



Andy Beshear
GOVERNOR

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

Bush Building, 3rd Floor
403 Wapping Street
Frankfort, Kentucky 40601
Phone: (502) 564-2205
Fax: (502) 564-8108


Holly M. Johnson
SECRETARY

Sam Ruth
COMMISSIONER

Scott Aubrey
DIRECTOR

MEMORANDUM

TO: Katherine Halloran, Committee Staff Administrator
Capital Projects and Bond Oversight Committee

FROM: Brien S. Hoover, Leasing Manager 
Division of Real Properties

DATE: May 8, 2023

SUBJECT: PR-5719, Graves County
Department of Corrections
Emergency Lease

As outlined, attached please find notification of a lease agreement modification being processed by the Division's Leased Properties Branch.

If you have questions or require additional information concerning this matter, please advise.

BSH/bh
Attachment

Cc: Capital Construction Log
OSBD
PR-5719 File
BSH

REPORT TO CAPITAL PROJECTS AND BOND OVERSIGHT COMMITTEE

EMERGENCY LEASE AGREEMENT

Lease No.: PR-5719		County: Graves	
Using Agency: Department of Corrections			
Lessor (identify all parties having 5% or more ownership): Attach extra sheet if necessary		Waldrop & Waldrop LLC	
Property Location: 337/345 Charles Drive, Mayfield, KY			
Check One: <input type="checkbox"/> New Lease <input type="checkbox"/> Renewal <input checked="" type="checkbox"/> Modification			
Type Space: Office		Cost Per Square Foot: \$16.80	
Annual Rental Cost: \$49,039.20		Average Cost Per Square Foot of Leased-In Space in County: \$15.25	
Utilities Included: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Cancellation Clause:	<input checked="" type="checkbox"/> Yes If yes, explain terms: 30 Days	<input type="checkbox"/> No If no, explain why not:	
Effective Date: April 1, 2022		Expiration Date: June 30, 2023	
Justification for Lease: Please see attached			
Has the Finance & Administration Cabinet complied with statutory requirements: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If no, explain:			
Explain why the Finance & Administration Cabinet chose this lessor (see attached approval memo and modification): Please see attached			

COMMONWEALTH OF KENTUCKY LEASE MODIFICATION AGREEMENT

LESSOR	Waldrop & Waldrop LLC DbA Property Development Account	PR NUMBER, COUNTY	PR-5719, Graves County
ADDRESS	935 Paris Road Mayfield KY 42066	VENDOR NUMBER	KY0024635
		AGENCY/DEPARTMENT	Department of Corrections
		DIVISION	
		DATE	March 16, 2023
		BUILDING CODE	91847001

1. Lease Agreement number PR-5719, Graves County, dated December 23, 2021, is hereby modified as set forth in Paragraph Two.

2. This Lease is modified as follows:

Effective March 16, 2023:

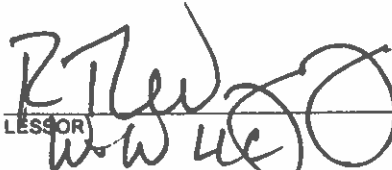
Pursuant to applicable provisions of KRS 56.803(16(a))/KRS 56.805(4) to replace in its entirety that Lease Agreement and Addendum providing for use of 2,919 square feet of space for the period between December 23, 2021 and February 28, 2022 with the Lease Agreement and Addendum attached hereto, incorporated herein by reference, and identified as Exhibit PR-5718C/PR-5718D.

3. All other terms and conditions of the lease are replaced as defined herein.

4. Signatures are required on this modification document only, signatures are not required on Exhibit PR-5718C/PR-5718D.

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


STATE LEASING AGENCY REPRESENTATIVE 4/3/23 Date


LESSOR 3/20/23 Date


ANALYST, LEASING BRANCH, DIVISION OF REAL PROPERTIES 14APR2023 Date


ATTORNEY, FINANCE & ADMINISTRATION CABINET 4/19/2023 Date


MANAGER, LEASING BRANCH, DIVISION OF REAL PROPERTIES 14APR2023 Date


DIRECTOR, DIVISION OF REAL PROPERTIES


SECRETARY, FINANCE & ADMINISTRATION CABINET 04.20.2023 Date

APPROVED THIS _____ DAY OF _____, 20____

All correspondence and inquiries regarding this Lease Modification Agreement are to be directed to the Division of Real Properties, Suite 300, 403 Wapping Street, Frankfort, Kentucky 40601-2607, phone 502/564-2205. BSH

LEASE/PR #	PR-5719, Graves County	AGENCY/DEPARTMENT	Department of Corrections
INITIAL ENCUMBRANCE	\$	DIVISION	
ANNUAL ENCUMBRANCE	\$49,039.20	DATE	March 16, 2023
VENDOR CODE #	KY0024635	BUILDING CODE #	91847001

THIS LEASE entered into between Waldrop & Waldrop LLC Dba Property Development Account whose address is 936 Paris Road, Mayfield, KY, 42066 (Business Phone 270-247-2734) his heirs and assigns, hereinafter called the "Lessor", and the COMMONWEALTH OF KENTUCKY hereinafter referred to as the "Commonwealth"

WITNESSETH that for the consideration hereinafter mentioned, the parties hereto agree as follows:

1a The Lessor hereby leases to the Commonwealth and agrees to keep in quiet and peaceful possession the following described premises with its appurtenances, property located at 337/345 Charles Drive, Mayfield, KY 42066, in the County of Graves

1b Said premises consisting of 2,919 square feet are to be rented at the cost of \$16.80 per square foot and will be used by the Commonwealth for Office space

2 The Commonwealth agrees to pay rent to the Lessor for the leased premises at the rate of \$12,259.80, payable Quarterly. The Lessor shall provide the Commonwealth with the following services: None with Sixteen (16) non-designated reserved parking spaces

3 Subject to the limitations imposed by law and as provided in paragraphs 5 and 6 of this Lease, the term during which the Lease shall be effective shall begin April 1, 2022, and end June 30, 2023.

4 This Lease shall be extended automatically upon the same terms and conditions herein for further periods of 12 months, not to exceed Zero (0) extension period(s) unless the Commonwealth shall give the Lessor written notice on 30 days prior to the expiration of the term or any extension that it will not be extended. No extension shall prolong the period of occupancy of the leased premises beyond the 30TH day of June 2023. The Lessor understands that the Commonwealth's funds cannot be committed beyond its current fiscal year and its applicable appropriation, and the related allotment from rental payments will be made.

5 The Commonwealth shall have the further right to terminate this Lease at any time upon 30 days written notice, time to be computed from date of mailing notice; termination under this paragraph shall not be considered effective until the last day of the month in which the notice period ends.

6 The Commonwealth agrees not to assign this Lease, or to sublet the premises except to a desirable tenant and for a similar purpose and will not permit the use of the premises by anyone other than the Commonwealth, the Federal Government, or such sub-lessee, and the agents and servants of the Commonwealth, the Federal Government, or such sub-lessee.

7 The Commonwealth shall have the right during the existence of this Lease to make alterations, attach fixtures and erect additional structures or signs in or upon the leased premises, provided such alterations, additions, structures or signs shall not be detrimental to or inconsistent with rights granted to other tenants on the property or in the building in which the premises are located. Fixtures, additions, structures or signs placed in or upon or attached to the premises shall remain the Commonwealth's property and may be removed by it prior to the termination of the Lease.

8 Unless otherwise specified, the Lessor shall maintain the premises in good repair and tenable condition, including heating and/or air conditioning equipment, except in case of damage arising from the negligent acts of the Commonwealth's agents or employees. For the purpose of maintaining the premises and to make necessary repairs, the Lessor reserves the right to enter and inspect the premises at reasonable times.

9 The Commonwealth agrees to take good care of the premises and to return them at the expiration of their Lease in as good order as received, ordinary wear and tear and natural decay excepted.

