/renovation work performed by the Lessee or its agents under the terms of this Lease.

(f). The Lessee shall procure all necessary permits and licenses, authorizations and certificates and abide by all applicable statutes, regulations, and ordinances of the United States, the Commonwealth of Kentucky, the LESSOR, and all political subdivisions thereof in which work under this Lease is performed. The Lessee shall provide to the LESSOR, at the LESSOR's request, copies of any such permits, licenses, authorizations and certificates. The Lessee is required to complete the renovations within the schedule submitted as part of the Lessee's proposal and any failure to meet such schedule will result in liquidated damages.

(g). Prior to initiating any renovation or alteration or construction to the Leased Premises, such renovation or alteration or construction must be approved in writing by the Commonwealth; the KDFWR; the Division of Engineering/Finance and Administration Cabinet; and the Department of Housing, Buildings and Construction/Public Protection and Regulation Cabinet. The Commonwealth shall act in good faith and will not unreasonably delay construction approval. The Lessee shall also comply with all standards set by the State Fire Marshal's Office, the Kentucky Occupational Safety and Health Standards Board, and any and all other local or state laws.

(h). Construction/renovation by the Lessee shall be in substantial accordance with the plans and specifications for the proposed renovation project and the Leased premises shall be utilized for no other purpose except with the prior written consent of the Lessor.

(i). 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 Lessee shall promptly repair any damage to the leased premises resulting from the installation or removal of same and return the leased premises to its original condition, at the Lessee's sole expense. Structures and equipment not removed from the premises at the termination, cancellation or expiration of the resulting Lease Agreement shall become the property of the Commonwealth, which may, at its sole discretion, assess the Lessee the costs of removal or repair incurred by said Commonwealth as a result of the Lessee's failure, howsoever caused, to effect the removal or repair required herein.

(j). During the remodel and fit-up/renovation, the Lessee shall provide, at its sole expense, proper receptacles for all construction debris and the trash and garbage, generated by such construction activities. Lessee is responsible for removal of all waste, construction debris, refuse, garbage and rubbish generated from project activities and shall not deposit or leave same, except temporarily in connection with collection for removal, on any part of the leased premises. Lessee shall, at its sole expense provide and use suitable covered receptacles for the storing of all trash, garbage and other refuse created in the conduct of the Lessee's business activities or arising from the Lessee's exercise of any right or obligation under the resulting Agreement. Piling of boxes, cartons, barrels or other similar items in an unsightly or unsafe manner on or about the leased premises is forbidden.

(k). The Lessee shall not remove the structures, improvements, and equipment erected or placed upon the premises without the prior written approval of the Lessor, except upon termination of this Lease, as provided hererin. Upon approval from the Lessor to remove any structures, improvements, or equipment placed upon the premises, the Lessee must repair any damage to the premises resulting from the removal of the structures, improvements, or equipment.

(l). Lessee shall not use or occupy the Leased Premises or permit the same to be used or occupied contrary to any statute, rule, order, ordinance, requirement or regulation applicable thereto, or in any manner which would cause the value or the usefulness of the Leased Premises to be substantially diminished or would cause a public nuisance or waste.

(m). If applicable, the Lessee is obligated to adhere to the prevailing wages laws (KRS 337.530-337.550) for one hundred percent (100%) of the renovation/fit up

project at the KDFWR. The Lessee is solely responsible for contacting the Kentucky Labor Cabinet for official wage rates.

(n). Prior to expiration or cancellation of this Lease, the Lessor and the Lessee shall complete a walk-through inspection of the building and property to determine what, if any, repairs, etc. must be completed by the Lessee prior to vacancy and return of the property to the Lessor.

#### **SECTION 6. LIENS AGAINST THE PREMISES.**

(a). Nothing in this agreement shall in any way be deemed or construed as constituting an order or request by the Lessor, expressed or implied, to any contractor, Lease-contractor, supplier, materialman, or laborer for the performance of any labor or the furnishing of any materials for the maintenance of any improvements on, alterations to, or other improvements of the leased premises; nor as giving the Lessee any right, power, or authority to grant for or permit the rendering of any services or furnishings of any materials that would give rise to the filing of any mechanic's liens against the Lessor's property or the Lessee's leasehold interest therein.

