

COMMONWEALTH OF KENTUCKY
FINANCE AND ADMINISTRATION CABINET
DEPARTMENT FOR FACILITIES AND SUPPORT SERVICES
DIVISION OF REAL PROPERTIES

Request For Proposals (RFP)



Project Name: PAINTSVILLE LAKE MARINA
Proposal Number: 112122

IMPORTANT: PROPOSALS MUST BE RECEIVED BY:
RFP CLOSING DATE: November 21, 2022
by 4:00 p.m. EST

Submit proposals to:
Nancy Brownlee, Buyer
Division of Real Properties
Department for Facilities and Support Services
Bush Building, 3rd Floor
403 Wapping Street
Frankfort, Kentucky 40601-2607

TABLE OF CONTENTS

INTRODUCTION	4
LOCATION - EXISTING STATE PARK FACILITIES AND BACKGROUND	5
RFP GENERAL PROCEDURAL INFORMATION.....	6
Site Visit	6
RFP Addenda.....	6
Offeror Responsibility for Proposal Submittal	6
Inquiries.....	7
No Prior Commitment or Obligation of the Commonwealth	7
Issuing Office	7
Proposal Guaranty	7
Warranty of Suitability	8
MARINA.....	8
SUBLEASE AGREEMENT TERMS AND CONDITIONS.....	9
General	9
Description of Property.....	10
Sublease Subject to Prime Lease	10
Sublease Term.....	10
Purpose.....	10
Rental Consideration.....	11
Marina Operation.....	11
Boat Slips Agreements	12
Rates and Prices	12
Staffing.....	13
Security	13
Utilities.....	13
Maintenance Responsibilities.....	14
Maintenance of Commonwealth/USACE Property.....	15
Escrow Account.....	16
Promotional Materials and Souvenirs.....	18
Signage.....	18
Insurance	18
Construction/Alteration/Renovations on the Subleased Premises.....	19
Performance Bonds	20
Prohibition from Removal of Vegetation & Minerals	20
Records and Reports	21
Taxes	21
Liens Against the Subleased Premises.....	21
Sub-Subleasing, Assignments, or Mortgages of Successful Offeror's Interest... ..	22
Improvements and Additions and Removal of Equipment and Supplies Upon Expiration or Termination of Sublease.....	22
Hold Harmless.....	23
Attorney's Fees	23
Notices	23
Offer of Gratuities.....	24

Conflict of Interest	24
Protection of Work, Property, Employees, and Public.....	24
Employment Practices	24
Permits and Licenses	25
Right of Entry	26
Termination of Sublease	26
Termination for Default.....	26
Procedure on Termination for Default	26
Force Majeure	27
Conflict of Law and Choice of Law Provision	27
Level of Assets.....	27
Waiver	28
Disclosure of Financial Information	28
Amendment to Agreement	28
Severability Clause	28
Successors and Assigns	28
Public Use	29
Cancellation Clause.....	29
PROPOSAL	29
Evaluation of Proposals	29
Point Scoring of Proposals	29
Submission of Proposal	30
Withdrawal of Proposal	30
Proposal Subject to These Terms	30
The Offeror's Proposal Shall Include the Following Sections.....	30
Transmittal Letter	30
Marina Operational Plan	31
Financial Background of Offeror and Proposed Method of Financing Project	32
Background and Experience	33
Completed Required Forms	33
Definition of Gross Receipts.....	33
Revenue Payable to the Commonwealth	35
Offeror's Past Performance Operating a Marina of similar size to Paintsville Lake Marina	36
ANNUAL AFFIDAVIT FOR BIDDERS, OFFERORS, AND CONTRACTORS	37
STATEMENT FINAL DETERMINATION OF VIOLATIONS PURSUANT TO KRS 45A.485	39
EXHIBITS.....	40

I. INTRODUCTION

The Commonwealth of Kentucky (“Commonwealth”) desires to continue offering a marina amenity at Paintsville Lake State Park in Staffordsville, Kentucky (“Park”). To that end, the Commonwealth solicits proposals from private, third-party developers and operators who will furnish a high quality marina operation at the Park (“Project”), either with existing marina structures or through the financing, design, and construction of new marina structures, and to operate and maintain the marina in accordance with the Commonwealth’s standards, applicable laws, and as set forth in this RFP and the resulting Sublease Agreement.

The Commonwealth has determined that the most feasible and responsible means for completing the Project is by and with private participation through the issuing of this Request for Proposals (“RFP”) and a proposed sublease agreement between the Commonwealth and the Successful Offeror resulting from this solicitation (“Sublease”).

The Commonwealth desires to sublease to a private concern a portion of the Park’s shoreline and water area for the Project (“Subleased Premises”). See attached **Exhibit A**. The corresponding Sample Sublease is attached as **Exhibit B**. The Park’s campground is not included and is not a part of this solicitation.

The Kentucky Department of Parks (“Department of Parks”) manages the Park under the terms of Lease Agreement DACW69-1-84-0144 between the United States Army Corps of Engineers (“USACE”) and the Commonwealth (“Prime Lease”), which began May 1, 1984, and expires April 30, 2034 (see attached **Exhibit C**).

The Commonwealth is currently working with USACE to extend the expiration date of the Prime Lease; however, the Commonwealth does not anticipate that the new lease agreement will be executed prior to the award of the Sublease. See letter from the USACE, as **Exhibit D**.

The Park’s current marina operation was subleased to a private entity; however, the sublease has expired with no options for renewal.

The Commonwealth is pursuing a high-quality marina operation at Paintsville Lake State Park through one of two options. Option 1 is for an interested party to construct a marina structure that provides at least 52 open slips and 116 covered slips for mooring and docking of various types of watercraft, as well as the other required components set forth in this RFP. Option 2 is for an interested party to acquire title and possession of the existing marina structure at Paintsville Lake and, at the Offeror’s sole expense, to rehabilitate same to satisfy all of the requirements of this RFP. Regardless of which option interested parties choose to bid, the final specifications for the marina/marina rehabilitation will be finalized in contract negotiations, and the Commonwealth reserves the right not to award a contract, if an agreement cannot be reached.

The Successful Offeror shall provide, at its sole expense, a marina containing, at a minimum, a facility the size and scale of the existing marina structures, with all pertinent amenities, and within **ninety (90) days** of award, the Successful Offeror shall submit professionally signed drawings and specifications for the marina.

Based on the detailed requirements, plans, specifications, terms and conditions set forth in this

RFP, the Commonwealth herewith solicits proposals from prospective developers and operators who can demonstrate the necessary capability to successfully furnish, construct, and/or rehabilitate a marina, and maintain, operate, and manage said marina at its optimum potential for an initial term of approximately eleven (11) years (January 1, 2023 –April 30, 2034) with the opportunity to renew for an additional ten years as described in Section V, Paragraph D. It is emphasized that the Successful Offeror shall either utilize and renovate the existing marina structures OR install a new marina of at least a minimum size as the existing marina, with pertinent amenities, at Paintsville Lake State Park (including Sections II, IV, and V herein).

It should be noted that the existing marina is subject to liens as evidenced by filings in the Office of the Secretary of State. A Mechanic's Lien Statement is recorded in the office of the Johnson County Clerk. To the best knowledge and belief of the Commonwealth, the balance owned by the former lessee, which is associated with these filings is approximately \$760,000. If an Offeror chooses to acquire and rehabilitate the existing facilities as part of its proposal, it will be the sole responsibility of the Offeror to reach an agreement with the former lessee and lienholders to release all of their claims to the property.

The Commonwealth also wishes to make interested parties aware of ongoing litigation in Franklin and Johnson County courts between the former lessee and the Commonwealth, and the former lessee and its contractors and creditors, over various issues, including the former lessee's right to continue to operate the marina, claims for compensation for the facilities, and other damages. The Commonwealth expects that such litigation will be fully resolved prior to Offeror initiating construction activities or beginning its operation of the marina.

II. LOCATION - EXISTING STATE PARK FACILITIES AND BACKGROUND

The Park is situated on Paintsville Lake, which is owned and operated by USACE. The lake contains 1,140 surface acres of water and 57 miles of shoreline.

The Park is comprised of approximately 242 acres of land and water area, leased by the Commonwealth from USACE via the Prime Lease, and operated by the Department of Parks.

The Park offers a year-round, 42-site campground; 32 sites are developed with full-service hookups, and 10 sites offer primitive camping. The campground includes restrooms, showers, and laundry. Two of the developed sites are adapted for the disabled.

The Park also offers water and lakefront recreation opportunities via boat launch ramp, courtesy dock, shelters, picnic tables, grills, playgrounds, and recreation courts. A new ADA-compliant fishing pier at the Park is expected in 2023.

This solicitation should result in complimenting the above amenities with a full-service marina, offering at least 52 open slips, 116 covered slips, a restaurant, boat and fishing supplies, and boat rentals. Depending upon post-solicitation arrangements, the award of this solicitation will either replace or improve the existing marina.

III. RFP GENERAL PROCEDURAL INFORMATION

A. Site Visit

A Site Visit will be held on October 12, 2022 at 11:00 a.m. EST at the Paintsville Lake Marina, 1581 KY Route 2275, Staffordsville, Johnson County, Kentucky 41256. Potential Offerors will have an opportunity to view the site, but a question and answer session will not occur at the site visit. If Potential Offerors have questions or inquiries concerning the site or the RFP, those shall be submitted in writing to the Buyer preferably within **10 days** after the site visit but no later than Tuesday, November 1, 2022 by 4:00 p.m. EST to allow sufficient time for written responses to be posted as an addendum to the RFP prior to Monday, November 21, 2022 by 4:00 p.m. (hereinafter "RFP Closing Date").

Attendance at the Site Visit is optional. If attending, RSVP no later than Monday, October 10, 2022 by 4:00 p.m. EST. If there is no interest by any Offeror in attending the site visit by that date, then it may be canceled. RSVP to the attention of the Buyer, Nancy Brownlee, Division of Real Properties, 3rd Floor – Bush Building, 403 Wapping Street, Frankfort, KY 40601 or nancy.brownlee@ky.gov. Potential Offerors or their representatives who have a disability pursuant to the ADA, for which the Commonwealth needs to make an accommodation, shall notify Nancy Brownlee of the need when communicating the RSVP.

In no event will failure to inspect the site constitute grounds for a claim after award of the resulting Sublease.