10 The Lessor shall be responsible for procuring and continuously maintaining casualty and liability insurance on the leased premises.

11 If the premises are destroyed by fire or other casualty, this Lease shall immediately terminate. In case of partial destruction or damage so as to render the premises untenable the Commonwealth may terminate or suspend this Lease by giving written notice to the Lessor within 15 days after such partial destruction or damage, and, if so suspended, no rent shall accrue to the Lessor after the date of such partial destruction or damage until such damage is repaired and premises are considered tenable.

12 It is agreed by the parties hereto that if any one of the provisions of this Lease shall contravene or be invalid under the laws of the Commonwealth of Kentucky, such contravention or invalidity shall not invalidate the whole Lease, but it shall be construed as if not containing that particular provision or provisions, and the rights and obligations of the parties shall be construed accordingly.

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

14 The Lessor agrees to notify the Commonwealth of all persons owning or upon any change or transfer of ownership involving 5% or more in stock, in partnership, business trust, or corporation, including silent or limited partners. Non-compliance may result in termination of the Lease Agreement.

15 Lessor shall comply with all standards set by the Department of Housing, Buildings and Construction, Division of Building Codes Enforcement, and that of the Kentucky Occupational Safety and Health Standards Board and the Americans with Disabilities Act (ADA).

16 The contractor as defined in KRS 45A.030 (b) agrees that the contracting agency, 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 this contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. In the event of a dispute between the contractor and the contracting agency, Attorney General, or the Auditor of Public Accounts over documents that are eligible for production and review, the Finance and Administration Cabinet shall review the dispute and issue a determination, in accordance with Secretary's Order 11-004.

IN WITNESS WHEREOF, the parties hereto have subscribed their names. REFER TO MODIFICATION PARAGRAPH FOUR (4)

STATE LEASING AGENCY REPRESENTATIVE _____ Date _____

LESSOR _____ Date _____

ANALYST, LEASING BRANCH, DIVISION OF REAL PROPERTIES _____ Date _____

ATTORNEY, FINANCE & ADMINISTRATION CABINET _____ Date _____

MANAGER, LEASING BRANCH, DIVISION OF REAL PROPERTIES _____ Date _____

DIRECTOR, DIVISION OF REAL PROPERTIES _____

APPROVED THIS _____ DAY OF _____, 20____

SECRETARY, FINANCE & ADMINISTRATION CABINET _____ Date _____
 When executed by the Secretary, Finance & Administration Cabinet, this instrument constitutes a binding and order, pursuant to KRS Chapters 45A and 56, that the leased property is needed for use by the Commonwealth of Kentucky. All correspondence and inquiries regarding this Lease are to be directed to the Division of Real Properties, Bush Building 3rd Floor, 403 Wapping Street, Frankfort, Kentucky 40601-2607, phone 802/564-2206.

Handwritten signature: TW
 3/20/23

ADDENDUM – EXHIBIT PR-5718C/PR-5718D

The following items are considered a part of Lease Agreement Modification PR-5719, Graves County, dated March 16, 2023:

SECTION 1 – APPLICABLE TO ALL OFFERED SUITES

1. The building shall meet all Kentucky building codes and accessibility specifications in accordance with ADA, as enforced by the Kentucky Department of Housing, Buildings and Construction. The Department may require a set of construction plans from the Lessor. The Lessor is required to submit a copy of these plans, if/as approved by the Department, to the Division of Real Properties. The Lessor shall be responsible for determining/complying with the requirements of the Department. Issues such as fire rated corridors, fire suppression systems (if applicable), HVAC installation, etc. are not addressed in the space planning information (i.e., floor plans and specifications) provided by the Division of Real Properties.
2. All facilities with a total leased square footage of 3,000 square feet or more shall be equipped with automatic fire suppression systems (sprinklers). The system shall be installed in accordance with all applicable provisions/requirements of the Department of Housing, Buildings, and Construction. **NOTE: Access to an underground water main with a minimum diameter of six (6) inches is required for sprinkler systems serving spaces that exceed 3,000 square feet.** The Lessor shall be responsible for installation and maintenance of the fire suppression system. The Commonwealth prepares floor plans based on the presence of a suppression system. Should the Lessor submit an exception to this requirement they shall be solely responsible for any expenses associated with additional requirements as determined by the Department.
3. Central heating and air conditioning (HVAC) shall be installed throughout. The HVAC system shall be installed in conformance with Kentucky building codes, as administered by the Kentucky Department of Housing, Buildings and Construction. The Lessor shall also install an adequate fresh air handling system in accordance with applicable ASHRAE Standards. Electronic thermostats with programmable functions shall be installed for new or existing HVAC systems. A standard locking cover shall be installed on the thermostat. The local supervisor, in conjunction with the Lessor, will determine appropriate settings (i.e.: daytime/evening temperature settings, set back timer settings as required by regular office hours, etc.) for each property. Central air units, heat pumps, etc. must be ENERGY STAR qualified where available. Alternative systems (e.g., geo-thermal, etc.) may be proposed at the discretion of the lessor but are subject to review and approval by the Division of Real Properties. The Lessor shall ensure that applicable HVAC systems are serviced (e.g., clean and check) not less than twice annually and filters shall be replaced not less than once per quarter. Documentation regarding annual servicing shall be provided to the Division of Real Properties.
4. The Lessor shall insulate exterior walls at a minimum R-13 or equivalent and the ceiling at a minimum R-38 or equivalent. Weather stripping and/or other suitable insulation shall be applied to all doors and windows and all other exterior of the leased space. This shall be inspected on an annual basis and repaired/replaced as necessary. Windows shall be installed or replaced with Low E/ENERGY STAR qualified windows. The lessor shall provide documentation identifying the type/rating of installed windows. The Lessor shall provide mini-blinds for all windows.
5. Separate utility meters are needed if the using agency is to pay utilities, with service to be established in the name of the using agency. *{Agencies that are billed directly by a local utility should contact the utility company to identify their agency as "tax exempt"}* If a separate meter is not feasible, the Lessor shall bill the using agency on a pro-rated basis. If this method is used, the Lessor shall provide the using agency sufficient documentation to justify the percentage of the total bill to be charged to the using agency. *{Agencies that receive utility invoices from the Lessor (based on the percentage of space occupied) should reimburse the Lessor for the full amount of the invoice including any applicable taxes}*.
6. If a plenum ceiling is to be used, all wiring shall be housed in conduit, or plenum cable shall be used. The Lessor shall advise the Division of Real Properties as soon as possible when it is determined that plenum or a ducted ceiling is to be used. This will ensure that the agency's appointed electricians will be prepared with the right cabling. **Failure to notify the Division of Real Properties of a plenum ceiling, prior to award of a lease, shall be considered grounds for termination of the lease.**
7. An acoustical tile ceiling shall be installed at a height of 9'.
8. Existing floor coverings in each suite are acceptable provided that the lessor repair or replace any damaged areas (i.e., mitigate trip hazards, etc.).
9. The Lessor shall provide lockable doors at the primary entrance/exit doors (i.e., front and rear) to each proposed/leased suite.

OK
3/20/23

10. Rest rooms must comply with ADA requirements for existing construction and be furnished with hot and cold water, toilet tissue holders, soap dispensers, paper towel dispensers, and mirrors.
11. The Lessor shall be responsible for the maintenance and upkeep of the grounds surrounding the property, to include mowing/trimming grass and raking leaves. The Lessor shall also be responsible for maintenance and cleaning of the parking lot, including snow removal from the parking lot and snow & ice removal from the sidewalks.
12. Conduit, cable tray, or raceway fill rate is to comply with the National Electrical Code.
13. Due to the continuing development of new office technology the Lessor authorizes competent agency personnel to install additional security and/or access control equipment, telephone wiring, computer cabling, and conduit or wire molding (as required) to accommodate such technology during the term of the agency's occupancy. Agency will notify the Division of Real Properties for approval before commencing any of this type work.
14. The exterior front of the building shall have a professional office appearance; with street number(s) of subject building displayed prominently.
15. The Division of Real Properties and/or the using agency reserves the right to inspect the facility at any time during construction/renovations/occupation.