(b). Furthermore, the Lessee and/or its contractors shall not suffer or permit any mechanic's or material-man lien to be filed against the Lessor's property or the Lessee's leasehold interest in the leased premises by reason of work, labor, services, or materials supplied to or claimed to be supplied to the Lessee. If a mechanic's or material-man's lien shall be filed against the leased premises or the Lessee's leasehold interest at any time, the Lessee and/or its contractors shall cause the same to be discharged within thirty (30) days after the notice of filing thereof by payment, deposit, bond, an Order of a Court of competent jurisdiction or otherwise. If the Lessee, in good faith, disputes the validity or correctness of any such lien, then it may refrain from paying or causing the same to be discharged of record, but it shall diligently proceed to initiate and conduct appropriate proceedings to determine the correctness or validity of such lien. The Lessee shall not be deemed to be in default under this agreement while such proceedings or litigation are being conducted in good faith by it. However, if the Lessee fails to cause any such lien to be discharged within the period aforesaid, or fails to contest the same as provided above, then the Lessee shall be deemed to be in default of this Lease Agreement which shall be a basis for termination of said Lease Agreement.

#### **SECTION 7. Performance and Payment Bonds.**

(a) The Lessee or its assignee shall furnish separate performance and payment bonds to the Lease and include the Commonwealth of Kentucky as an additional insured. The Lessee or its designee shall furnish a performance bond satisfactory to the Lease in an amount equal to one hundred percent (100%) of the renovation project. The Lessee or its designee shall also furnish a payment bond satisfactory to the Lease in an amount equal to one hundred percent (100%) of the project construction contract for the protection of all persons performing labor or furnishing materials, equipment, or supplies for the Lessee or its subcontractors for the

performance of the work provided for in this project, including security for payment of all unemployment contributions which become due and payable under Kentucky Unemployment Insurance law.

(b) Each bond furnished by the Lessee or its designee shall incorporate by reference the terms of the project as fully as though they were set forth verbatim in such bonds. In the event the project construction contract is adjusted by written document executed by both parties, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount.

(c) The performance and payment bonds shall be executed by a surety company authorized to do business in this Commonwealth, and the contract instrument of bonds must be countersigned by a duly appointed and licensed resident agent.

**SECTION 8. Acceptance of Leased Premises.** Lessee has examined the Leased Premises and accepts the same in the condition thereof on the date first aforesaid.

**SECTION 9. Lessee's Property.** All fixtures, furnishings, equipment, inventory and other personal property at any time located upon the Leased Premises owned by Lessee, shall be kept and maintained by Lessee, at its sole risk, and Lessee shall bear all cost, loss and expense for any casualty or theft risk in connection with such fixtures, furnishings, equipment, inventory and other personal property provided by Lessee.

**SECTION 10. Title to Improvements.** Upon termination of this Lease, by expiration, prior termination, or otherwise, title to the property shall automatically vest in the Lessor. Upon any such termination of Lease, Lessee shall execute all documents necessary for the transfer of the Improvements, buildings, and any other property improvements to Lessor.

**SECTION 11. Right to Cure.** Notwithstanding anything to the contrary provided for elsewhere in this Lease, the rights of Lessor, in the event of a default hereunder, may not be exercised until written notice of such default is given to the Lessee. It is agreed that the Lessee shall have the right to cure any such default within ten (10) days of receipt of written notice with respect to any default that can be cured by payment of money or within thirty (30) days of receipt of notice with respect to any other covenant or condition or term of this Lease; and, if such default is of such nature that it cannot be remedied within said time, then the Lessee shall have such additional time as is reasonably necessary to cure such default, provided that it commences the curing of such default within said thirty (30) day period and thereafter diligently continues the curing of the same.

**SECTION 12. Liability Insurance.** Prior to commencement of construction of any improvements on the Leased Premises, Lessee shall, at its sole cost and expense, purchase or cause to be purchased and maintained during the term of such construction and during the term of the lease and any extensions such insurance as will protect itself and the Lessor and their respective, officers, agents and employees from claims which may arise out of or result from the Lessee's construction of the Improvements, whether

such construction be by Lessee or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. It is acknowledged by the parties that claims against Lessor are governed by KRS 44.070 et seq.