B. RFP Addenda

This RFP may be supplemented or amended at any time by appropriate addenda, which will be distributed to all participants in the RFP process. Addenda may also be necessary after the receipt date and will be sent to all Offerors who have submitted a proposal at that time.

C. Offeror Responsibility for Proposal Submittal

All proposals submitted should be clearly mark with Project Name and Proposal Number on the outside of the proposal. Proposals shall be deemed to have been made with the full knowledge of all of the terms, conditions, provisions, specifications, and requirements contained in this RFP and any addenda and enclosures thereto, and those terms and conditions contained in the Prime Lease, DACW69-1-84-0144, dated May 1, 1984, between USACE and the Commonwealth (**Exhibit C**).

Each Offeror has the responsibility of submitting his/her proposal by 4:00 p.m. EST on the RFP Closing Date to the Buyer by mail (USPS or other commercial shipping carrier) at:

Division of Real Properties
Department for Facilities and Support Services
Bush Building, 3rd Floor
403 Wapping Street
Frankfort, Kentucky 40601
Attn: Nancy E. Brownlee, Buyer

Hand delivered proposals will be rejected and returned unopened to the Offeror. Timely submitted Proposals will remain secure and unopened until after the RFP Closing Date. Any proposal

received after 4:00 p.m. EST on the RFP Closing Date will be rejected and returned unopened to the Offeror. The Commonwealth and its officials and employees shall not be responsible for the premature opening of a proposal through inadvertence or one not properly addressed and marked. Neither the proposals nor their contents will be made available for public information or inspection until a sublease is fully executed.

All proposals shall be deemed an offer acceptable within a period of **one hundred eighty (180) calendar days** after the closing date for receipt of proposals (See Section III., Paragraph G. Proposal Guaranty, *infra*).

INCOMPLETE PROPOSALS WILL BE DEEMED NON-RESPONSIVE TO THIS REQUEST FOR PROPOSALS.

D. Inquiries

Contact with Commonwealth agents for information specific to this RFP, bidding procedures and/or regulations, programmatic, technical, or site specifications or location shall be limited to the Buyer for the Division of Real Properties, Attention: Nancy E. Brownlee, Bush Building, 3rd Floor, 403 Wapping Street, Frankfort, Kentucky 40601, nancy.brownlee@ky.gov. All inquiries must be submitted no later than Tuesday, November 1, 2022 by 4:00 p.m. EST to allow sufficient time for written responses to be posted as an addendum to the RFP.

E. No Prior Commitment or Obligation of the Commonwealth

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

The Commonwealth unconditionally reserves the right to amend, withdraw, or cancel this RFP and to reject any and all offers at any time and for any reason without recourse. Receipt of proposal materials by the Commonwealth or submission of a proposal to the Commonwealth confers no rights upon the Offeror nor obligates the Commonwealth in any manner.

No sublease resulting from this RFP shall be binding on the Commonwealth until it has been approved by the Secretary, Finance and Administration Cabinet and USACE.

Where the Commonwealth may waive minor irregularities or technicalities, such waiver shall in no way modify the RFP requirements or provisions if the Offeror is awarded the Sublease.

F. Issuing Office

This RFP is being issued by the Finance and Administration Cabinet, Department for Facilities and Support Services, on behalf of the Department of Parks.

G. Proposal Guaranty

1. Offeror's proposal shall be accompanied by a certified or cashier's check, made payable to the "Kentucky State Treasurer", in the amount of Seven Thousand Five Hundred Dollars (\$7,500.00) as bid security.

Upon award of the Sublease or cancellation of the solicitation, the certified or cashier's check of the Unsuccessful Offerors will be returned immediately. Following execution of the Sublease, the certified or cashier's check of the Successful Offeror will be returned upon receipt of the performance and payment bonds enumerated herein.

2. In the event an Offeror's proposal is accepted and the Offeror shall fail to execute the Sublease within **ten (10) calendar days** after its receipt by the Successful Offeror, the Commonwealth may, at its option, determine that the Successful Offeror has abandoned the Project and the amount of the bid security shall be forfeited to the Commonwealth as liquidated damages, and not as a penalty.

H. Warranty of Suitability

The Commonwealth makes no guaranty or warranty, either expressed or implied, with respect to the property. The property and/or any existing facilities are offered in an "as is, where is" condition subject to the terms of this RFP. There is no warranty given as to any structural, electrical, or mechanical components thereupon. The Offeror shall be responsible for any and all inspections to account for the condition of the facilities prior to bidding. Any and all repairs to the existing facilities shall be the sole responsibility of the Successful Offeror from the date of award of this RFP throughout the resulting agreement. **The Offeror is expected to have examined the property and to submit with Offeror's proposal his/her own formed conclusions as to the suitability of the property for the stated purposes.**

IV. MARINA

The existing marina was subleased through a land sublease, to a private operator, whose agreement has expired with no options for renewal. The marina has the capacity to offer 116 covered slips for pontoons, bay liners, fishing boats, and other similar vessels on Docks A, B, and C; 52 open slips for houseboats on Docks D and E; a restaurant; a store offering boat and fishing supplies, merchandise, and other staple items; and rental of fishing boats, pontoons, and pedal boats. An aerial view of the existing marina layout is visible on **Exhibit A**. It has been reported the covered slips rent for \$1600.00/year and open slips rent for \$60.00/foot per year, with a minimum annual charge of \$2800.00.

The Successful Offeror shall rehabilitate and improve the existing marina facilities or finance, design, and construct new marina structures that will achieve the requirements of this RFP.

Upon award of the Sublease, the Successful Offeror shall have **ninety (90) days** from the date of award to submit professionally signed drawings and specifications of the proposed new marina. If the Successful Offeror will utilize the existing marina structures, the Successful Offeror must provide a fully executed agreement addressing ownership, satisfactory to the Commonwealth, and clear title of the existing marina structures within **thirty (30) days** of award and submit within **ninety (90) days** of award professionally signed drawings and specifications for, at a minimum, the RFP-required improvements to the existing marina structures. The deadlines set forth in this paragraph may be extended at the Commonwealth's sole discretion.

NOTE: **THE DEPARTMENT OF PARKS SHALL NOT PROVIDE ANY PERSONAL PROPERTY FOR THE OPERATION OF THE MARINA. ALL NECESSARY PERSONAL PROPERTY SHALL BE THE RESPONSIBILITY AND AT THE SOLE EXPENSE OF THE SUCCESSFUL OFFEROR.**

REQUIRED IMPROVEMENTS TO EXISTING MARINA: If the Successful Offeror intends to purchase and/or utilize the existing marina structures, the marina areas that will require improvements, by and at the expense of the Successful Offeror, in order for the Sublease to be awarded are:

- Full-service restaurant with sale of a variety of food and beverages to include foods found in a full-service restaurant subject to Commonwealth approval. Please be advised alcohol sales are currently prohibited on the Subleased Premises, but they may be considered in the future, subject to applicable law, and the approval of USACE and the Commonwealth.
- A marina store open and operational during operating hours. Subject to Commonwealth approval, the marina store must sell light refreshments, prepared foods, snacks, ice and souvenirs.
- A functioning fuel tank, fuel lines and pumps (with twice-yearly routine maintenance of fueling system).
- Repair or replace any damaged/deteriorated decking and structural frames, including concrete walkways, throughout structure.
- Electrical infrastructure upgrade that meets current Housing Building and Construction codes and USACE requirements, particularly Docks A, B and C toward the front of the marina structure.
- Inspection and any needed repair of underwater anchors, cabling systems, winches, shore connections or other equipment, per the Guidelines for the Safe Operation and Maintenance of Marinas attached as **Exhibit G**.

All upgrades must be in accordance with local, state, and federal laws, regulations, and current codes, including approval by the Department for Housing, Buildings, and Construction; the Finance and Administration Cabinet; State or Local Department of Health; and USACE.

V. SUBLEASE AGREEMENT TERMS AND CONDITIONS

A. General

The terms of Sublease between the Commonwealth and the Successful Offeror will include language from: (1) the RFP (and any addenda thereto), and (2) the Successful Offeror's proposal submitted in response to the RFP. The Sublease shall also be subject to the terms and conditions contained in the Prime Lease. In the event of a conflict in language between the documents referenced above, the provisions and requirements set forth and/or referenced in the Sublease shall govern to the extent authorized by law.

No modification or change of any provision in the Sublease shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by the Successful Offeror and the Commonwealth and is incorporated as a written amendment to the Sublease and approved by the Finance and Administration Cabinet prior to the effective date of such modification or change.

Memoranda of Understanding, written clarification and/or correspondence shall not be construed as amendments to the Sublease.

The Sublease shall be construed and interpreted according to the laws of the Commonwealth. Any legal proceedings against the Commonwealth regarding this RFP or any resultant Sublease shall be brought in Commonwealth administrative or judicial forums. Venue will be in Franklin County, Commonwealth of Kentucky.

B. Description of Property

The Commonwealth proposes to grant to the Successful Offeror the use of a portion of the Park shoreline and water area ("Subleased Premises"), with the approximate area shown on **Exhibit A**, which is attached hereto and expressly made a part hereof, for the purpose of furnishing a high quality marina operation. The Commonwealth holds the Subleased Premises under the USACE Prime Lease. Within **sixty (60) days** from award of the Sublease, the Successful Offeror, at its sole expense, shall submit a preliminary boundary survey of the Subleased Premises, which must be completed by a surveyor registered in the Commonwealth of Kentucky. The Commonwealth must approve the survey in writing prior to its finalization by the surveyor. The final survey documents, once agreed upon by both the Commonwealth and the Successful Offeror, will become the official description of the Subleased Premises, as referenced in the RFP and the resulting Sublease.

C. Sublease Subject to Prime Lease

The Sublease between the Commonwealth and the Successful Offeror shall be made subject to all rights of USACE under the Prime Lease. All the provisions of the Prime Lease shall be binding upon both the Successful Offeror and the Commonwealth. The Successful Offeror shall abide by all rules and regulations which may be promulgated by USACE in connection with the use of the Subleased Premises, including applicable minimum wage requirements.

D. Sublease Term

The Commonwealth proposes to grant to the Successful Offeror a Sublease with an initial term of eleven (11) years, which commences on January 1, 2023 and terminates on April 30, 2034.