SECTION 4 – APPLICABLE TO 345 CHARLES DRIVE

1. The Lessor shall provide non-designated reserved parking for eight (8) agency staff and visitors, plus accessible space(s) as required by the Department of Housing, Buildings, & Construction. The parking lot shall be asphalted and striped with all spaces clearly marked and identified. All holes and other damage shall be repaired on a timely basis. All spaces shall be a minimum of 9' x 18' with the exception of ADA accessible spaces.
2. The lessor shall install six (6) additional 110v duplex electrical outlets in locations to be identified by the tenant agency.

SECTION 5 – APPLICABLE TO 337 CHARLES DRIVE

1. The Lessor shall provide non-designated reserved parking for eight (8) agency staff and visitors, plus accessible space(s) as required by the Department of Housing, Buildings, & Construction. The parking lot shall be asphalted and striped with all spaces clearly marked and identified. All holes and other damage shall be repaired on a timely basis. All spaces shall be a minimum of 9' x 18' with the exception of ADA accessible spaces.
2. The lessor shall install a floor-to-ceiling wall to separate the waiting area from the balance of the suite as reflected on the enclosed floor plan. The lessor shall also install a lockable door and a transaction (pass through with a voice port and transfer tray) window in the new wall. The wall shall be drywalled and painted a scrubbable neutral color latex enamel paint with either a satin or eggshell finish. New walls require a primer coat (sprayed or rolled) and two finish coats (rolled). Existing walls require one finish coat (rolled) if same color is being used or two finish coats (rolled) if changing color or patching is required.

ACKNOWLEDGED BY:

ACKNOWLEDGED BY:

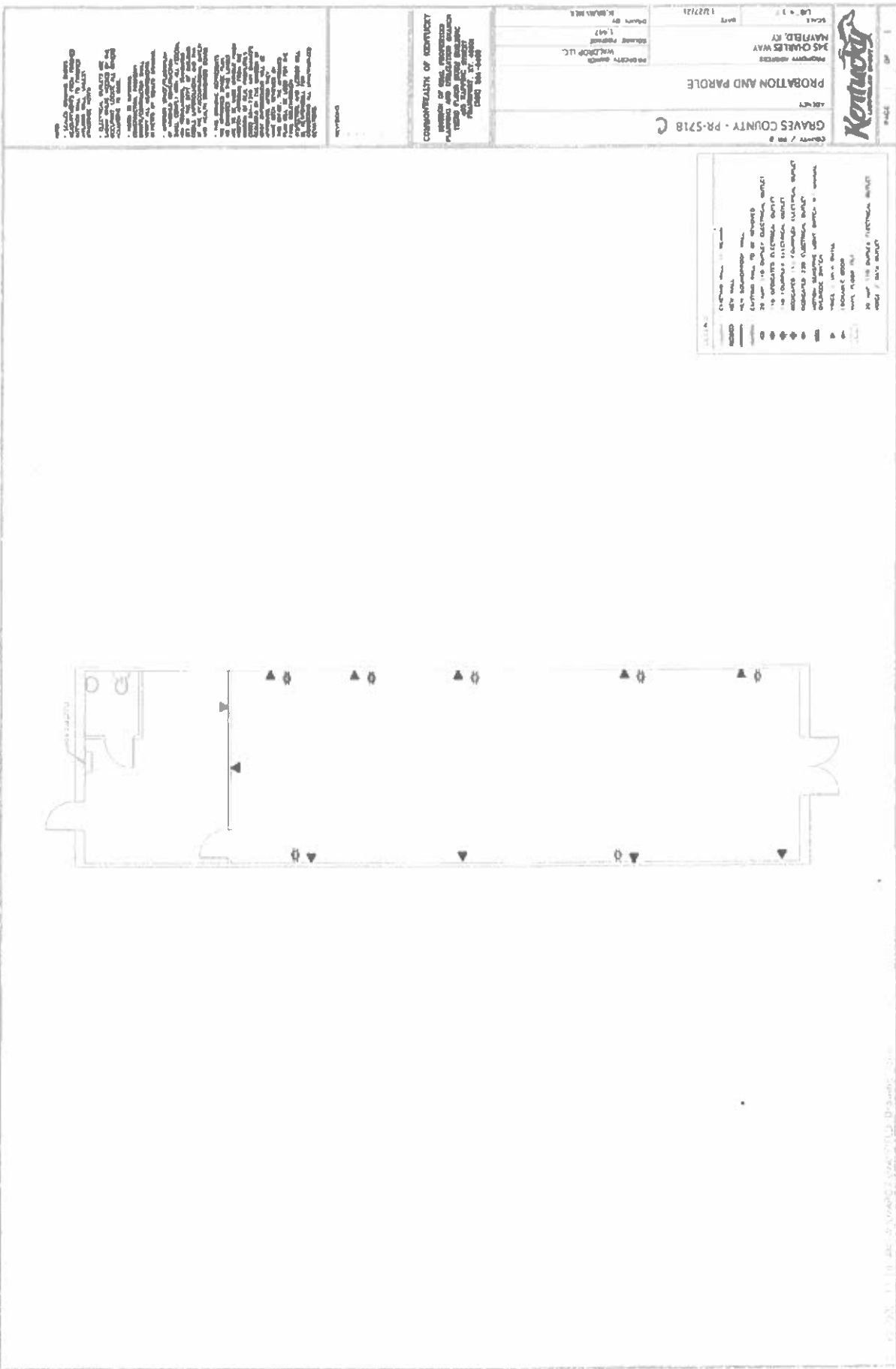
REFER TO MODIFICATION PARAGRAPH FOUR (4)

REFER TO MODIFICATION PARAGRAPH FOUR (4)

 Department of Corrections Date

 Waldrop & Waldrop LLC Date

*OK
 3/20/23*





Andy Beshear
GOVERNOR

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

Bush Building, 3rd Floor
403 Wapping Street
Frankfort, Kentucky 40601
Phone: (502) 564-2205
Fax: (502) 564-8108

Holly M. Johnson
SECRETARY

Sam Ruth
COMMISSIONER

Scott Aubrey
DIRECTOR

MEMORANDUM

TO: Holly M. Johnson, Secretary
Finance and Administration Cabinet

FROM: Scott Aubrey, Director *SA*
Division of Real Properties

DATE: April 14, 2023

SUBJECT: PR-5718, Graves County
Finance & Administration Cabinet
PR-5719, Graves County
Department of Corrections
PR-5720, Graves County
Cabinet for Health & Family Services

Beginning on December 10, 2021, and continuing through December 11, 2021, a severe weather system generating heavy rain, thunderstorms, tornadoes, and strong straight-line winds impacted the Commonwealth of Kentucky, causing flash flooding, loss of power, damage to public infrastructure and private properties. (Executive Order 2021-923). During the Division of Real Properties' ("Real Properties") initial damage assessment immediately following the storms, we received confirmation that the leased facility occupied by the referenced agencies and the Mayfield State Office Building which was occupied by Cabinet for Health & Family Services staff experienced significant damage (i.e., roof damaged or partially removed, most windows destroyed, interior wind and water damage, etc.).