The Lessee shall procure and maintain during the period of this agreement, the insurance described, and in the amounts specified in the following subsections, from a company or companies licensed to do business in Kentucky:

a. *Commercial General Liability Insurance*

Throughout the term of this Lease, and any renewal thereof, the Lessee shall maintain and pay for insurance which shall insure on a primary basis, the Lessee, the Lessor and its officers, employees, and agents against all claims for personal injury, bodily injury, death, or property damage, all costs and expenses including attorney fees, caused by reason of the operations conducted by the Lessee at the leased premises, or ways adjacent thereto, or elsewhere, including and covering, but not limited to, products liability and any and all claims arising out of activities of the Lessee, with limits of \$1,000,000 for each occurrence, \$1,000,000 for personal injury and advertising, with a \$1,000,000 aggregate and a \$1,000,000 products-completed operations aggregate for:

- Premises and operations
- Products and completed operations
- Contractual liability for the liability assumed by the Offeror
- Fire damage

In addition, the Lessee shall provide excess limits of \$1,000,000 per occurrence and \$1,000,000 aggregate.

b. *Limits of Liability*

The limits of liability requirements set forth in this Section can be met by the Lessee's use of an Umbrella Liability or Excess Liability policy or policies.

**SECTION 13. Indemnification.**

(a) The Lessee shall indemnify and hold harmless the Lease, any of its departments or agencies or officers or employees from any and all claims, demands, damages, actions, costs (including attorney fees), and charges which the Lessor or the Lessee 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 Leased premises or any means of ingress thereto, or egress therefrom, or resulting

from the Lessee's operations on the Leased premises, unless such injury or loss arises directly from the negligence of the Lessor, any of their departments or agencies, or officers or employees while acting within the scope of their employment.

(b). The Lessee 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 Lessor by third person; 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 Lessor, any of its departments or agencies, or any of its officers, agents, or employees while acting within the scope of their employment.

#### **SECTION 14. Utilities.**

(a). The Lessee shall solely be responsible for all utilities for the leased premises, including placing in its own name all of the utilities connected with the leased premises. This responsibility includes, but is not limited to, obtaining all necessary easements and rights of way from the various private, local, state and federal government agencies involved. All expenses and costs resulting from the granting and installation of such easements and rights of way will be borne by the Lessee.

(b). Lessee shall pay all charges for utilities (including gas, electric, water and telephone) furnished to the Leased Premises during the term of this Lease and any extensions thereof. Lessor shall not be responsible for the quality, quantity, interruption or failure in the supply of any utility to the Leased Premises. Lessor shall provide reasonable access to utilities at all reasonable times.

#### **SECTION 15 Maintenance and Repairs.**

(a). Unless otherwise specified, the Lessee, at its sole expense, will maintain the leased property, both on-going and capital, during the entire term of this Lease. The Lessee agrees to maintain the premises in good order. The Lessee shall also be responsible for any additional landscaping required by the Lessee on the leased premises.

(b). The Lessee shall do those acts as necessary to: (1) maintain the property in a reasonably attractive, clean, efficient, and safe condition; (2) prolong the useful life of the property; and (3) cause the property to be in conformity with all federal, state, and local regulatory standards.

(c). The Lessee shall be responsible for all utilities, janitorial services (including pest control), fixtures/furnishing and non-building systems equipment, insurance of the contents of the building (renter's insurance), etc. of the leased premises.

(d). The Lessee shall maintain, at all times, the leased premises in a clean and sanitary manner in accordance with the highest industry standards and will comply with

all federal, state and local laws, codes, and regulations. The Lessee shall immediately notify the Lessor, in writing, of any notices of violations that are received during or in connection with inspections. A copy of ALL inspection reports received by Lessee shall be immediately sent to the Lessor. The Lessee shall include action plans to correct conditions causing the violation. The Lessee shall immediately notify the Lessor of all inspection dates and the Lessor shall have the option to be present at all inspections and shall be given prior notice thereof whenever possible.

(e). In the event Lessee does not take immediate action fully satisfactory to the Lessor to cure all conditions causing said violations, the Lessor retains the right (at the non-reimbursable cost and expense of the Lessee, unless such violation resulted from failure of the Lessor to perform its obligations hereunder) to take all acts and actions that the Lessor believes to be reasonably necessary to promptly correct all conditions which caused said violations or potential violations. Any fees incurred/action required to satisfy stated or potential violations, shall be the sole responsibility of the Lessee.