At the end of the initial term, the Commonwealth will agree to an extension of the Sublease for an additional ten (10) year term, contingent upon:

1. The USACE's extension of the Prime Lease (see letter attached as **Exhibit D**), and
2. The Successful Offeror is adhering to the terms and conditions of the Sublease.

E. Purpose

The Successful Offeror shall operate as a marina concession and for no purpose other than outlined herein, except as may be authorized by the express prior written consent of the Department of Parks, upon the terms and conditions set forth in the Sublease. The Successful Offeror shall, at a minimum, conduct the following business activities on the Subleased Premises:

- Full-service restaurant with sale of food and beverages. Please be advised alcohol sales are currently prohibited on the Subleased Premises, but they may be considered in the future, subject to applicable law, and the approval of USACE and the Commonwealth.

- Marina Store with sale of light refreshments, prepared foods, snacks, ice and souvenirs
- Furnishing a marina structure that provides at least 52 open slips and 116 covered slips for mooring and docking of privately-owned boats
- Rental to the public of watercraft, with a minimum of three (3) boats with motors or personal watercraft
- Sale of boat and fishing merchandise, supplies, tackle, and bait
- Sale of gasoline, oil, and other desired petroleum products
- Sewage pumpout services pursuant to KRS 235.230(4)
- Accessible and operational restrooms when the marina is open, subject to applicable ADA requirements

The Successful Offeror may, at its discretion, also conduct the following business activities on the Subleased Premises:

- Subject to USACE and Department of Parks prior written approval, additional boat slips could be added
- Rental to the public of kayaks or canoes from the boat launch area subject to Department of Parks approval
- Limited incidental sales of boats, motors, and boat accessories subject to Department of Parks prior written approval
- Servicing of privately-owned boats
- Sale of grocery items such as bread, milk, meat, and other related products
- Other related business activities, subject to the prior written approval of the Department of Parks

Other than as outlined above, the Successful Offeror shall not conduct, engage, or allow in any form of trade or commercial activity nor perform any type of service on the Subleased Premises or property under the control of the Commonwealth.

F. Rental Consideration

As consideration for allowing the Successful Offeror to furnish and operate a marina on the Subleased Premises, the Successful Offeror shall make monthly payments to the Department of Parks of a percentage of gross receipts derived from operation of the marina concession, boat slip rental, and all other business activities conducted on the Subleased Premises (See Section VI., Paragraph f.).

G. Marina Operation

The mission of Kentucky State Parks is to deliver quality programs, amenities, and services which create memorable experiences and a sense of place, contribute to the economic growth of the Commonwealth, and preserve the historic and natural integrity, and traditions of our parks for existing and future generations. The marina operation will be perceived by the public as being part of a state park system that strives to maintain a positive image and reputation. The Successful Offeror will be expected to operate and maintain the marina in accordance with the Commonwealth's standards, applicable laws, and as set forth in this RFP and the resulting Sublease Agreement and to offer customer service that will enhance the mission of State Parks and the total tourism effort of the Commonwealth.

The Successful Offeror shall assure that the marina operation provides services to the best standards prevailing for similar businesses and that the marina property is maintained to a safe and functional standard that complies with all codes, laws, and regulations.

The Successful Offeror shall keep the marina facilities open to the public seven days a week with the following minimum hours of operation:

- **May 1 – October 31 (“Operating Season”): 7:00 a.m. – 8:00 p.m.**
- **November 1 – April 30 (“Off-Season”): 8:30 a.m. – 4:30 p.m. Restaurant and Store operations are optional during Off-Season**

The Successful Offeror shall obtain preapproval of operating hours deviating from the above hours from the Department of Parks. The marina can be open longer if the season dictates. The Successful Offeror shall keep the marina open to the public for days and times preapproved by the Department of Parks. Offeror is encouraged to maximize opportunities for business during the off-season as Paintsville Lake does not release for winter pool.

For informational purposes, since Fiscal Year 2015, the amounts paid to the state at 5.5% of annual gross receipts by the former lessee are as follows (Please note: Fiscal Year is July 1-June 30):

FY 2015	\$16,344.24
FY 2016	\$13,795.14
FY 2017	\$17,264.15
FY 2018	\$12,715.92
FY 2019	\$14,103.50
FY 2020	\$14,547.00
FY 2021	\$ 7,999.68
FY 2022	\$16,255.22

H. Boat Slip Agreements

The Successful Offeror shall annually maintain and keep a dockage license agreement for every slip renter on the Subleased Premises, which shall be a slip rental agreement between the Successful Offeror and the boat owner. The agreement shall be updated annually, and a copy of each slip rental agreement shall be provided to the Department of Parks upon request. The Successful Offeror shall utilize a dockage license agreement similar or identical to the Department of Parks agreement (attached **Exhibit E**), which form shall hold harmless the Commonwealth and USACE from any negligent acts.

I. Rates and Prices

The Successful Offeror shall set reasonable rates and prices for its goods and services and may be subject to approval by the Department of Parks. In addition, its slip, boat, and personal watercraft rental rates and prices will be subject to review and written approval by the Department of Parks throughout the entire term of the Sublease. The Successful Offeror shall not be permitted to charge for entrance or admission to the Subleased Premises, including, but not limited to, the store, restaurant, and restrooms.

J. Staffing

The Successful Offeror shall employ only competent and orderly employees and contract laborers, who shall be subject to a criminal background check and who will keep themselves neat and clean. The Successful Offeror, its employees, and contract laborers will accord courteous and competent treatment and service to all guests and patrons. The Successful Offeror, its employees, and contract laborers shall be properly trained in their duties and must be adequate in number and quality to provide prompt, courteous, and efficient service. The Successful Offeror shall issue and enforce an employee uniform policy that has been preapproved by the Department of Parks.

K. Security

The Successful Offeror shall provide suitable security for its entire operation on the Subleased Premises. The Department of Parks will not provide security for the Subleased Premises.

L. Utilities

The Commonwealth divests itself of any and all responsibility to all utility service components located on the Subleased Premises, as well as all utility service components located downstream of each marina utility meter. Consequently, the Successful Offeror shall, at its sole expense, be responsible for **all** utility service components located on the Subleased Premises and downstream of each marina utility meter throughout the entire term of the Sublease, including, but not limited to, the following:

1. Provide for and timely pay for **all** utilities for the operation of the marina. The existing marina utilities are metered separately from all other Park facilities; utility providers will bill the Successful Offeror directly.
2. Pay all costs and obtain all regulatory approvals necessary for utility upgrades, rerouting, provider changes, and any other utility modifications.
3. Ensure adequate domestic and fire safety water service for the entire marina. Paintsville Utilities provides water service to the marina and will bill the Successful Offeror directly. The Successful Offeror shall timely pay each monthly bill.
4. Annually certify to the Department of Parks that all water and sanitary systems on the Subleased Premises have been inspected and comply with federal, state, and local standards and regulations. A licensed plumber shall make the certification. Inspectors with the Department of Housing, Buildings, and Construction must perform inspections for permitted repairs and modifications.
5. Certify to the Department of Parks that all electrical components on the Subleased Premises have been inspected and comply with federal, state, and local standards whenever modifications are made or damages occur to the electrical system. Inspectors with the Department of Housing, Buildings, and Construction must perform inspections for permitted repairs and modifications.

KRS 235.230(4) governs sewage pumpout services to be provided by the Successful

Offeror, Historically, toilets go into holding tanks on individual boats and are emptied by a pump-a-head boat. Only sanitary waste can be discharged (i.e., no oil, grease, cleaning chemicals, etc.). The pump-a-head boat transfers waste to a stationary pump at the marina. From the marina pump, waste is transferred into the Paintsville Utilities sewer system. Paintsville Utilities will bill the Successful Offeror directly. The Successful Offeror shall timely pay each monthly bill. In no instance shall waste be discharged into the water. A pumpout log must be maintained by the Successful Offeror along with documentation showing the frequency and location of pumpout services and shall be provided to USACE and Department of Parks upon request.

6. Successful Offeror shall, at its own expense, be responsible for the provision of all internet or telecommunications services to customers and guests should it elect to do so or may permit individual slip occupants to secure these services.

M. Maintenance Responsibilities

At a minimum, the following property and facilities shall be subject to the maintenance provisions of this Section, to wit: (i) all floating docks, gangways, ramps, piers, slips, and walkways, together with all appurtenances, equipment, utility service components, and signage thereupon; and (ii) all marina buildings, fuel tanks and dispensing systems, maintenance and storage sheds, and any and all other structures.

Except as otherwise specifically reserved, the Commonwealth divests itself of any and all maintenance to the marina facilities. The Successful Offeror shall reasonably maintain the entirety of the Subleased Premises in a manner that provides a safe and functioning environment for all patrons and does not detract from or cause ill effect to the overall appearance of the Park or the safety of customers and patrons.

Consequently, the Successful Offeror shall, at its sole expense, be responsible for all maintenance and repair duties throughout the entire term of the Sublease, including, but not limited to, the following:

1. Keeping existing and proposed buildings, structures, and other improvements located on the Subleased Premises, both interior and exterior, and all equipment and personal property within and attached to said buildings and structures in good repair, and not suffering or permitting any waste to be committed or anything to be done on the Subleased Premises that would constitute a nuisance.
2. Conspicuously posting regulatory and other safety signage on the Subleased Premises, such as notifications regarding swimming, stray electrical currents, smoking near fuel, fishing, etc.
3. Daily removal of trash from the entire Subleased Premises, including the dock and shoreline. The Successful Offeror shall frequently monitor the Subleased Premises and remove trash as reasonably directed by the Department of Parks or USACE, to maintain a clean and orderly appearance. Trash from the Subleased Premises shall be properly disposed of in a dumpster, the location of which shall be determined by the Department of Parks. The dumpster shall be procured and maintained by and at the sole expense of the Successful Offeror, and the Successful Offeror shall daily monitor and remove trash in and around the immediate vicinity of the dumpster or as reasonably directed by the Department

of Parks or the USACE. The Successful Offeror shall be responsible, at its sole expense, for emptying the dumpster at least twice per week during operating season and weekly during the off-season.