Beginning on December 13th and continuing through December 16th, Real Properties staff completed as many standard procedural actions associated with identifying and securing emergency replacement space to expeditiously restore agency operations as feasible. These included the following: review of online sources (e.g., Loopnet, Cityfeet, etc.); where feasible given the absence of utility and network services contacts with local real estate offices, references from local agency, and a physical examination of the city. Based on current occupancy levels (i.e., 4,032 square feet) in leased property by the Department of Corrections and in leased and owned properties (2,973 square feet and approximately 5,500 square feet respectively) by the Cabinet for Health & Family Services, negotiations for the temporary use of space located at 351 Charles Drive for benefit of the Cabinet for Health & Family Services commenced. Those negotiations led to a proposed lease to include 7,410 square feet at a rental rate of \$15.00 per square foot (\$111,150.00 annually) excluding utilities and janitorial services, effective December 22, 2021 and expiring June 30, 2023 (reference PR-5720). Subsequent negotiations for the temporary use of space located at 337 and 345 Charles Drive for benefit of the Department of Corrections led to a proposed lease to include 2,919 square feet total at a rental rate of \$16.75 per square foot (\$48,893.24 annually) excluding utilities and janitorial services, effective December 23, 2021 and expiring June 30, 2023 (reference PR-5719).



In the course of engaging in negotiations described herein under applicable provisions of KRS 56.805(3) and for benefit of agencies displaced from tornado damaged facilities, our office was advised that the property was owned and controlled by a Limited Liability Corporation ("LLC"). One of the principal partners in the LLC is Mr. Thomas Waldrop, who is also a member of the Murray State University Board of Regents. Given Mr. Waldrop's status as a Murray State Regent, and notwithstanding the resulting conflict between the requirements of KRS 45A.340(5)(a) and KRS 56.805(4), the provisions of KRS 45A.340 were determined to be applicable to the initial temporary lease award(s). Following internal review of KRS 45A.340, Mr. Waldrop was notified of the statute and its possible applicability given his status as a Regent. Recognizing the need to secure leased property to expeditiously restore partial or full operational capacity for agencies in the storm ravaged communities, Mr. Waldrop agreed to lease to the Commonwealth the above described spaces at a flat rental rate of \$1.00 each, excluding utilities and janitorial, with terms beginning December 22 and December 23, 2021 respectively and ending February 28, 2022. The short-term leases facilitated the immediate restoration of critical services to the City of Mayfield and Graves County while providing time for the Commonwealth to complete an expedited competitive bid project (reference KRS 56.803) for use of space on a longer term temporary basis.

Pursuant to the aforementioned determination a modified Invitation to Lease was processed under PR-5718 seeking proposals for spaces ranging from 936 square feet to 13,400 square feet to be offered in any combination of size/number of facilities meeting the general space requirements. The Invitation also specified that the Commonwealth reserved the right to issue one or more awards and/or to terminate the Invitation. A single proposal was received from Waldrop & Waldrop LLC offering for suites located at 335-365 Charles Drive, Mayfield. Site evaluations conducted pursuant to KRS 56.803(10) and subsequent discussions with the five agencies (i.e., Cabinet for Health & Family Services, Department of Corrections, Labor Cabinet, Transportation Cabinet, and the former Department for Workforce Investment) included in the Invitation determined that the suite identified as 351 Charles Drive contained sufficient space to house Cabinet for Health & Family Services staff with sufficient excess space to accommodate temporary use by the Department for Workforce Investment, the Labor Cabinet, and potentially sufficient to accommodate the Transportation Cabinet. The remaining two suites, identified as 337 and 345 Charles Drive, were considered for use by the Department of Corrections and the Labor Cabinet. Based on the space requirements of the Department of Corrections, and the aforementioned determination that the 355 Charles Drive suite offered sufficient space to accommodate the Labor Cabinet, the Department for Workforce Investment, and the Transportation Cabinet, both suites (i.e., 337 and 345 Charles Drive) were designated for proposed use by the Department of Corrections. Subsequent to preliminary identification of suitable spaces to accommodate all agencies included in the Invitation, and in accordance with the provisions of KRS 56.803(11), final proposal solicitations that included general requirement specifications applicable to all offered suites and specific requirement specifications associated with operational requirements for the Cabinet for Health & Family Services (351 Charles Drive), the Transportation Cabinet (355 Charles Drive), and the Department of Corrections (337 & 345 Charles Drive) were transmitted to Waldrop & Waldrop LLC. Pursuant to KRS 56.803(12) the following proposals were received for each offered space identified within the Invitation as PR-5718A through PR-5718D:

Waldrop & Waldrop LLC proposed to lease 3,316 square feet of space located at 355 Charles Drive at a rental rate of \$15.00 per square foot, excluding utilities and janitorial services, with a term expiring June 30, 2023. Specific requirement specifications for the Transportation Cabinet were included in this proposal solicitation and it is identified as PR-5718A.

Memo to: Holly M. Johnson, Secretary
PR-5718, Graves County
Finance & Administration Cabinet
PR-5719, Graves County
Department of Corrections
PR-5720, Graves County
Cabinet for Health & Family Services
April 14, 2023
Page Three

Waldrop & Waldrop LLC proposed to lease 7,410 square feet of space located at 351 Charles Drive at a rental rate of \$15.50 per square foot, excluding utilities and janitorial services, with a term expiring June 30, 2023. Specific requirement specifications for the Cabinet for Health & Family Services were included in this proposal solicitation and it is identified as PR-5718B.

Waldrop & Waldrop LLC proposed to lease 1,447 square feet of space located at 345 Charles Drive at a rental rate of \$16.75 per square foot, excluding utilities and janitorial services, with a term expiring June 30, 2023. Specific requirement specifications for the Department of Corrections were included in this proposal solicitation and it is identified as PR-5718C.

Waldrop & Waldrop LLC proposed to lease 1,472 square feet of space located at 337 Charles Drive at a rental rate of \$16.95 per square foot, excluding utilities and janitorial services, with a term expiring June 30, 2023. Specific requirement specifications for the Department of Corrections were included in this proposal solicitation and it is identified as PR-5718D.

Pursuant to applicable provision of KRS 56.803(13), and subsequent to confirming that the anticipated temporary requirements to accommodate the Transportation Cabinet were best addressed through the use of space in the 351 Charles Drive Suite, Real Properties initiated negotiations with the property owner relative to temporary use of 337 & 345 Charles Drive for the Department of Corrections and 351 Charles Drive for the Cabinet for Health & Family Services. Those negotiations resulted in a reduction of the proposed rental rate for the 351 Charles Drive suite to \$15.25 per square foot, excluding utilities and janitorial services, with a term expiring June 30, 2024 and a proposal to combine the proposed lease(s) for 337 and 345 Charles Drive at a total area of 2,919 square feet to be leased at a rental rate of \$16.80 per square foot, excluding utilities and janitorial services, with a term expiring June 30, 2023. The Cabinet for Health & Family Services and the Department of Corrections have both confirmed acceptance of the proposed lease terms defined herein.

Three of the five individual space requests included in the Invitation were resolved as follows:

Transportation Cabinet: Immediate temporary operations space was obtained under PR-5721 for the period between December 14, 2021 and February 28, 2022. The 355 Charles Drive suite noted above was considered for extended temporary use, however the longer term temporary need was accommodated in the 351 Charles Drive suite for the period between March 1 and September 30, 2022. The Transportation Cabinet relocated to fully renovated permanent operational space in the 355 Charles Drive suite, obtained under regular provisions of KRS 56.803, on August 1, 2022 (reference PR-5672). This portion of the Invitation will be terminated in accordance with applicable provisions of KRS 45A.105.

Department of Workforce Investment: The 355 Charles Drive suite noted above was utilized as temporary operations space (i.e., interagency agreement under PR-5720, Cabinet for Health & Family Services) by the Department with that use ending on or before February 28, 2022. The Department expressed interest in obtaining long term temporary or permanent space for the three staff included in their space request in a facility operated by the Purchase Area Development District, however space for the proposed use was not available of an ongoing basis. We have discussed the disposition of this request with the designated liaison from the Education & Labor Cabinet, and this portion of the Invitation will be terminated in accordance with applicable provisions of KRS 45A.105.

Labor Cabinet: The 355 Charles Drive suite noted above was utilized as temporary operations space (i.e., interagency agreement under PR-5720, Cabinet for Health & Family Services) by the Cabinet and it our understanding that their temporary use ended on or before February 28, 2022. We have discussed the disposition of this request with the designated liaison from the Education & Labor Cabinet, and this portion of the Invitation will be terminated in accordance with applicable provisions of KRS 45A.105.