(f). The Lessee shall be required to repair any damage to the leased premises, including damage to plumbing and electrical systems, caused by negligence, reckless or willful conduct of the Lessee or anyone acting on its behalf, including but not limited to its agents or suppliers. The Lessee shall give the KDFWR prompt, written notice of any damage or fire occurring to the leased premises and a copy of all notices received by the Lessee of any claim for bodily injury occurring within the building.

(g). The Lessee, at its sole expense, agrees to repair fully any portion of the facilities damaged or affected by remodeling.

(h). The Lessee shall pay the cost of building and equipment maintenance or repairs resulting from the acts or omissions of the Lessee or its employees.

(i). The Lessee, at its sole expense, shall be responsible for daily trash and garbage removal from the entire leased premises year-round. Lessee shall be required to police the leased premises on a daily basis and remove on an as needed basis.

(j). The Lessee shall be responsible, at its sole expense, for all repair and maintenance of the leased premises, to include utilities, janitorial services, and supplies; painting, and daily restroom cleaning (as the customer load dictates on any given day); providing all supplies, etc.

(k). The Lessor shall monitor and inspect on a periodic basis the quality of all services and products offered, to insure that the image and public perception of this operation is equal to or exceeds that of the KDFWR system.

(l). The Lessor is entitled to inspect the property annually during the lease term in coordination with the Lessee. All state inspections will follow existing

procedures for the Lessor. The Lessee shall be furnished copies of state inspections such as state fire marshal inspection results.

(p). The Lessee shall be responsible for snow removal (if desired) and lawn care of the leased premises.

(q). Restricted, authorized KDFWR personnel *ONLY* shall have 24-hour access to all parts of the leased premises. The KDFWR shall maintain a complete set of keys to the leased premises.

(r) The Lessor is amenable to the Lessee installing a security system to the building, by and at the Lessee's sole expense, with prior written approval of the Lessor.

**SECTION 16. Casualty Insurance.**

(a). During the term of this Lease Agreement, the Lessor shall maintain, at the Lessor's total expense, fire and extended coverage insurance, including theft and vandalism, covering the structure in an amount equal to its full replacement cost value.

(b). The Lessee shall carry and maintain during the term of the Lease Agreement, at Lessee's sole cost and expense, fire and extended coverage insuring all of the Lessee's contents and inventories in the premises to the extent of their full insurable value.

(c). Certified copies of the above described insurance policies and all certificates and proof of renewals thereof shall be furnished to the Lessor effective as of the date of this Lease. Certificates of Insurance and renewals thereof shall reflect the terms and conditions stated above and shall be provided to the Lessor prior to the Lessee occupying the leased premises.

(d). All liability insurance policies required by this Lease shall name the Commonwealth of Kentucky as an additional insured and shall include a severability of interest clause with respect to claims, demands, suits, judgments, costs, charges, and expenses arising out of, or in connection with any loss, damage, or injury resulting from the negligence or other fault of the Lessee, Lessee's agents, representatives, and employees. The following provisions shall be included in the Lessee's insurance policies:

1. "Notwithstanding any other provision in this policy, the insurance afforded hereunder to the Commonwealth of Kentucky shall be primary as to any other insurance or reinsurance covering the leased premises and improvements, and such other insurance or reinsurance shall not be required to contribute to any liability until the appropriate limit of liability afforded hereunder is exhausted."
2. "This policy may not be canceled or materially changed until thirty (30) days after receipt by the Commonwealth of Kentucky of written notice

of such cancellation or change in coverage, as evidenced by receipt of a certified letter."

**SECTION 17. Assignment by Lessee.** Lessee agrees that, without Lessor's written consent, it shall not, unless required by law, transfer or permit the transfer of the Leased Premises or the Improvements, or any interest therein or part thereof to any person or party other than Lessee during the term of this Lease, as extended from time to time. "Transfer", without intending to limit the generality of the foregoing, shall, at any given time, include grant, convey, mortgage, encumber, pledge, hypothecate, lease or sublease, release, quitclaim, assign and sell and shall embrace the creation of an easement, servitude or license, the passage or creation of title, the passage or creation of any interest, the creation of any lien or judgment of record against the Leased Premises or the Improvements, or any disposition thereof or any interest therein or part thereof, whether voluntary or involuntary or by operation of law). Any such unapproved disposition by the Lessee shall be an act of default, and the Lessor may cancel the lease pursuant to Section 18 below.