4. Providing all janitorial services, cleaning, painting, pest control services, similar services, and all supplies and materials required thereto.
5. Implementing a program of preventative equipment maintenance that is in accordance with manufacturer recommendations, particularly with regard to fire extinguishers, fuel pumps, sewage pumpout, life preservers, electrical, or any other equipment needed for safe operation of the marina and keeping detailed records that shall be provided to the Department of Parks upon request.
6. Removing any and all debris that should become lodged within the Subleased Premises, to be completed at the direction of and in conjunction with USACE and/or Department of Parks.
7. Rebuilding, restoring, and/or replacing the Subleased Premises necessitated by casualty resulting from fire, flood, wind, rain or other weather event and the negligent, reckless, or intentional acts of the Successful Offeror, its agents, its contractors, its employees, its patrons or guests.
8. Operating and maintaining the gasoline tanks and dispensing systems in compliance with all laws and regulations promulgated by the Energy and Environment Cabinet, Department of Agriculture, and any other applicable local, state, or federal agency. Maintenance of these components includes, but is not limited to, regular inspections, painting, and pumping of sludge and/or water from the tanks (caused by flooding, leaks, or other problems). The Successful Offeror shall promptly provide copies of all gasoline tank and dispensing system inspections, documents, and reports to the Department of Parks. The Successful Offeror shall also assume all responsibility to repair or replace gasoline tank and dispensing system components, in whole or in part, if necessary or required by a regulating agency. The Successful Offeror shall replace the gasoline tank or any dispensing system component if it deteriorates to the point of replacement. All such repairs or replacement shall be made as soon as possible and no later than 30 days, absent agreement of the Commonwealth.
9. Maintaining the grounds of the Subleased Premises including the shoreline. Park staff shall maintain the property adjacent to the Subleased Premises.

If the Successful Offeror does not make necessary repairs or maintenance timely after notice from the Commonwealth, the Department of Parks shall have the right to conduct the repairs or maintenance at the sole expense of the Successful Offeror.

N. Maintenance of Commonwealth / USACE Property

In addition to Subsection M, Maintenance Responsibilities, the Successful Offeror shall be responsible for the proper care and custody of all Commonwealth / USACE property furnished for Successful Offeror's use in connection with the performance of the Sublease. This responsibility includes the repair and/or replacement due to loss, damage, or negligence, normal wear and tear expected, and to cure deficiencies noted in regular, annual inspections of the marina facilities by the Commonwealth, as described below. Failure to cure deficiencies outlined in the annual inspection report and within the permitted timeframe may result in the Commonwealth exercising its rights under the Sublease.

The Successful Offeror shall do those acts 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

The Successful Offeror shall participate in annual inspections by the Commonwealth, which may include representatives of the USACE, Department of Parks; the Finance and Administration Cabinet; the Department of Housing, Buildings and Construction; the State Fire Marshal's Office; the State or Local Department of Health; and other appropriate representatives of the Commonwealth. The inspections will (1) determine whether the Successful Offeror is in conformity with the provisions of the Sublease, and (2) specify what act or acts are necessary to conform with the provisions of the Sublease. As soon thereafter as practicable, the Commonwealth shall provide to the Successful Offeror a written inspection report detailing the findings and recommendations pertaining to maintenance.

The Successful Offeror shall have thirty (30) days following receipt of the inspection report to either (1) complete the maintenance recommendations made by the Commonwealth's representatives or (2) present a written plan, for approval by the Commonwealth's representatives, which details the actions to be taken in order to correct any maintenance deficiencies and an anticipated completion date.

In the event the Successful Offeror fails either to (1) complete the maintenance recommendations within thirty (30) days, or (2) submit a reasonable plan, approved by the Commonwealth, within thirty (30) days, together with a projected date of completion by which to accomplish those maintenance recommendations, and to complete such plan of maintenance as agreed, unless good cause be shown for delay, then the Commonwealth may enter upon the Subleased Premises and do that which is necessary to maintain or repair the property.

The Successful Offeror shall indemnify and hold harmless the Commonwealth from all costs and expenses of any such maintenance accomplished by the Commonwealth. Should the Commonwealth be required to do that which is necessary to maintain or repair the property, then the Commonwealth may, at its sole discretion, declare the Successful Offeror in default of the Sublease.

The Successful Offeror shall also submit to inspections by USACE, which may or may not be conducted in conjunction with the Commonwealth's inspections. The Successful Offeror shall comply with all inspection requirements and recommendations made by USACE. In the event the Successful Offeror fails to satisfy the USACE inspection requirements, then the Commonwealth may, in consultation with USACE, declare the Successful Offeror in default of the Sublease.

O. Escrow Account

In order to ensure that the Successful Offeror shall be sufficiently liquid to indemnify the Commonwealth against the costs and expenses that it may incur to maintain and repair the property, the Successful Offeror agrees that, upon execution of the Sublease, the Successful Offeror shall either deposit \$50,000 or on the 10th business day of each month, deposit a sum of money equal to two and one-half percent (2-1/2%) of the gross sales of the total marina operation realized for the preceding one month, as reported to the Commonwealth by the Successful Offeror, but in no instance less than one thousand five hundred dollars \$1500 per month ("minimum maintenance deposit"), in a demand deposit account in a Kentucky financial institution authorized to do business pursuant KRS Chapters 286.3 and 286.6 for the purpose of providing to the Successful Offeror a working maintenance account with a balance of up to Fifty Thousand Dollars

(\$50,000).

The parties agree with respect to such escrow demand account that:

The Successful Offeror may withdraw from the escrow account at any time that funds are available on the condition that the Commissioner of the Department of Parks, or his/her designee, countersigns the check or other instrument to withdraw proceeds from the aforesaid account. The Successful Offeror shall be deemed by the resulting Sublease 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 Commissioner of the Department of Parks. Accompanying each request for reimbursement, the Successful Offeror must provide legitimate estimates for repairs and/or maintenance to the facilities with proof of payment to each of the Successful Offeror's contractors. In the event funds are withdrawn from the escrow account for maintenance expenses, the Successful Offeror shall resume monthly deposits of the greater of two and one-half percent (2-1/2%) of the gross sales of the total marina operation realized for the preceding one month, as reported to the Commonwealth by the Successful Offeror, or the minimum maintenance deposit until the escrow account balance returns to Fifty Thousand Dollars (\$50,000).

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

1. 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 subleasehold;
2. That the account shall be maintained jointly in the names of the Commonwealth, Commissioner of the Department of Parks or his/her designate, and the Successful Offeror;
3. Withdrawals from the account shall be made only upon the signatures of the representatives of both parties, only to reimburse the Successful Offeror 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; or to reimburse Commonwealth for maintenance costs incurred as a result of the Successful Offeror's failure to perform such maintenance. Refusal by the Successful Offeror to authorize a withdrawal from the account to reimburse the Commonwealth for maintenance costs incurred under this section shall constitute a material breach of the Sublease;
4. Escrow account funds shall not be utilized to pay salaries, overhead, or operating expenses;
5. That said escrow deposit account, and the requirement for same, shall exist during the entirety of the term of the Sublease and any extensions thereof;
6. That it is the intention of the parties that distributions shall be made from the escrow deposit account for reimbursement to the Commonwealth for all costs and expenses it shall have incurred to maintain or repair the components of the marina at the failure of the Successful Offeror to perform such necessary maintenance or repair;
7. At the expiration of the term of the Sublease and any extensions thereto, and after the fulfillment of the requirements of the Sublease and completion of any necessary repairs as determined by the Commonwealth at its sole discretion, the entirety of the contents of the account shall be returned to the Successful Offeror.

P. Promotional Materials and Souvenirs

The Department of Parks shall have the right to review and approve the Successful Offeror's proposed promotional materials prior to the publication, dissemination, or broadcast of such materials including digital or social media. Marina promotional materials may incorporate Department of Parks "branding" upon prior written approval by the Department of Parks.

The Department of Parks shall have the right to review and approve the Successful Offeror's proposed souvenirs and other similar items that it proposes to sell.

Q. Signage

The Successful Offeror shall, at its sole expense, be responsible for all marina signage throughout the entire term of the Sublease, including, but not limited to, the following:

1. Install or modify marina promotional sign(s) at appropriate locations, subject to the prior written approval of the Department of Parks. Marina promotional sign(s) shall complement existing Park signage in color and lettering and may incorporate Department of Parks "branding" upon prior written approval by the Department of Parks. Proposed signage along state-maintained highways must also be approved by the Transportation Cabinet prior to installation.
2. Post all signs required by regulatory agencies in conformance with the applicable regulatory requirements.
3. Maintain and repair all aforementioned signs as necessary or reasonably directed by the Department of Parks or USACE.

R. Insurance

Each insurance policy required by this Section shall name the Commonwealth and USACE as additional insureds and shall also provide that said policy will not be cancelled, terminated, or changed without at least thirty (30) days prior written notice to the Commonwealth and USACE.

The Successful Offeror shall furnish to the Department of Parks copies of the initial certificates of coverage for each policy required by this Section **within ten (10) business days** of the date that the Sublease is fully executed by all parties, or the date the Successful Offeror is granted written permission to enter the property to begin construction and/or operation, whichever date is earlier.

In addition, the Successful Offeror shall furnish to the Department of Parks renewal certificates of coverage for each policy required by this Section at any time upon request but at **least ten (10) business days** prior to the expiration of each policy, for the full term of the Sublease and any renewals thereof.

FAILURE TO PROVIDE CERTIFICATES OF COVERAGE ANNUALLY MAY BE GROUNDS FOR DEFAULT OF THIS AGREEMENT AND MAY BE THE BASIS FOR CLOSURE OF THE MARINA TO THE PUBLIC OR THE PROHIBITION OF ITS OPENING FOR THE SEASON.

Liability Insurance. Prior to commencement and during the term of the Sublease, the Successful Offeror shall be required to obtain from an insurance company authorized to do business in the Commonwealth, and keep in force, at Successful Offeror's own expense, a commercial general liability insurance policy providing minimum combined single limits coverage of Five Million Dollars

(\$5,000,000) per occurrence, and having an aggregate annual limit of not less than Five Million Dollars (\$5,000,000), with an umbrella of Five Million Dollars (\$5,000,000) per occurrence and an annual aggregate limit of Five Million Dollars (\$5,000,000).

After award of the Sublease, the minimum liability amounts of required coverage established under this Section may be subject to modification by the Commonwealth upon **sixty (60) days** notice to the Successful Offeror.

Casualty Insurance. During the term of the Sublease, the Successful Offeror shall maintain, at its sole expense, fire and extended coverage insurance, including theft and vandalism, covering the entire Subleased Premises including the marina in an amount equal to its full replacement cost value. The Successful Offeror shall also carry and maintain fire and extended coverage insuring all contents and inventories in the Subleased Premises to the extent of their full insurable value. In the event of a loss, the Successful Offeror must repair/replace the affected facilities within twelve (12) months from the date of loss.