Based on the terms arrived at via application of the Invitation to Lease process defined under KRS 56.803 as described above, and specifically based on both the considerations applied to all lease awards defined under KRS 56.803(14)(a) and to the Department of Facilities and Support Services authority to locate and negotiate for space suitable to meet the needs of appropriately certified emergency requests, we recommend issuance of two lease awards for the Cabinet for Health & Family Services and the Department of Corrections via emergency modifications to revise the terms applicable to PR-5720 and PR-5719 respectively. A brief description of the initial disposition of the requests from each agency follows:

Cabinet for Health & Family Services: Immediate temporary operations space was obtained under PR-5720 for the period between December 22, 2021 and February 28, 2022 in the 355 Charles Drive suite. The Cabinet retains use of the space under the provisions of KRS 383.160 (hold over tenancy) pending final disposition of a long term temporary award via terms and/or procedures applicable under KRS 56.803 and/or KRS 56.805(4).

Department of Corrections: Immediate temporary operations space was obtained under PR-5719 for the period between December 23, 2021 and February 28, 2022 in the 345/337 Charles Drive suites. The Department retains use of the space under the provisions of KRS 383.160 (hold over tenancy) pending final disposition of a long term temporary award via terms and/or procedures applicable under KRS 56.803 and/or KRS 56.805(4).

The recommendation to resolve the hold over status of the agreements for both agencies via emergency modifications is based on the following considerations:

1. Modification of the original lease agreements is informed by established procedures applied to lease agreements subject to regular renewal rental rate increases. While award under a newly assigned lease identification number would be permissible under statute, the circumstances unique to the identified requirements for emergency replacement space for both agencies created the need to apply a novel procurement method (i.e., incorporation of a modified competitive bidding process) to the established procedural mechanisms typically applied to emergency lease agreements. Accordingly, we would recommend maintaining all of the lease award records in the manner that best provides clear documentation of the Commonwealth's use of the facility under all applicable acquisition methods and emergency modifications best accomplish that purpose.
2. Award via regular provisions of KRS 56.803 would then indicate that Capital Projects and Bond Oversight is required for the proposed award for the Cabinet for Health & Family Services under KRS 56.823(2); however, the proposed award for the Department of Corrections would not be reportable since the annual cost of the lease does not exceed \$100,000.00. The overall designated award authority for the proposed action(s) remains under KRS 56.805(3)(a), therefore reporting for both agreements is required accordingly with modifications specifically addressed under KRS 56.823(11)(b).

Memo to: Holly M. Johnson, Secretary
PR-5718, Graves County
Finance & Administration Cabinet
PR-5719, Graves County
Department of Corrections
PR-5720, Graves County
Cabinet for Health & Family Services
April 14, 2023
Page Five

3. Modifications to the both original agreements eliminates certain requirements for duplicative document processing, for duplication commissioning actions (e.g., code enforcement inspections, etc.), and simplifies the final resolution of the multi-agency Invitation processed under PR-5718A-D.

Subsequent to internal review, and also in the interest of maintaining consistency with established processing procedures and methods, we anticipate that the resulting modifications will include a modification page defining the authority and acquisition methods for signature purposes and an exhibit/addendum that includes the Commonwealth's standard contract form identifying the revised terms for each agreement as described herein and the general and specific requirement specifications applicable to each agreement

Should you require additional information, please advise.

JSA/BSH/bh
Attachment

RECOMMENDED:



Sam Ruth, Commissioner
Dept. for Facilities & Support Services



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

Andy Beshear
GOVERNOR

Holly M. Johnson
SECRETARY


Sam Ruth
COMMISSIONER

Scott Aubrey
DIRECTOR

Bush Building, 3rd Floor
403 Wapping Street
Frankfort, Kentucky 40601
Phone: (502) 564-2205
Fax: (502) 564-8108

MEMORANDUM

TO: Katherine Halloran, Committee Staff Administrator
Capital Projects and Bond Oversight Committee

FROM: Brien S. Hoover, Leasing Manager 
Division of Real Properties

DATE: May 8, 2023

SUBJECT: PR-5720, Graves County
Cabinet for Health & Family Services
Emergency Lease

As outlined, attached please find notification of a lease agreement modification being processed by the Division's Leased Properties Branch.

If you have questions or require additional information concerning this matter, please advise.

BSH/bh
Attachment

Cc: Capital Construction Log
OSBD
PR-5720 File
BSH

REPORT TO CAPITAL PROJECTS AND BOND OVERSIGHT COMMITTEE

EMERGENCY LEASE AGREEMENT

Lease No.: PR-5720		County: Graves	
Using Agency: Cabinet for Health & Family Services			
Lessor (identify all parties having 5% or more ownership): Attach extra sheet if necessary		Waldrop & Waldrop LLC	
Property Location: 351 Charles Drive, Mayfield, KY			
Check One: <input type="checkbox"/> New Lease <input type="checkbox"/> Renewal <input checked="" type="checkbox"/> Modification			
Type Space: Office		Cost Per Square Foot: \$15.25	
Annual Rental Cost: \$113,002.52		Average Cost Per Square Foot of Leased-In Space in County: \$15.25	
Utilities Included: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Cancellation Clause:	<input checked="" type="checkbox"/> Yes If yes, explain terms: 30 Days		<input type="checkbox"/> No If no, explain why not:
Effective Date: April 1, 2022		Expiration Date: June 30, 2024	
Justification for Lease: Please see attached			
Has the Finance & Administration Cabinet complied with statutory requirements: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If no, explain:			
Explain why the Finance & Administration Cabinet chose this lessor (see attached approval memo and modification): Please see attached			

COMMONWEALTH OF KENTUCKY LEASE MODIFICATION AGREEMENT

LESSOR	Waldrop & Waldrop LLC Dba Property Development Account	PR NUMBER, COUNTY	PR-5720, Graves County
ADDRESS	935 Paris Road Mayfield KY 42066	VENDOR NUMBER	KY0024635
		AGENCY/DEPARTMENT	Cabinet for Health & Family Services
		DIVISION	
		DATE	March 17, 2023
		BUILDING CODE	91847001

1. Lease Agreement number PR-5720, Graves County, dated December 22, 2021, is hereby modified as set forth in Paragraph Two.

2. This Lease is modified as follows:

Effective March 17, 2023:

Pursuant to applicable provisions of KRS 56.803(16(a))/KRS 56.805(4) to replace in its entirety that Lease Agreement and Addendum providing for use of 7,410 square feet of space for the period between December 22, 2021 and February 28, 2022 with the Lease Agreement and Addendum attached hereto, incorporated herein by reference, and identified as Exhibit PR-5718B.

3. All other terms and conditions of the lease are replaced as defined herein.

4. Signatures are required on this modification document only, signatures are not required on the attached Exhibit PR-5718B.

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

Astrud Masterson 4/17/2023
STATE LEASING AGENCY REPRESENTATIVE Date

R. Thond 3/20/23
LESSOR MEMBER MBR, LLC Date

Ben S. Hansen 18APR2023
ANALYST, LEASING BRANCH, DIVISION OF REAL PROPERTIES Date

Patrick M. Deane 4/19/2023
ATTORNEY, FINANCE & ADMINISTRATION CABINET Date

Ben S. Hansen 18APR2023
MANAGER, LEASING BRANCH, DIVISION OF REAL PROPERTIES Date

Scott A. Selby
DIRECTOR, DIVISION OF REAL PROPERTIES

Kelly M. Gibson 04.20.2023
SECRETARY, FINANCE & ADMINISTRATION CABINET Date

APPROVED THIS _____ DAY OF _____, 20____

All correspondence and inquiries regarding this Lease Modification Agreement are to be directed to the Division of Real Properties, Suite 300, 403 Wapping Street, Frankfort, Kentucky 40601-2607, phone 502/564-2205. BSH

12-17-5 (Rev. 9/03) **COMMONWEALTH OF KENTUCKY LEASE AGREEMENT - EXHIBIT PR-5718B**

LEASE/PR #	PR-5720, Graves County	AGENCY/DEPARTMENT	Cabinet for Health & Family Services
INITIAL ENCUMBRANCE	\$	DIVISION	
ANNUAL ENCUMBRANCE	\$113,002.52	DATE	March 17, 2023
VENDOR CODE #	KY0024635	BUILDING CODE #	91847001

THIS LEASE, entered into between: **Waldrop & Waldrop LLC Dba Property Development Account** whose address is **935 Paris Road, Mayfield, KY, 42066** (Business Phone: **270-247-2734**) his heirs and assigns, hereinafter called the "Lessor", and the COMMONWEALTH OF KENTUCKY, hereinafter referred to as the "Commonwealth".