**SECTION 18. Default; Termination.**

This Lease shall be subject to the following termination provisions. The Lease may be terminated as follows:

1. **Remedies and Termination for Default**

In the event the Lessee shall default as defined in this Section, and such default shall continue unresolved for sixty (60) days after written notice thereof is given to the Lessee by the LESSOR, the Lessee shall, at the discretion of the Commonwealth, be declared in default and such Lease may be terminated as a result of such default. If the Lessee remedies the default within the sixty (60) day notice period, the LESSOR shall consent to a continuation of performance, which consent shall not be withheld or delayed unreasonably.

A default in performance by the Lessee for which a Lease may be terminated shall include, but shall not necessarily be limited to (a) failure to perform the Lease according to its terms, conditions, and specifications; (b) failure to make any payment due hereunder; (c) failure to comply substantially with the terms and conditions concerning the Project's standards with respect to quality of service and with respect to prices; (d) failure to make delivery with the time specified or according to a delivery schedule fixed by the Lease; or (e) if the Lessee abandons the Project and/or leased premises, or (f) letters of indebtedness received from creditors by the purchasing agency; or (g) if the Lessee commits any other material breach or fails substantially to perform any other material obligation hereunder.

The Lessee and/or his surety shall be jointly and severally liable to the Commonwealth for all loss, cost, or damage sustained by the Commonwealth as

a result of the Lessee's default; provided, however, that a surety liability shall not exceed the final sum specified in the Lessee's bond.

2. Termination of Lessee for Bankruptcy

In the event of the filing of a petition in bankruptcy by or against the Lessee, the LESSOR shall have the right to terminate the Lease upon the same terms and conditions as a termination for default.

3. Termination for Convenience

The Commonwealth may terminate a contract for convenience, pursuant to 200 KAR 5:312, if the Commonwealth has determined that termination will be in the Commonwealth's best interests. The Commonwealth shall provide the Lessor thirty (30) calendar days written notice of termination of the lease, unless the secretary of the Finance and Administration Cabinet, or his designee, makes a written determination that a shorter notice of termination for convenience is in the best interest of the Commonwealth. Time shall be computed from date of mailing notice; termination under this paragraph shall not be considered until the last day of the month in which the notice period ends. Upon termination for convenience by the COK, the Lessee, in addition to the remedies set forth in 200 KAR 5:312, shall be authorized to remove all personal property, provided that the Lessee promptly repairs any damage to the Leased premises resulting from the removal.

A. Procedure on Termination

Upon delivery by certified mail to the Lessee of a Notice of Termination specifying the nature of the termination, the extent to which performance of work under the Lease is terminated, and the date upon which such termination becomes effective, the Lessee shall:

1. Stop work under the Lease on the date and to the extent specified in the Notice of Termination;
2. Place no further orders for materials, services, or Lessorilities, except as may be necessary for completion of such portion of the work under the Lease as is not terminated;
3. Terminate all orders to the extent that they relate to the performance of work terminated by the Notice of Termination;
4. Assign to the Commonwealth in the manner and to the extent directed by the purchasing official, all of the right, title, and interest of the Lessee under the orders so terminated, in which case the Commonwealth shall have the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders;
5. With the approval or ratification of the purchasing official, settle all outstanding liabilities and claims arising out of such termination of orders,

- the cost of which would be reimbursable in whole or in part, in accordance with the provision of the Lease;
6. Transfer title to the Commonwealth (to the extent that the title has not already been transferred) and deliver in the matter, at the times, and the extent directed by the purchasing official, all permanent fixture, permanent equipment, and other permanent items, in any form, that relate to the work terminated by the Notice of Termination;
  7. Complete the performance of such part of the work as shall not have been terminated by the Notice of Termination.
  8. Take such action as may be necessary, or as the purchasing official may direct, for the protection and preservation of the property related to the Lease which is in the possession of the Lessee and in which the Commonwealth has or may acquire an interest.

The Lessee shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of any item of reimbursable price under this clause.

#### B. Termination Claims

After receipt of a Notice of Termination, the Lessee shall submit to LESSOR any termination claim in the form and with the certification prescribed by the LESSOR. Such claim shall be submitted promptly but in no event later than six months from the effective date of termination, unless one or more extensions in writing are granted by the LESSOR with such six month period or authorized extension thereof. However, if the LESSOR determines that the Lessors justify such action, he may receive and act upon any such termination claim at any time after such six month period or any extension thereof. Upon failure of the Lessee to submit its termination claim within the time allowed, the LESSOR may, subject to any review required by the Commonwealth procedures in effect as of the date of execution of the Lease, determine, on the basis of information available, the amount (if any) due to the Lessee by reason of the termination and shall thereupon cause to be paid to the Lessee the amount so determined.