Property Insurance. During the term of the Sublease, the Successful Offeror shall maintain, at its sole expense, property insurance for the entire Subleased Premises including the marina against loss of damage by fire, lightning, windstorm, or other casualty in an amount not less than one hundred percent (100%) of the full insurable value thereof. The term "full insurable value" shall mean the actual replacement cost excluding foundation and excavation costs, less physical depreciation, as mutually agreeable to both parties.

S. Construction/Alterations/Renovations on the Subleased Premises

During the course of the Sublease, the Successful Offeror shall not construct, modify, upgrade, alter, renovate, improve, or majorly repair facilities located upon the Subleased Premises, without prior written approval from the Commonwealth through the Department of Parks and USACE (if applicable). The Successful Offeror shall comply with the Department of Parks Lessee Property Modification Request procedures, as described in **Exhibit F** which is attached hereto and expressly made a part hereof.

The Commonwealth's approval is not intended to verify constructability or conformance with any applicable codes but rather to ensure that the proposed design is consistent with the Successful Offeror's proposal, the Sublease requirements, and is in the best interest of the Commonwealth. In addition, the Successful Offeror, at its sole expense, shall:

1. Agree that proposed construction, modifications, upgrades, alterations, renovations, improvements, and major repairs to the Subleased Premises shall be subject to all applicable building codes of the Commonwealth, the Americans with Disabilities Act (ADA), and Guidelines for the Safe Operation and Maintenance of Marinas attached as **Exhibit G**, which is attached hereto and expressly made a part hereof.
2. Allow the Commonwealth to routinely monitor all construction/renovation work performed by the Successful Offeror or its agents to ensure that work is being performed in a manner that provides a safe and healthy environment for the public.
3. Obtain all regulatory approvals, building permits, and other necessary approvals prior to commencing construction/renovation activities. In addition to the Commonwealth's approval, the Successful Offeror's construction/renovation activities may also require prior approval by USACE and the Department of Housing, Buildings, and Construction or other State and local agencies. The Successful Offeror solely shall determine the necessary approvals and

permits and solely shall be responsible to obtain them. The Successful Offeror shall be responsible for all fees associated with said approvals and permits. Refer to the Department of Parks Lessee Property Modification Request procedures (**Exhibit F**) for more detail.

4. Obtain occupancy permits required by law prior to permitting the general public to enter an area of the Subleased Premises that has been constructed, modified, upgraded, altered, renovated, improved, or majorly repaired.
5. Make reasonable attempts to design and construct projects compatible with the following goals:
 - (a) Increase environmental performance and economic value over time;
 - (b) Enhance satisfaction and productivity of workers through energy-efficient systems;
 - (c) Incorporate environmentally friendly materials and products; and
 - (d) Reduce waste.

T. Performance Bonds

1. For any proposed construction, renovation, alteration or major repair with a total anticipated project cost in excess of \$40,000, the Successful Offeror or its assignee shall furnish separate performance and payment bonds to the Commonwealth and include the Commonwealth and the USACE as an additional insured. The Successful Offeror, or its designee, shall furnish a performance bond satisfactory to the Commonwealth in an amount equal to one hundred percent (100%) of an approved construction project as security for the faithful performance of the project. The Successful Offeror or its designee shall also furnish a payment bond satisfactory to the Commonwealth 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 Successful Offeror or its contractors for the performance of the work provided for in the project, including security for payment of all unemployment contributions which become due and payable under Kentucky Unemployment Insurance Law.
2. Each bond furnished by the Successful Offeror 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.
3. 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.

NOTE: The performance bond protects the Commonwealth in the event the Successful Offeror defaults on the project. The payment bond assures payment of those supplying labor and materials to the Successful Offeror. Unemployment compensation and workers' compensation do not protect against these contingencies.

U. Prohibition from Removal of Vegetation and Minerals

The Successful Offeror agrees that no live trees will be cut, no vegetation dug, nor the landscape altered in any way without prior consultation and written approval of the Commonwealth, and where applicable, USACE. In no event shall the Successful Offeror extract or remove any minerals, oil, or gas from the Subleased Premises.

V. Records and Reports

The Successful Offeror shall keep complete and accurate financial records and books relating to Subleased Premises' business operations, pursuant to 304 KAR 1:010, and any and all other applicable laws or regulations, of all transactions relating to the marina facilities and to maintain such additional records as the Commonwealth deems necessary to adequately reflect the operations conducted on the Subleased Premises. The financial records will be subject to inspection or audit by designated representatives of the Commonwealth at all times during regular business hours and shall be made available at a convenient location for that purpose.

The Successful Offeror further covenants that, promptly after the close of each fiscal year, it will, at its own expense, cause an audit to be made of its books and accounts relating to the operation of the facilities for the preceding fiscal year by an independent firm of certified public accountants of recognized ability and approved by the Department of Parks, and a copy of the audit shall be submitted to the Department of Parks no later than three (3) months after year's end. Distribution of the audit will be the responsibility of the Department of Parks.

W. Taxes

The Successful Offeror shall be responsible for paying all state, federal, and local taxes, including but not limited to, ad valorem taxes assessed against the marina facilities and the operations conducted on the Subleased Premises.

X. Liens Against the Subleased Premises

Nothing in the resulting Sublease shall in any way be deemed or construed as constituting an order or request by the Commonwealth, expressed or implied, to any contractor, sub-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 Subleased Premises; nor as giving the Successful Offeror any right, power, or authority to grant 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 property of the Commonwealth or USACE or the Successful Offeror's subleasehold interest therein.

Furthermore, the Successful Offeror shall not suffer or permit any mechanic's or materialman's lien to be filed against the property of the Commonwealth or USACE, or the Successful Offeror's subleasehold interest in the Subleased Premises, by reason of work, labor, services, or materials supplied to or claimed to be supplied to the Successful Offeror. If a mechanic's or materialman's lien shall be filed against the Subleased Premises or the Successful Offeror's subleasehold interest at any time, the Successful Offeror shall cause the same to be discharged within thirty (30) days after the notice of filing thereof by payment, deposit, bond, or an Order of a Court of competent jurisdiction or otherwise. If the Successful Offeror, 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 Successful Offeror shall not be deemed to be in default under the Sublease while such proceedings or litigation are being conducted in good faith by it. However, if the Successful Offeror fails to cause any such lien to be discharged within the period aforesaid, or fails to contest the same as provided above, then the Successful Offeror shall be deemed to be in default of the Sublease, which shall be a basis for termination of said Sublease.

Y. Sub-Subleasing, Assignments, or Mortgages of Successful Offeror's Interest

During the course of the Sublease, the Successful Offeror shall not, with the exception of boat slip agreements relative to the storage and mooring of boats and boating equipment, as specified in Subsection H, voluntarily, involuntarily, or by operation of law, assign, sublet, mortgage, or transfer the Sublease or any interest created therein to any other person, partnership, corporation, or other entity without first notifying and obtaining the prior written consent of the Commonwealth. Any attempt to assign, sublet, mortgage, or transfer the Sublease or any interest created therein without such consent shall be void. If an assignment, sublet, mortgage, or transfer of the Sublease is made with the consent of the Commonwealth, the Successful Offeror shall not be relieved from payment of all rent (revenues) according to the terms of the Sublease or from the performance of all other terms, covenants, and conditions of the Sublease. If consent is once given by the Commonwealth to any such assignment, mortgage, or subletting, such consent shall not operate as a waiver of the necessity for obtaining the Commonwealth's consent to any subsequent assignment, mortgage, or subletting. Furthermore, any change in the Successful Offeror's business status (i.e., partnership, corporation) shall be reported to the Commonwealth immediately.

No assignment, subletting, transfer, or mortgage of Successful Offeror's interest in the property shall be effective or binding against the Commonwealth until such time as the assignee and the Commonwealth execute an amendment to this agreement reflecting such transfer.

Z. Improvements and Additions and Removal of Equipment and Supplies Upon Expiration or Termination of Sublease

1. It is understood and agreed by the parties that the Successful Offeror shall have the right, during the term of the resulting Sublease, to erect structures and install equipment in or upon the Subleased Premises, which structures and equipment so placed in or upon or attached to said premises shall be and remain the property of the Successful Offeror and may be removed therefrom by the Successful Offeror, at its sole expense, at any time prior to any termination or expiration of the Sublease, so long as the Successful Offeror has the written approval of the Commonwealth; provided, however, that no structures may be erected upon the Subleased Premises until and unless the design and proposed location thereof have been approved by the Commonwealth and USACE; provided, further, the Successful Offeror shall, upon the removal of said structures and equipment, or any part thereof, promptly repair any damage to the Subleased Premises resulting from the installation or removal of said structures and equipment.
2. All structures and equipment of the Successful Offeror placed in or upon or attached to the Subleased Premises shall be at the sole risk of the Successful Offeror. Nothing herein contained, however, shall be construed to confer any right upon the Successful Offeror to construct, operate, or maintain any structure without compliance with requirements of the Commonwealth and USACE.
3. Before the expiration of the Sublease or its termination by the Successful Offeror, the Offeror shall vacate the Subleased Premises, remove the structures and equipment of the Successful Offeror therefrom, and restore the Subleased Premises to a condition satisfactory to the Department of Parks. If, however, the Sublease is terminated by the Commonwealth, the Successful Offeror shall vacate the Subleased Premises within sixty days of the Commonwealth mailing the termination notice, remove structures and equipment, and restore the Subleased Premises to the aforesaid condition within such time

as the Department of Parks may designate. In either event, if the Successful Offeror shall fail or neglect to remove said property and restore the Subleased Premises, then, at the option of the Commonwealth, said structures and equipment shall either become the property of the Commonwealth without compensation therefor, or the Commonwealth may cause the property to be removed and no claim for damages against the Commonwealth or its officers or agents shall be created by or made on account of such removal and restoration work. The Successful Offeror shall also pay the Commonwealth on demand any sum which may be expended by the Commonwealth after the expiration, revocation, or termination of this Sublease in removing the structures and equipment and/or restoring the Subleased Premises.