WITNESSETH, that for the consideration hereinafter mentioned, the parties hereto agree as follows:

1a. The Lessor hereby leases to the Commonwealth and agrees to keep in quiet and peaceful possession the following described premises with its appurtenances; property located at **361 Charles Drive, Mayfield, KY 42066**, in the County of **Graves**.

1b. Said premises consisting of **7,410** square feet are to be rented at the cost of **\$15.25** per square foot and will be used by the Commonwealth for **Office** space.

2. The Commonwealth agrees to pay rent to the Lessor for the leased premises at the rate of **\$28,250.63**, payable **Quarterly**. The Lessor shall provide the Commonwealth with the following services: **None**; with **Seventy-Six (76)** non designated reserved parking spaces.

3. Subject to the limitations imposed by law and as provided in paragraphs 5 and 6 of this Lease, the term during which the Lease shall be effective shall begin **April 1, 2022**, and end **June 30, 2022**.

4. This Lease shall be extended automatically upon the same terms and conditions herein for further periods of 12 months, not to exceed **Two (2)** extension period(s) unless the Commonwealth shall give the Lessor written notice **30** days prior to the expiration of the term or any extension that it will not be extended, no extension shall prolong the period of occupancy of the leased premises beyond the **30th** day of **June 2024**. The Lessor understands that the Commonwealth's funds cannot be committed beyond its current fiscal year and its applicable appropriation and the related allotment from rental payments will be made.

5. The Commonwealth shall have the further right to terminate this Lease at any time upon **30** days written notice, time to be computed from date of making notice, termination under this paragraph shall not be considered effective until the last day of the month in which the notice period ends.

6. The Commonwealth agrees not to assign this Lease, or to sublet the premises except to a desirable tenant and for a similar purpose and will not permit the use of the premises by anyone other than the Commonwealth, the Federal Government, or such sub-lessee, and the agents and servants of the Commonwealth, the Federal Government, or such sub-lessee.

7. The Commonwealth shall have the right during the existence of this Lease to make alterations, attach fixtures and erect additional structures or signs in or upon the leased premises provided such alterations, additions, structures or signs shall not be detrimental to or inconsistent with rights granted to other tenants on the property or in the building in which the premises are located. Fixtures, additions, structures or signs placed in or upon or attached to the premises shall remain the Commonwealth's property and may be removed by it prior to the termination of this Lease.

8. Unless otherwise specified, the Lessor shall maintain the premises in good repair and tenable condition, including heating and/or air conditioning equipment, except in case of damage arising from the negligent acts of the Commonwealth's agents or employees. For the purpose of maintaining the premises and to make necessary repairs, the Lessor reserves the right to enter and inspect the premises at reasonable times.

9. The Commonwealth agrees to take good care of the premises and to return them at the expiration of their Lease in as good order as received, ordinary wear and tear and natural decay excepted.

10. The Lessor shall be responsible for procuring and continuously maintaining casualty and liability insurance on the leased premises.

11. If the premises are destroyed by fire or other casualty, the Lease shall immediately terminate. In case of partial destruction or damage so as to render the premises untenable, the Commonwealth may terminate or suspend this Lease by giving written notice to the Lessor within 15 days after such partial destruction or damage, and, if so suspended, no rent shall accrue to the Lessor after the date of such partial destruction or damage until such damage is repaired and premises are considered tenable.

12. It is agreed by the parties hereto that if any one of the provisions of this Lease shall contravene or be invalid under the laws of the Commonwealth of Kentucky, such contravention or invalidity shall not invalidate the whole Lease, but it shall be construed as if not containing that particular provision or provisions, and the rights and obligations of the parties shall be construed accordingly.

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

14. The Lessor agrees to notify the Commonwealth of all persons owning or upon any change or transfer of ownership involving 5% or more in stock, in partnership, business trust or corporation, including silent or invited partners. Non-compliance may result in termination of the Lease Agreement.

15. Lessor shall comply with all standards set by the Department of Housing, Buildings and Construction, Division of Building Codes Enforcement, and that of the Kentucky Occupational Safety and Health Standards Board and the Americans with Disabilities Act (ADA).

16. The contractor, as defined in KRS 45A.030 (8) agrees that the contracting agency, 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 contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The contractor also recognizes that any books, documents, papers, records, or other evidence received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. In the event of a dispute between the contractor and the contracting agency, Attorney General, or the Auditor of Public Accounts over documents that are eligible for production and review, the Finance and Administration Cabinet shall review the dispute and issue a determination in accordance with Secretary's Order 11-004.

IN WITNESS WHEREOF, the parties hereto have subscribed their names: **REFER TO MODIFICATION PARAGRAPH FOUR (4)**

STATE LEASING AGENCY REPRESENTATIVE _____ Date _____

LESSOR _____ Date _____

ANALYST, LEASING BRANCH, DIVISION OF REAL PROPERTIES _____ Date _____

ATTORNEY, FINANCE & ADMINISTRATION CABINET _____ Date _____

MANAGER, LEASING BRANCH, DIVISION OF REAL PROPERTIES _____ Date _____

DIRECTOR, DIVISION OF REAL PROPERTIES _____

SECRETARY, FINANCE & ADMINISTRATION CABINET _____ Date _____

APPROVED THIS _____ DAY OF _____, 20_____

When executed by the Secretary, Finance & Administration Cabinet, this instrument constitutes a finding and order, pursuant to KRS Chapters 45A and 56, that the leased property is needed for use by the Commonwealth of Kentucky. All correspondence and inquiries regarding this Lease are to be directed to the Division of Real Properties, Bush Building 3rd Floor, 403 Wapping Street, Frankfort, Kentucky 40601 2607, phone 502/564-7205. **BNH**

Handwritten signature and date: TW 3/20/23

ADDENDUM – EXHIBIT PR-5718B

The following items are considered a part of Lease Agreement Modification PR-5720, Graves County, dated March 17, 2023:

SECTION 1 – APPLICABLE TO ALL OFFERED SUITES

1. The building shall meet all Kentucky building codes and accessibility specifications in accordance with ADA, as enforced by the Kentucky Department of Housing, Buildings and Construction. The Department may require a set of construction plans from the Lessor. The Lessor is required to submit a copy of these plans, if/as approved by the Department, to the Division of Real Properties. The Lessor shall be responsible for determining/complying with the requirements of the Department. Issues such as fire rated corridors, fire suppression systems (if applicable), HVAC installation, etc. are not addressed in the space planning information (i.e., floor plans and specifications) provided by the Division of Real Properties.
2. All facilities with a total leased square footage of 3,000 square feet or more shall be equipped with automatic fire suppression systems (sprinklers). The system shall be installed in accordance with all applicable provisions/requirements of the Department of Housing, Buildings, and Construction. **NOTE: Access to an underground water main with a minimum diameter of six (6) inches is required for sprinkler systems serving spaces that exceed 3,000 square feet.** The Lessor shall be responsible for installation and maintenance of the fire suppression system. The Commonwealth prepares floor plans based on the presence of a suppression system. Should the Lessor submit an exception to this requirement they shall be solely responsible for any expenses associated with additional requirements as determined by the Department.
3. Central heating and air conditioning (HVAC) shall be installed throughout. The HVAC system shall be installed in conformance with Kentucky building codes, as administered by the Kentucky Department of Housing, Buildings and Construction. The Lessor shall also install an adequate fresh air handling system in accordance with applicable ASHRAE Standards. Electronic thermostats with programmable functions shall be installed for new or existing HVAC systems. A standard locking cover shall be installed on the thermostat. The local supervisor, in conjunction with the Lessor, will determine appropriate settings (i.e.: daytime/evening temperature settings, set back timer settings as required by regular office hours, etc.) for each property. Central air units, heat pumps, etc. must be ENERGY STAR qualified where available. Alternative systems (e.g., geo-thermal, etc.) may be proposed at the discretion of the lessor but are subject to review and approval by the Division of Real Properties. The Lessor shall ensure that applicable HVAC systems are serviced (e.g., clean and check) not less than twice annually and filters shall be replaced not less than once per quarter. Documentation regarding annual servicing shall be provided to the Division of Real Properties.
4. The Lessor shall insulate exterior walls at a minimum R-13 or equivalent and the ceiling at a minimum R-38 or equivalent. Weather stripping and/or other suitable insulation shall be applied to all doors and windows and all other exterior of the leased space. This shall be inspected on an annual basis and repaired/replaced as necessary. Windows shall be installed or replaced with Low E/ENERGY STAR qualified windows. The lessor shall provide documentation identifying the type/rating of installed windows. The Lessor shall provide mini-blinds for all windows.
5. Separate utility meters are needed if the using agency is to pay utilities, with service to be established in the name of the using agency. *{Agencies that are billed directly by a local utility should contact the utility company to identify their agency as "tax exempt"}* If a separate meter is not feasible, the Lessor shall bill the using agency on a pro-rated basis. If this method is used, the Lessor shall provide the using agency sufficient documentation to justify the percentage of the total bill to be charged to the using agency. *{Agencies that receive utility invoices from the Lessor (based on the percentage of space occupied) should reimburse the Lessor for the full amount of the invoice including any applicable taxes}*
6. If a plenum ceiling is to be used, all wiring shall be housed in conduit, or plenum cable shall be used. The Lessor shall advise the Division of Real Properties as soon as possible when it is determined that plenum or a ducted ceiling is to be used. This will ensure that the agency's appointed electricians will be prepared with the right cabling. **Failure to notify the Division of Real Properties of a plenum ceiling, prior to award of a lease, shall be considered grounds for termination of the lease.**
7. An acoustical tile ceiling shall be installed at a height of 9'.
8. Existing floor coverings in each suite are acceptable provided that the lessor repair or replace any damaged areas (i.e., mitigate trip hazards, etc.).
9. The Lessor shall provide lockable doors at the primary entrance/exit doors (i.e., front and rear) to each proposed/leased suite.

RW
3/20/23



GRAVE COUNTY PR 5718

CABINET FOR HEALTH AND FAMILY SERVICES
TRANSPORTATION - ADULT EDUCATION

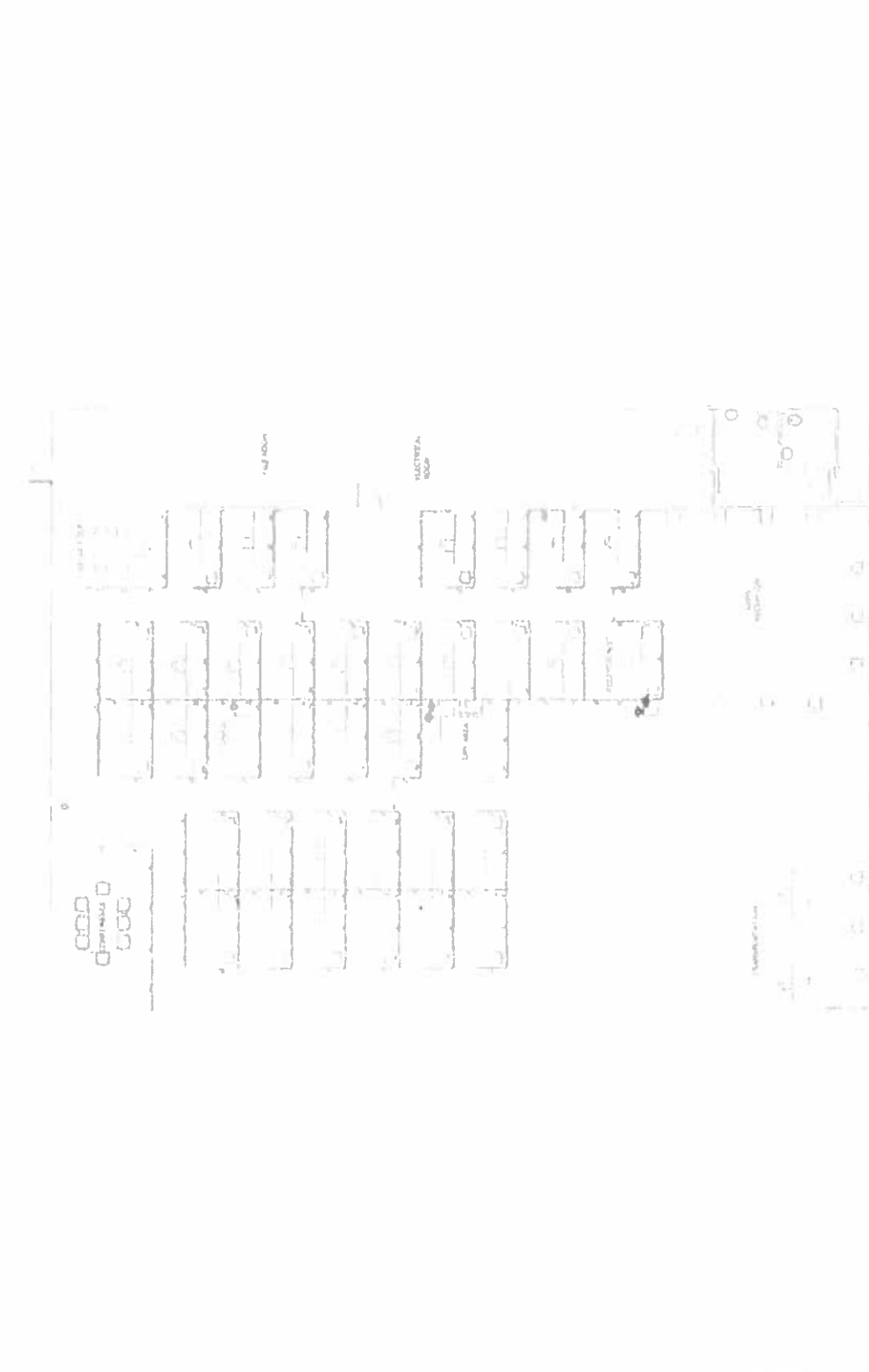
351 CHARLES DRIVE
MAYFIELD, KY

12/17/11

CONTRACTOR'S OBLIGATION
 TO BE COMPLETED BY THE CONTRACTOR
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CONTRACTOR'S OBLIGATION
 TO BE COMPLETED BY THE CONTRACTOR
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- 1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE NATIONAL ELECTRICAL CODE (NEC) AND THE NATIONAL FIRE ALARM AND SIGNALING CODE (NFPA 72).
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- 10. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE NATIONAL ELECTRICAL CODE (NEC) AND THE NATIONAL FIRE ALARM AND SIGNALING CODE (NFPA 72).