Subject to the provisions of the previous paragraph and any review required by the Commonwealth procedures in effect as of the date of execution of the Lease, the Lessee and the Commonwealth may agree upon the amounts to be paid to the Lessee by reason of the total or partial termination of work pursuant to this article. The Lease shall be amended accordingly.

In the event of the failure of the Lessee and the Commonwealth to agree in whole or in part as to the amounts with respect to cost to be paid to the Lessee in connection with the total or partial termination of work pursuant to this article, the Commonwealth shall determine (on the basis of information available) the amount, if any, due to the Lessee by reason of termination and shall pay to the Lessee the amount so determined.

The Lessee shall have the right of appeal, as stated under Disputes Section 41 from any such determination made by the Commonwealth.

**SECTION 19. Quiet Enjoyment.** So long as Lessee shall promptly perform the terms, covenants and conditions of this Lease on its part to be kept and performed, Lessee shall peaceably and quietly hold, occupy and enjoy the Leased Premises during the term hereto, without let, hindrance or molestation from or by any person lawfully claiming through or under contract .

**SECTION 20. Acts Beyond Control of Lessor or Lessee.** In the event that or Lessee shall be delayed or hindered or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, inadequate power, restrictive governmental laws or regulations, severe weather conditions, disaster, riots, insurrection, war or other reason of a like nature not the fault of or Lessee in performing work or doing acts required under the terms of this Lease, the performance of such acts shall be excused for the period of the delay until return to the status quo.

**SECTION 21. Notice.** Any notice required by this Lease to be given by either or Lessee to the other shall be in writing, sent by certified mail, return receipt requested, and unless otherwise specifically stated herein, shall be deemed to be given when deposited in the United States mail, postage prepaid, addressed to or Lessee at their respective addresses as follows:

If to Lessor: KDFWR

If to Lessee: \_\_\_\_\_  
\_\_\_\_\_

With a copy to:

Division of Real Properties  
Finance and Administration Cabinet  
3<sup>rd</sup> floor - Bush Building  
403 Wapping Street  
Frankfort, Kentucky 40601

or at such other address as Lessee or may give notice of to the other.

**SECTION 22. Headings.** It is understood and agreed that the headings of the various Sections of this Lease have been inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of this Lease or any of its provisions. The singular number and gender of personal pronouns as used throughout this Lease shall be construed to mean such number and gender as the context, circumstances or its antecedent may require.

**SECTION 23. Successors and Assigns.** Any term, covenant or condition of this Lease which inures to the benefit of or is binding upon Lessee shall also inure to the benefit of and be binding upon the successors and assigns of Lessee. Any term, covenant or condition of this Lease which inures to the benefit of or is binding upon Lessee shall also inure to the benefit of and be binding upon the successors and assigns of Lessee.

**Section 24. Permits and Licenses.** The Lessee 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. Plans for electric, fire code, housing, etc. must be reviewed by the Department of Housing, Buildings and Construction, Finance's Division of Engineering and Contract Administration, and the KDFWR prior to any construction on the leased premises. The Lessee shall conform to operational standards of the KDFWR and to all bona fide rules, procedures pertaining to same as may be promulgated by the KDFWR. Plans for electric, fire code, housing, etc. must be reviewed by the Department of Housing, Buildings and Construction, Finance's Division of Engineering and Contract Administration, and the KDFWR prior to renovation/fit-up of the structure. The Lessee shall secure and pay for all permits and licenses which may be required by the Commonwealth of Kentucky and its political subdivisions for the conduct of business operations on the premises under the terms of this Agreement.

**SECTION 25. Entire Agreement.** This Lease constitutes the entire agreement between the Lessor and Lessee in respect of the subject matter thereof and this Lease supersedes all prior and contemporaneous leases and agreements, if any, between and Lessee in connection with the subject matter of this Lease. This Lease may be modified only by a lease agreement amendment, signed by both Lessor and Lessee.