Should the Successful Offeror holdover, fail to remove the marina structures and equipment, and continue operations upon termination or expiration of the Sublease without the consent of the Commonwealth, then rent in the amount of the higher of a) \$1000.00 per day or b) two times the amount of the average monthly (based on the previous twelve months) Sublease rental rate/revenue payable to the Commonwealth prorated on a daily basis shall become due and owing.

AA. Hold Harmless

The Successful Offeror shall indemnify and hold harmless the Commonwealth, USACE, and any of their agents, employees, or representatives, from any and all claims, demands, damages, actions, costs (including attorney fees), and charges which the Commonwealth, USACE, or the Successful Offeror 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 Subleased Premises or any means of ingress thereto, or egress therefrom, or resulting from the Successful Offeror's operations on the Subleased Premises, unless such injury or loss arises directly from the negligence of the Commonwealth, USACE, or any of their departments or agencies, or officers or employees while acting within the scope of their employment.

The Successful Offeror 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 or USACE 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 Commonwealth, any of its departments or agencies, or any of its officers, agents, or employees while acting within the scope of their employment.

BB. 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 Successful Offeror agrees to pay all expenses of such action, including attorney's fees and costs at all stages of litigation as set by the court or hearing officer.

CC. Notices

Except as provided otherwise herein, after Sublease award, all notices under the Sublease shall be provided by either registered mail, certified mail, or hand-delivered to the receiving party. Notice shall be effective upon mailing or hand delivery of the notice.

DD. Offer of Gratuities

By submission of a proposal, the Successful Offeror certifies that no member or delegate of Congress, nor any elected or appointed official or employee of the Commonwealth 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 Successful Offeror, its agents, or employees.

EE. Conflict of Interest

No official or employee of the Commonwealth, and no other public official of the Commonwealth or the federal government who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the Project shall, prior to the completion of the Project, voluntarily acquire any personal interest, direct or indirect, in the Sublease.

The Successful Offeror 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 Successful Offeror further covenants that in the performance of the Sublease no person having any such known interests shall be employed. By entering into the Sublease, the Successful Offeror covenants that it is not in violation of KRS Chapter 11A (Executive Branch Code of Ethics).

FF. Protection of Work, Property, Employees, and Public

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

The Successful Offeror shall take all necessary precautions for the safety of employees on the work site and shall comply with all applicable provisions of the Kentucky Worker's 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 Subleased Premises where the work is being performed. The Successful Offeror shall designate a responsible member of his/her organization 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 Department of Parks within **ten (10) business days** of the date that the Sublease is fully executed by all parties, or the date the Successful Offeror is granted written permission to begin operation, whichever date is earlier.

GG. Employment Practices

The Successful Offeror 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 Offeror must take affirmative action to ensure that employees, as well as applicants for employment, are treated without discrimination because of their race, color, religion, sex, national origin, age (except as provided by law), marital 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. The Successful Offeror agrees to post in a conspicuous place available to

employees and applicants for employment, notices setting forth the provisions of this clause.

The Successful Offeror shall, in all solicitations or advertisements for employees placed by or on behalf of the Successful Offeror, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age (except as provided by law), marital status, political affiliation, or disability, except where it relates to a bona fide occupational qualification.

The Successful Offeror shall comply with the non-discrimination clause contained in Federal Executive Order 11246, as amended by Federal Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex, or 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 Offeror shall comply with related Commonwealth laws and regulations.

The Successful Offeror shall comply with regulations issued by the Secretary of Labor of the United States in Title 20, Code of Federal Regulations, Part 741, pursuant to the provisions of Executive Order 14026, the regulations issued by the Secretary of Labor in 29 CFR part 23 pursuant to the Executive Order, Federal Sick Leave Policies in Executive Order 13706, the regulations issued by the Secretary of Labor in 29 CFR part 13 pursuant to the Executive Order, and the Federal Rehabilitation Act of 1973. The Successful Offeror shall comply with the Civil Rights Act 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. The Successful Offeror shall also abide by all the terms and conditions of the aforementioned Prime Lease, to include but not be limited to, Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directive 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Successful Offeror, its agents, successors, transferees, and assigns. (See **Exhibit H**).

The Prime Lease requires the Commonwealth, as lessee, to sign an assurance that it will comply with Title VI of the Civil Rights Act of 1964 (78 Stat. 241) and the Department of Defense Directive 5500.11 issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations, and requires that all Successful Offerors shall supply like assurance. An assurance will be attached to the resulting Sublease and must be signed by the Successful Offeror pursuant to **Exhibit C**, the Prime Lease.

The Successful Offeror will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

HH. Permits and Licenses

The Successful Offeror shall procure all necessary permits, licenses, and certificates that 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, the Department of Parks, and USACE prior to any re/construction of the marina.

The Successful Offeror shall conform to operational standards of the Department of Parks and to all bona fide rules and procedures pertaining to same as may be promulgated by the Department of Parks.

II. Right of Entry

The Sublease will reserve the right to the Commonwealth, its officers, agents, and employees, as well as officers, agents, and employees of USACE, to enter upon the Subleased Premises at reasonable times to inspect said premises, operation, and equipment, or for any purposes in connection with work necessary to the benefit of the Commonwealth and the U.S. Government, including, if necessary, any ingress or egress in the form of an easement that shall not unreasonably interfere with the marina operation.

JJ. Termination of Sublease

The Sublease shall be subject to the following termination provisions:

Termination for Default. If at any time during the period in which the Sublease is in effect, the Successful Offeror, in the opinion of the Commonwealth, defaults on any obligation incurred hereunder, including, but not limited to, the payment of rent due the Commonwealth or the failure to maintain standards of service required, or in any manner fails to provide adequate service to the public, then the Sublease shall be subject to termination by the Commonwealth, with no right of recourse remaining in the Successful Offeror. All rights and benefits of the Successful Offeror set forth herein shall be deemed forfeited, subject to the terms outlined in the Sublease; provided, however, that before any termination shall occur under this section, the Successful Offeror shall be given written notice and be allowed thirty (30) days from receipt of notice in which to cure such default or non-compliance. If said default or non-compliance is cured within the above period, then the Sublease shall remain in full force and effect. In the event of termination for default, the Successful Offeror shall be responsible for paying to the Commonwealth any monetary sum due, up to and including the date of termination.

If, in a 12-month period, the Successful Offeror has been notified three times or more by the Commonwealth that it is in default on its monetary obligation to be paid to the Commonwealth, then the Commonwealth may, at its sole option, declare the Successful Offeror in immediate default and the 30-day cure provision shall not apply.

The various rights, options, elections, powers, and remedies contained in the sublease shall be construed as cumulative and not one of them shall be exclusive of any of the others, or of any other legal or equitable remedy which either party might otherwise have in the event of breach or default in the terms hereof, and the exercise of one right or remedy by such party shall not impair its right to any other right or remedy until all obligations upon the other party have been fully performed.

KK. Procedure on Termination for Default

Upon mailing by certified mail to the Successful Offeror a Notice of Termination, specifying the nature of the termination, the extent to which performance of service under the Sublease is terminated and the date upon which such termination becomes effective, the Commonwealth may proceed as follows:

- (1) Declare the Sublease to be terminated, in which event the Sublease, all rights of the Successful Offeror, and all duties of the Commonwealth shall immediately cease and terminate and the Commonwealth may immediately possess and enjoy the properties as though this Sublease had never been made, without prejudice, however, to any and all rights of action against the Successful Offeror the Commonwealth may have for rent, damages, or breach of covenant, in respect to which the Successful Offeror shall remain and continue liable notwithstanding such termination; or,
- (2) Take immediate possession and re-let the properties or any part thereof, for such term or terms and on such conditions as the Commonwealth determines for and on behalf of the Successful Offeror, for the highest rental reasonably obtainable in the judgment of the Commonwealth, which re-letting shall not be considered as a surrender or acceptance back of the properties or a termination of the Sublease, and recover from the Successful Offeror any deficiency between the amount of rent, additional rent and all other charges payable under the Sublease, plus any expenses incurred by the Commonwealth in connection with repairs, or alterations the Commonwealth deems necessary or appropriate to make in connection with such re-letting, all costs incurred in actually re-letting the properties, and sums expended for reasonable attorney's fees; but the Commonwealth shall be under no duty to re-let the properties.

LL. Force Majeure

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

MM. Conflict of Law and Choice of Law Provision

It is agreed by both parties of the Sublease that all questions as to the execution, validity, interpretation, construction, and performance of the resulting Sublease shall be governed by the laws of the Commonwealth. Furthermore, both parties agree that any legal action which is brought on the basis of said Sublease shall be filed in Franklin County, Kentucky.

NN. Level of Assets

The Successful Offeror promises and commits to maintain its assets at the marina operation for the purposes of providing and producing revenue, and for the purpose of providing security to the Commonwealth to ensure the Successful Offeror's performance of its obligations under the resulting Sublease. For the purpose of the Sublease, the term "assets" shall be construed to mean: (1) physical properties to include, but not be limited to, houseboats, jet skis, docks, marina buildings, storage sheds, and physical inventory; and (2) accounts receivables in an amount equal to its expenses to operate, to pay the license fee(s) to the Commonwealth, and an amount equal to the sum necessary to pay its secured creditors.

Further, the Successful Offeror agrees to maintain its current level of "assets", as defined in above paragraph and as will be described in the resulting Sublease, as will be existing as of the effective date of the resulting Sublease and, shall thereafter, not remove said "assets" from the Subleased Premises, nor allow the current level of assets to diminish, without prior written approval from the

Commonwealth.

OO. Waiver

The waiver by the Commonwealth, or failure of the Commonwealth, to take action with respect to any breach of any term, covenant, or condition herein contained or contained in the resulting Sublease, shall not be deemed to be a waiver of the same or any other term, covenant, or condition contained herein or in the resulting Sublease.

PP. Disclosure of Financial Information

The Successful Offeror certifies that by entering into the Sublease resulting from this solicitation with the Commonwealth and that by holding and performing the Sublease, the Successful Offeror will not be violating either any conflict of interest statute (KRS 45A.330 - 45A.340, 164.390), or KRS Chapter 11A, the Executive Branch Code of Ethics, or any other applicable statute or principle by the performance of the Sublease, nor will the Successful Offeror realize any unlawful benefit or gain directly or indirectly from it. Non-compliance may result in termination of the resulting Sublease.