**SECTION 26. Conditions and Covenants.** All of the provisions of this Lease shall be deemed as running with the land, and construed to be "conditions" as well as "covenants" as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

**SECTION 27. Waiver.** No covenant, condition, duty, obligation, or undertaking contained in, or made a part of, the Lease shall be waived except by the written agreement of the parties, and forbearance or indulgence in any other form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the party to which the same may apply; and until complete performance or satisfaction of all undertakings, and other party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence.

Any consent by any party to, or waiver of, a failure of the other, whether expressed or implied, shall not constitute a consent to, a waiver of, or an excuse for any other different or subsequent failure.

**SECTION 28. Interest in Leased Premises.** The Lessee agrees that it does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the premises by virtue of this Lease Agreement or its occupancy and use thereunder, except for the rights and privileges granted hereunder.

**SECTION 29. Time of Essence.** Time is of the essence of this Lease and of each provision hereof.

**SECTION 30. Computation of Time.** The time in which any act provided by this Lease is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or legal holiday, and then it is also excluded.

**SECTION 31. Relationship of Lessor and Lessee.** Nothing contained in this Lease shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between Lessor and Lessee, and neither the method of computation of rent nor any other provisions contained in this Lease nor any acts of the parties shall be deemed to create any relationship between Lessor and Lessee other than that of Landlord and Tenant.

**SECTION 32. Interpretation and Definitions.** The language in all parts of this Lease shall in all cases be simply construed according to its plain meaning and not strictly for or against Lessor or Lessee.

**SECTION 33. Taxes.** The Lessee shall be responsible for paying all state, federal, and local, including but not limited to, ad valorem taxes assessed against the operations conducted on the Leased premises. The Lessee shall pay any sales, use, and personal property taxes arising out of this Lease and the transactions contemplated thereby. Any other taxes levied upon this Lease, the transactions, or the equipment or services delivered pursuant hereto shall be the responsibility of the Lessee.

**SECTION 34. Exhibits.** This Lease consists of \_\_\_\_\_ pages and two (2) exhibits, which are identified as follows:

Exhibit A – Description of Leased Premises

**SECTION 35. Commissions.** There are no commissions, broker fees, finders' fees or other financial obligations due and owing or that become due and owing to any third party as a result of Lessor and Lessee entering into this Lease of the Leased Premises.

**SECTION 36.** The Lessee certifies that no member or delegate of neither 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 Lease Agreement arising from this procurement may be terminated by the Lessor 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 Lessee, its agent, or employees.

**SECTION 37. KRS Chapter 11A (Executive Branch Code of Ethics).** The Lessee covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Lessee further covenants that in the performance of the Lease Agreement no person having any such known interests shall be employed by the Lessee. By entering into the Lease Agreement, the Lessee covenants that it is not in violation of KRS Chapter 11A (Executive Branch Code of Ethics).

**SECTION 38. Severability.** If any provisions of this Lease or any application thereof shall be invalid or unenforceable, the remainder of this Lease and any other application of such provision shall not be affected thereby.

**SECTION 39. Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. Venue of any action filed by or Lessee shall be in Franklin County, Kentucky. In the event that either party deems it necessary to take legal action to enforce any provision of the Lease Agreement, and in the event the Lease prevails, the Lessee 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.

**SECTION 40. Prior Negotiations.** It is agreed by the parties to this Lease Agreement that all prior negotiations have been merged into this Agreement, which may not be modified, altered or amended except by an "Amendment to Lease Agreement" signed by all parties to this Lease.

**SECTION 41. Disputes.** Except as otherwise provided in this Lease, a question or act arising which is not disposed of by mutual agreement shall be decided by the Lessor and it shall serve by certified mail, a copy to the Lessee. The decision of the Lessor shall be final and conclusive unless within thirty (30) days from the date of service, the Lessee notifies the Secretary of the Finance and Administration Cabinet pursuant to KRS 45A.235.

Pending final determination of any dispute hereunder, the Lessee shall proceed diligently with the performance of the lease and in accordance with the LESSOR's direction.

**SECTION 42. Conformance with State and Federal Law.** The Lessee agrees to comply with all applicable federal, state and local laws in the conduct of the work hereunder. The Lessee accepts full responsibility for payment of all taxes and insurance including workers' compensation insurance premiums, unemployment compensation insurance premiums, all income tax deductions, social security deductions, and any and all other taxes or payroll deductions required for all employees engaged by the Lessee in performance of the work authorized by the Lease. The Commonwealth does not agree to pay any taxes.

**Section 43. Rights and Remedies.** The rights and remedies of the Lessor provided herein shall not be exclusive, and are in addition to other rights and remedies provided by applicable state or federal law or the Lease.

**Section 44. Advertising/Graphics.** The Lessee may display its identity (logos and graphics) within the leased premises. Signs and other graphic materials are expected to be conservative and must be approved in advance by KDFWR.

**Section 45. Premises Destroyed by Fire.** If the premises are destroyed by fire or other casualty, this Lease shall immediately terminate. In case of partial destruction or damage so as to render the premises untenantable, the Lessor may terminate or suspend this Lease by giving written notice to the Lessee within 15 days after such partial destruction or damage, and, if so suspended, no rent shall accrue to the Lessee after the date of such partial destruction or damage until after such damage is repaired and premises are considered tenantable by the Lessor.

**Section 46. Access to Books.** The Lessee, the contractor as defined in KRS 45A.030(9), agrees that the Finance and Administration Cabinet, the KDFWR, 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 this Lease for the purpose of financial audit or program review. Furthermore, any books, documents, papers, records, or other evidence provided to the KDFWR, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, which are directly pertinent to the Lease 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 to the execution of the Lease Agreement. The Secretary of the Finance and Administration Cabinet shall not restrict the public release of any information which would otherwise be subject to public release if a state government agency provides the service.

**Section 47. KRS 45A.330-45A.340 or 45A.990 and KRS Chapter 11A.** The Lessee certifies by his signature to this Lease that he ("he" is construed to mean "they" if more than one person is involved; and, if a firm, partnership, corporation, business trust or other organization is involved, the "he" is construed to mean any person with an interest therein) is legally entitled to enter into Leases with the Commonwealth of Kentucky and that holding and performing such contract(s) will not be violating either any conflict of interest statute (KRS 45A.330 – 45A.990) of the Executive Branch Code of Ethics, KRS Chapter 11A, or any other applicable statute or principle by the performance of this Lease, or will he realize any unlawful benefit or gain directly or indirectly from it. The Lessee further certifies that he has not knowingly violated any provisions of the campaign finance law of the Commonwealth, and that by entering into this resulting Lease Agreement he will not be in violation of the campaign finance laws of the Commonwealth of Kentucky.

**IN TESTIMONY WHEREOF**, witness the signatures of William M. Landrum, III, Secretary of the Finance and Administration Cabinet, for and on behalf of the Commonwealth of Kentucky, pursuant to authority contained in Chapters 45A and 56 of the Kentucky Revised Statutes.

Recommended for Approval:

\_\_\_\_\_  
Commissioner  
Kentucky Department of Fish and Wildlife Resources

Examined:

\_\_\_\_\_  
Counsel  
Kentucky Department of Fish and Wildlife Resources

LESSEE:

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved:  
Commonwealth of Kentucky

\_\_\_\_\_  
William M. Landrum, III, Secretary  
Finance and Administration Cabinet

Approved as to Form and Legality:

\_\_\_\_\_  
Patrick McGee, Counsel  
Finance and Administration Cabinet

COMMONWEALTH OF KENTUCKY)

COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, Lessee, in the foregoing Lease, and acknowledge the signing thereof to be a voluntary act and deed of them on behalf of the KDFWR Commission.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Notary Public, State-at-Large

My Commission Expires: \_\_\_\_\_

COMMONWEALTH OF KENTUCKY)

COUNTY OF FRANKLIN )

Before me, a Notary Public in and for said County and State, personally appeared William M. Landrum III, Secretary of the Finance and Administration Cabinet of the Commonwealth of Kentucky in the foregoing Lease, and acknowledge the signing of the Lease to be a voluntary act and deed of him on behalf of the Commonwealth of Kentucky.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Notary Public, State-at-Large

My Commission Expires: \_\_\_\_\_

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this  
\_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public, State-at-Large

My Commission Expires: \_\_\_\_\_

THE LEASE IS HEREBY APPROVED

\_\_\_\_\_  
MATTHEW G. BEVIN, GOVERNOR  
COMMONWEALTH OF KENTUCKY

Examined:

\_\_\_\_\_  
Stephen Pitt  
General Counsel to the Governor