The Successful Offeror, as defined in KRS 45A.030 (10), agrees that the Department of Parks, 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 Sublease for the purpose of financial audit or program review. Furthermore, any books, documents, papers, records or other evidence provided to the Department of Parks, the Finance and Administration Cabinet, the Auditor of Public Accounts, or the Legislative Research Commission which are directly pertinent to the Sublease shall be subject to public disclosure pursuant to 200 KAR 5:314 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 Sublease. The Secretary of the Finance and Administration Cabinet shall not restrict the public access to any information that would otherwise be subject to public access if a state government agency was providing the service.

QQ. Amendment to Agreement

It is agreed by both parties to the Sublease that all prior negotiations will have been merged into said Sublease, which may not be modified, altered, or amended except by a "Sublease Agreement Amendment" signed by all parties to the Sublease.

RR. Severability Clause

If any provision of the resulting Sublease is declared invalid or unenforceable, then the remainder of said Sublease shall continue in full force and effect.

SS. Successors and Assigns

The covenants, conditions, and agreements made and entered into by the parties to the Sublease will be declared and agreed to be binding upon and to inure to the benefit of their respective successors and/or assigns.

TT. Public Use

No attempt shall be made by the Sublessee, or any of its sub-lessees or concessionaires, to forbid the full use by the public of the premises and of the water areas of the project, subject, however, to the authority and responsibility of the Sublessee to manage the premises and provide safety and security to the visiting public.

UU. Cancellation Clause

Subject to the provisions of 200 KAR 5:312, which is hereby incorporated as if fully set forth herein, either party to the resulting Sublease Agreement may cancel said Sublease by giving written notice to the other party, specifying the date of cancellation; such notice to be given not less than thirty (30) days prior to the date of cancellation.

VI. PROPOSAL

A. Evaluation of Proposals

The Commonwealth will conduct a comprehensive evaluation of proposals received in response to the RFP. This evaluation will be conducted by a committee, which may be comprised of representatives from the Department of Parks, the Finance and Administration Cabinet, the Corps of Engineers, and other resource agencies' representatives, as appropriate.

The Successful Offeror's proposal documents will become a part of any final sublease agreement. All items listed must be thoroughly addressed in your written proposal.

Please include six (6) complete copies of your proposal document and all attachments.

B. Point Scoring of Proposals

The evaluation of proposals will involve the point scoring of each proposal in five (5) areas. A maximum of one hundred (100) points will be available for each proposal as follows:

1. Plan for new marina construction and operation up to 35 Points
OR
Plan for required marina improvements (See Section IV), marina operation, and, if applicable, any proposed additional improvements and operation of same.
2. Financial background of Offeror and proposed Method of financing Project (evaluated by Finance OFM) up to 20 Points
3. Background and experience up to 15 Points
4. Revenue and percentage of gross receipts to be paid to the Commonwealth up to 25 Points
5. Offeror's past performance operating a marina of similar size to Paintsville Lake Marina up to 5 points

Oral presentations may be required at the discretion of the Commonwealth for up to ten (10) additional points.

The proposal receiving the highest point total will be awarded the Sublease contract.

C. Submission of Proposal

See Section III, C.

D. Withdrawal of Proposal

Proposals may be withdrawn in writing if the request is received from the Offeror prior to the RFP Closing Date. Proposals may not be withdrawn for a period of **one hundred and eighty (180) calendar days** after the RFP Closing Date. Negligence on the part of the Offeror in preparing his proposal confers no right to withdraw his proposal after the RFP Closing Date.

E. Proposal Subject to These Terms

All proposals submitted shall be deemed to have been made with full knowledge of all terms, conditions, and requirements contained in this RFP and enclosures thereto.

F. THE OFFEROR'S PROPOSAL SHALL INCLUDE THE FOLLOWING SECTIONS:

Transmittal Letter. The transmittal letter shall be in the form of a standard business letter and shall be signed by an individual authorized to legally bind the Offeror. This signed letter will legally bind the Offeror. It should include the name, address, and telephone number of the Offeror and, if applicable, the name, address, and telephone number of a representative authorized to act on behalf of the Offeror during the course of the Project. It shall include:

1. A statement indicating if the Offeror is a corporation, sole proprietorship, partnership, or other legal entity.
2. A statement that the Offeror is registered to do business in Kentucky or will obtain a Kentucky business license, as well as any other documents required by law and the regulations of the Commonwealth prior to commencement of work.
3. A statement from the Offeror, along with evidence from the Kentucky Secretary of State, that the Offeror is in good standing and duly authorized to transact business in Kentucky, as well as certification from the Offeror that the Offeror has verified from each of its proposed subcontractors and suppliers that each is a viable, ongoing business entity, and is capable of performing its obligations to the prime contractors and its subs, and that each has supplied the Offeror (or will supply prior to acceptance of a contract) evidence of "good standing" with the Kentucky Secretary of State.
4. A statement identifying all addenda to the RFP issued by the Commonwealth and received by the Offeror. If no addenda have been received, a statement to that effect should be included.
5. A statement that the Offeror's proposal meets all requirements, provisions, specifications, terms, and conditions set forth in the RFP and sample lease agreement, or in the alternative, an explanation of any deviation from such terms

and conditions, specifications, requirements, or provisions. The Commonwealth reserves the right to reject any proposal containing such deviations or to require modifications before acceptance. [Any deviation from the terms and conditions, specifications, requirements, or provisions of this RFP must be stated in writing in the Offeror's transmittal letter.]

6. A statement that the Offeror's proposal shall remain valid for **one hundred and eighty (180) days** after the closing date for the receipt of proposals.

1. **Marina Operational Plan.** The Offeror shall provide:

1. A general narrative description of the proposed marina operation, including a time schedule, operation date, seasonal opening/closing times, off-season days and opening/closing times, list of personal property inventory (i.e., type of rental boats, etc.), a plan view of the proposed marina layout (including slips, sizes, electric, water and cable locations), and itemized cost estimate. For example, indicate the number of rental houseboats, fishing boats, sail boats, jet skis, and etc., including rental fees to be assessed for all categories of boat slips and moorage (i.e., bays, covered and uncovered, and houseboat slips). The Offeror must also indicate the services to be offered, proposed area lighting, proposed area security, proposed promotional plans, signage, employee uniform policy, preventative maintenance schedule, safety equipment replacement schedule, emergency procedures for fire and accidents, and any other information pertinent to the proposed operation of the Offeror's marina facilities.
2. Offeror shall provide comprehensive and detailed specification material relative to all operation, materials, equipment, furnishings, etc. (i.e. make/model of equipment, boats for rental, etc.) for the proposed marina complex that will enable the Commonwealth to determine the quality of these items.
3. Describe management structure/organization proposed for the marina; identify management personnel by name, if selected, titles; and show how management staff will interact with each other in managing the facilities. Additionally, the Offeror is to indicate the number of staff and categories of work to be utilized in operation and maintenance of the facilities (i.e., housekeeping, maintenance, servers, fuel dispensing operator, cashier, motor repairperson, etc.).
4. Provide an initial five-year business plan for operation and development of the Subleased Premises. The plan must show goals and objectives for each year showing the estimated cost of any development.
5. Provide a comprehensive and detailed proposal for either a new marina OR planned improvements (required and proposed additional) to the existing marina structures. (See Section IV). The Successful Offeror proposing a new marina shall have **ninety (90) days** from the date of award to submit the requisite professionally signed drawings and specifications of the proposed new marina. The Successful Offeror proposing improvements to the existing Marina shall have **ninety (90) days** from the date of award to provide professionally signed drawings and specifications for, at a minimum, the RFP-required improvements to the existing marina structures (See Section IV) as well as any proposed additional improvements. All drawings and specifications must be stamped and

signed by a registered professional in the Commonwealth of Kentucky.

6. Within **thirty (30) days** of award, the Successful Offeror proposing to utilize the existing marina structures shall provide evidence of ownership or a fully executed contract for the transfer of marina within **ninety (90) days** of award that results in the release of all liens or encumbrances.

NOTE: THE OFFEROR SHOULD CAREFULLY COMPLETE ITS RESPONSE TO THE ABOVE CATEGORY, AS OFFEROR'S PROPOSAL WILL BE INCORPORATED INTO THE RESULTING SUBLEASE AS A PORTION OF THE OFFEROR'S "LEVEL OF ASSETS" (SEE SECTION V., Paragraph NN).

2. Financial Background of Offeror and Proposed Method of Financing Project. The Offeror shall provide:

1. Business Entity – Audited Balance Sheet and Income Statement, Cash Flows (prior 5 years), Off-Balance Sheet Liabilities
Individuals – Tax returns for prior 5 years, FICO credit score from 3 credit bureaus and details (terms of loan) on all outstanding debt.
2. List of Representative Material Changes
 - An event of default or bankruptcy involving the affected entity, or the parent corporation of the affected entity;
 - A change in tangible net worth of 10% of shareholder equity;
 - A sale, merger or acquisition exceeding 10% of the value of shareholder equity prior to the sale, merger or acquisition which in any way involves the affected entity or parent corporation of the affected entity;
 - A change in credit rating for the affected entity or parent corporation of the affected entity.
 - Inability to meet material conditions of loan or debt covenants by the affected entity or parent corporation of the affected entity which has required or will require a waiver or modification of agreed financial ratios, coverage factors or other loan stipulations, or additional credit support from shareholders or other third parties;
 - In the current and five (5) most recent completed fiscal years, the affected entity or the parent corporation of the affected entity either: (i) incurs a net operating loss; (ii) sustains charges exceeding 5% of the then shareholder equity due to claims, changes in accounting policies, directed charges to equity, write-offs or business restructuring; or (iii) implements a restructuring/reduction in labor force exceeding 200 positions or involves the disposition of assets exceeding 10% of the then shareholder equity;
 - Contingent liabilities disclosed in the notes to the financial statements;
 - Other events known to the affected entity which represents a material change in financial condition over the past five (5) years, or may be pending for the next reporting period.
3. Bank references for the Offeror shall be provided, including name, address, and current telephone number of the given financial institution. This should include a signed authorization for release of financial information from each bank listed.

4. Except for governmental agencies, provide the names, addresses, and telephone numbers of at least two commercial or institutional credit references from which the Offeror has previously obtained financing. Attach a letter authorizing each credit reference to respond to inquiries from the government.
5. A description of the proposed financing plan for the first three years, including, but not limited to, source of credit, terms of credit, and repayment schedule. Source of credit will identify credit for construction, as well as long-term financing of the structures.
6. Provide a preliminary budget, projected cash flow, estimated operating costs, and detailed plans of financing including identity of proposed lenders. Identify all interim and permanent sources of funds and include copies of loan documents used to implement the assignment.
7. Provide an annual estimated gross income from the marina operations.

3. Background and Experience. The background and experience section shall include the following details of the Offeror: date established, ownership (public company, partnership, subsidiary, etc.), resources, and details of experience relevant to the proposed development. List, if any, current or past marina facilities managed. Related or similar business experience preferred and should be documented in the Offeror's proposal. (Note: If the proposal is submitted by an individual, the same type of information will be required.)

Should the proposal be submitted by a corporation or business venture formed solely for the purpose of responding to this RFP, the above information shall be submitted for each individual within the said corporation, business venture, or partnership.

4. Completed Required Forms: Authentication of Bid and Affidavit of Non-Collusion and Non-conflict of Interest (page 35), Statement of Final Determination of Violations pursuant to KRS 45A.485 (page 37), Sworn Statement Regarding Campaign Finance Laws Pursuant to KRS 45A.110 and KRS 45A.115 (page 38), and Disadvantaged Business Enterprises (DBE) Participation (Exhibit I).

DEFINITION OF GROSS RECEIPTS

"Gross Receipts" shall be the total amount of cash or credits received by the Successful Offeror from all business, including receipts from sale of restaurant food and beverage sales, food/grocery items; gasoline sales; sale or servicing of private boats; rental of motors, ski boats, houseboats, fishing boats, jet skis, kayaks, canoes and any other marina rental equipment; and any and all other incidental income, including the total gross revenue generated by any Sub-sublessee or consigned items, during the term of the resulting sublease. Gross receipts shall also include, for the purposes of the resulting sublease agreement, boat slip and moorage rental. Kentucky Tax, writing fees for licenses (hunting, fishing, watercraft) and Federal Excise tax on those items subject to it, are exempt from the gross receipts for fee purposes.

Fees for utilities should be exempt from commission rate.

Gross receipts as defined in reference to revenue derived from all sales, including consigned items, located on the Subleased Premises, shall mean total dollar sales derived from the sale of said items, as opposed to commissions received by the Offeror.

When any item, use of an item, or service is sold including, but not limited to, boat sales, boat rentals, food/snack concession operation equipment or vending machine products generate sales on consignment or otherwise, the Offeror shall view the total of the sale as a gross receipt and pay to the Commonwealth its percentage of Gross Receipts due under the lease based on the total price of that sale, not just on the Offeror's fee; i.e., the share of the total sale price which the Offeror receives.

**NOTE: THIS SECTION MUST BE FILLED OUT
AND RETURNED WITH THE PROPOSAL PACKAGE**

5. **Revenue Payable to the Commonwealth.** Offerors are to indicate (on the line below) the percentage of gross receipts Offeror will pay to the Commonwealth for the term of the corresponding sublease. **Offeror must identify the anticipated, estimated amount of gross receipts derived from the operation of the marina for the first five years of the sublease period, with a detailed description of all revenue streams.**

Revenue payable to the Commonwealth shall be made monthly and shall be due on or before close of business of the 12th day of the next month. Should the Offeror be late on rental payment to the Commonwealth, then such payment shall accrue interest at the rate of one (1) percent per month or twelve (12) percent per annum for each month the concession payment is late.

THE SUCCESSFUL OFFEROR SHALL PAY TO THE COMMONWEALTH A MONTHLY PERCENTAGE ON REVENUE EARNED FROM THE OPERATION OF A MARINA AT PAINTSVILLE LAKE STATE PARK.

OFFEROR MUST CHECK THE APPROPRIATE OPTION AND FILL IN BLANK FOR THAT OPTION AND RETURN:

For the sublease and operation of the Paintsville Lake Marina for the selected Option, I propose to pay the Commonwealth of Kentucky the stated percentage of Gross Receipts earned from Offeror's operation as follows:

___ Option 1:

Utilize Existing Marina Structures with a minimum of the required upgrades/improvements

_____ % of Gross Receipts earned

OR

___ Option 2: Constructing New Marina

_____ % of Gross Receipts earned

NOTE: THE MINIMUM ACCEPTABLE BID IS FIVE PERCENT (5%) OF GROSS RECEIPTS DERIVED FROM THE OPERATION OF THE MARINA.

Offeror's Signature

(Offeror's Name - Printed)

6. Offeror's Past Performance Operating a Marina or similar business to Paintsville Lake Marina

The Offeror shall provide verifiable reports/accounts for the previous five-year period, which demonstrates the Offeror's satisfactory performance operating a business similar to the Paintsville Lake Marina.

ANNUAL AFFIDAVIT FOR BIDDERS, OFFERORS AND CONTRACTORS

Affidavit Effective Date: _____

Affidavit Expiration Date: _____

Maximum Length One-Year: _____

**REQUIRED AFFIDAVIT FOR BIDDERS, OFFERORS AND CONTRACTORS PAGE 1 OF 2
FOR BIDS AND CONTRACTS IN GENERAL:**

I. Each bidder or offeror swears and affirms under penalty of perjury, that to the best of their knowledge:

a. In accordance with KRS 45A.110 and KRS 45A.115, neither the bidder or offeror as defined in KRS 45A.070(6), nor the entity which he/she represents, has knowingly violated any provisions of the campaign finance laws of the Commonwealth of Kentucky; and the award of a contract to the bidder or offeror or the entity which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.

b. The bidder or offeror swears and affirms under penalty of perjury that, to the extent required by Kentucky law, the entity bidding, and all subcontractors therein, are aware of the requirements and penalties outlined in KRS 45A.485; have properly disclosed all information required by this statute; and will continue to comply with such requirements for the duration of any contract awarded.

c. The bidder or offeror swears and affirms under penalty of perjury that, to the extent required by Kentucky law, the entity bidding, and its affiliates, are duly registered with the Kentucky Department of Revenue to collect and remit the sales and use tax imposed by KRS Chapter 139, and will remain registered for the duration of any contract awarded.

d. The bidder or offeror swears and affirms under penalty of perjury that the entity bidding is not delinquent on any state taxes or fees owed to the Commonwealth of Kentucky and will remain in good standing for the duration of any contract awarded.

e. The bidder or offeror swears and affirms under penalty of perjury that the entity bidding, is not currently engaged in, and will not for the duration of the contract engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which Kentucky can enjoy open trade, as defined in KRS 45A.607.

f. The bidder or offeror swears and affirms that the entity bidding, and all subcontractors therein, have not violated any of the prohibitions set forth in KRS 11A.236 during the previous ten (10) years, and further pledge to abide by the restrictions set forth in such statute for the duration of the contract awarded.

g. The bidder or offeror swears and affirms that they have not procured an original, subsequent, or similar contract while employing an executive agency lobbyist who was convicted of a crime related to the original, subsequent, or similar contract within five (5) years of the conviction of the lobbyist.

FOR "NON-BID" CONTRACTS (I.E. SOLE-SOURCE; NOT-PRACTICAL OR FEASIBLE TO BID; OR EMERGENCY CONTRACTS, ETC):

II. Each contractor further swears and affirms under penalty of perjury, that to the best of their knowledge:

a. In accordance with KRS 121.056, and if this is a non-bid contract, neither the contractor, nor any member of his/her immediate family having an interest of 10% or more in any business entity involved in the performance of any contract awarded, have contributed more than the amount specified in KRS 121.150 to the campaign of the gubernatorial slate elected in the election last preceding the date of contract award.

ANNUAL AFFIDAVIT FOR BIDDERS, OFFERORS AND CONTRACTORS
REQUIRED AFFIDAVIT FOR BIDDERS, OFFERORS AND CONTRACTORS PAGE 2 OF 2

b. In accordance with KRS 121.330(1) and (2), and if this is a non-bid contract, neither the contractor, nor officers or employees of the contractor or any entity affiliated with the contractor, nor the spouses of officers or employees of the contractor or any entity affiliated with the contractor, have knowingly contributed more than \$5,000 in aggregate to the campaign of a candidate elected in the election last preceding the date of contract award that has jurisdiction over this contract award.

c. In accordance with KRS 121.330(3) and (4), and if this is a non-bid contract, to the best of his/her knowledge, neither the contractor, nor any member of his/her immediate family, his/her employer, or his/her employees, or any entity affiliated with any of these entities or individuals, have directly solicited contributions in excess of \$30,000 in the aggregate for the campaign of a candidate elected in the election last preceding the date of contract award that has jurisdiction over this contract. As a duly authorized representative for the bidder, offeror, or contractor, I have fully informed myself regarding the accuracy of all statements made in this affidavit and acknowledge that the Commonwealth is reasonably relying upon these statements, in making a decision for contract award and any failure to accurately disclose such information may result in contract termination, repayment of funds and other available remedies under law. If the bidder, offeror, or contractor becomes non-compliant with any statements during the affidavit effective period, I will notify the Finance and Administration Cabinet, Office of Procurement Services immediately. I understand that the Commonwealth retains the right to request an updated affidavit at any time.

Signature

Printed Name

Title

Date

Company Name: _____

Address: _____

Commonwealth of Kentucky Vendor Code (if known): _____

Subscribed and sworn to before me by _____
(Affiant) (Title)

of _____ this _____ day of _____, 20____ .
(Company Name)

Notary Public

(Seal of Notary)

My commission expires: _____

**IMPORTANT - THIS SECTION MUST BE READ, FILLED OUT,
AND RETURNED WITH THE PROPOSAL PACKAGE:**

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

Pursuant to KRS 45A.485, the Offeror shall reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the Offeror 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 Offeror 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.)

<u>KRS Violation</u>	<u>Date</u>	<u>State Agency</u>

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

EXHIBITS

- A. Paintsville Marina Proposed (Aerial) Subleased Premises**
- B. Sample Sublease**
- C. USACE Prime Lease Agreement #DACW69-1-84-0144**
- D. USACE Extension Letter to the Commonwealth**
- E. Department of Parks Sample Dock Agreement**
- F. Parks' Lessee Property Modification Request Procedures**
- G. Guidelines for the Safe Operation and Maintenance of Marinas**
- H. United States 29 CFR Part 13 and 29 CFR Part 23 with respect to employee compensation and benefits**
- I. Disadvantaged Business Enterprise (DBE) Participation**