3/20/23



Andy Beshear
GOVERNOR

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

Holly M. Johnson
SECRETARY

Bush Building, 3rd Floor
403 Wapping Street
Frankfort, Kentucky 40601
Phone: (502) 564-2205
Fax: (502) 564-8108

Sam Ruth
COMMISSIONER

Scott Aubrey
DIRECTOR

MEMORANDUM

TO: Holly M. Johnson, Secretary
Finance and Administration Cabinet

FROM: Scott Aubrey, Director *SA*
Division of Real Properties

DATE: April 14, 2023

SUBJECT: PR-5718, Graves County
Finance & Administration Cabinet
PR-5719, Graves County
Department of Corrections
PR-5720, Graves County
Cabinet for Health & Family Services

Beginning on December 10, 2021, and continuing through December 11, 2021, a severe weather system generating heavy rain, thunderstorms, tornadoes, and strong straight-line winds impacted the Commonwealth of Kentucky, causing flash flooding, loss of power, damage to public infrastructure and private properties. (Executive Order 2021-923). During the Division of Real Properties' ("Real Properties") initial damage assessment immediately following the storms, we received confirmation that the leased facility occupied by the referenced agencies and the Mayfield State Office Building which was occupied by Cabinet for Health & Family Services staff experienced significant damage (i.e., roof damaged or partially removed, most windows destroyed, interior wind and water damage, etc.).

Beginning on December 13th and continuing through December 16th, Real Properties staff completed as many standard procedural actions associated with identifying and securing emergency replacement space to expeditiously restore agency operations as feasible. These included the following: review of online sources (e.g., Loopnet, Cityfeet, etc.); where feasible given the absence of utility and network services contacts with local real estate offices, references from local agency, and a physical examination of the city. Based on current occupancy levels (i.e., 4,032 square feet) in leased property by the Department of Corrections and in leased and owned properties (2,973 square feet and approximately 5,500 square feet respectively) by the Cabinet for Health & Family Services, negotiations for the temporary use of space located at 351 Charles Drive for benefit of the Cabinet for Health & Family Services commenced. Those negotiations led to a proposed lease to include 7,410 square feet at a rental rate of \$15.00 per square foot (\$111,150.00 annually) excluding utilities and janitorial services, effective December 22, 2021 and expiring June 30, 2023 (reference PR-5720). Subsequent negotiations for the temporary use of space located at 337 and 345 Charles Drive for benefit of the Department of Corrections led to a proposed lease to include 2,919 square feet total at a rental rate of \$16.75 per square foot (\$48,893.24 annually) excluding utilities and janitorial services, effective December 23, 2021 and expiring June 30, 2023 (reference PR-5719).



Memo to: Holly M. Johnson, Secretary
PR-5718, Graves County
Finance & Administration Cabinet
PR-5719, Graves County
Department of Corrections
PR-5720, Graves County
Cabinet for Health & Family Services
April 14, 2023
Page Two

In the course of engaging in negotiations described herein under applicable provisions of KRS 56.805(3) and for benefit of agencies displaced from tornado damaged facilities, our office was advised that the property was owned and controlled by a Limited Liability Corporation ("LLC"). One of the principal partners in the LLC is Mr. Thomas Waldrop, who is also a member of the Murray State University Board of Regents. Given Mr. Waldrop's status as a Murray State Regent, and notwithstanding the resulting conflict between the requirements of KRS 45A.340(5)(a) and KRS 56.805(4), the provisions of KRS 45A.340 were determined to be applicable to the initial temporary lease award(s). Following internal review of KRS 45A.340, Mr. Waldrop was notified of the statute and its possible applicability given his status as a Regent. Recognizing the need to secure leased property to expeditiously restore partial or full operational capacity for agencies in the storm ravaged communities, Mr. Waldrop agreed to lease to the Commonwealth the above described spaces at a flat rental rate of \$1.00 each, excluding utilities and janitorial, with terms beginning December 22 and December 23, 2021 respectively and ending February 28, 2022. The short-term leases facilitated the immediate restoration of critical services to the City of Mayfield and Graves County while providing time for the Commonwealth to complete an expedited competitive bid project (reference KRS 56.803) for use of space on a longer term temporary basis.

Pursuant to the aforementioned determination a modified Invitation to Lease was processed under PR-5718 seeking proposals for spaces ranging from 936 square feet to 13,400 square feet to be offered in any combination of size/number of facilities meeting the general space requirements. The Invitation also specified that the Commonwealth reserved the right to issue one or more awards and/or to terminate the Invitation. A single proposal was received from Waldrop & Waldrop LLC offering for suites located at 335-365 Charles Drive, Mayfield. Site evaluations conducted pursuant to KRS 56.803(10) and subsequent discussions with the five agencies (i.e., Cabinet for Health & Family Services, Department of Corrections, Labor Cabinet, Transportation Cabinet, and the former Department for Workforce Investment) included in the Invitation determined that the suite identified as 351 Charles Drive contained sufficient space to house Cabinet for Health & Family Services staff with sufficient excess space to accommodate temporary use by the Department for Workforce Investment, the Labor Cabinet, and potentially sufficient to accommodate the Transportation Cabinet. The remaining two suites, identified as 337 and 345 Charles Drive, were considered for use by the Department of Corrections and the Labor Cabinet. Based on the space requirements of the Department of Corrections, and the aforementioned determination that the 355 Charles Drive suite offered sufficient space to accommodate the Labor Cabinet, the Department for Workforce Investment, and the Transportation Cabinet, both suites (i.e., 337 and 345 Charles Drive) were designated for proposed use by the Department of Corrections. Subsequent to preliminary identification of suitable spaces to accommodate all agencies included in the Invitation, and in accordance with the provisions of KRS 56.803(11), final proposal solicitations that included general requirement specifications applicable to all offered suites and specific requirement specifications associated with operational requirements for the Cabinet for Health & Family Services (351 Charles Drive), the Transportation Cabinet (355 Charles Drive), and the Department of Corrections (337 & 345 Charles Drive) were transmitted to Waldrop & Waldrop LLC. Pursuant to KRS 56.803(12) the following proposals were received for each offered space identified within the Invitation as PR-5718A through PR-5718D:

Waldrop & Waldrop LLC proposed to lease 3,316 square feet of space located at 355 Charles Drive at a rental rate of \$15.00 per square foot, excluding utilities and janitorial services, with a term expiring June 30, 2023. Specific requirement specifications for the Transportation Cabinet were included in this proposal solicitation and it is identified as PR-5718A.

Memo to: Holly M. Johnson, Secretary
PR-5718, Graves County
Finance & Administration Cabinet
PR-5719, Graves County
Department of Corrections
PR-5720, Graves County
Cabinet for Health & Family Services
April 14, 2023
Page Three

Waldrop & Waldrop LLC proposed to lease 7,410 square feet of space located at 351 Charles Drive at a rental rate of \$15.50 per square foot, excluding utilities and janitorial services, with a term expiring June 30, 2023. Specific requirement specifications for the Cabinet for Health & Family Services were included in this proposal solicitation and it is identified as PR-5718B.

Waldrop & Waldrop LLC proposed to lease 1,447 square feet of space located at 345 Charles Drive at a rental rate of \$16.75 per square foot, excluding utilities and janitorial services, with a term expiring June 30, 2023. Specific requirement specifications for the Department of Corrections were included in this proposal solicitation and it is identified as PR-5718C.

Waldrop & Waldrop LLC proposed to lease 1,472 square feet of space located at 337 Charles Drive at a rental rate of \$16.95 per square foot, excluding utilities and janitorial services, with a term expiring June 30, 2023. Specific requirement specifications for the Department of Corrections were included in this proposal solicitation and it is identified as PR-5718D.

Pursuant to applicable provision of KRS 56.803(13), and subsequent to confirming that the anticipated temporary requirements to accommodate the Transportation Cabinet were best addressed through the use of space in the 351 Charles Drive Suite, Real Properties initiated negotiations with the property owner relative to temporary use of 337 & 345 Charles Drive for the Department of Corrections and 351 Charles Drive for the Cabinet for Health & Family Services. Those negotiations resulted in a reduction of the proposed rental rate for the 351 Charles Drive suite to \$15.25 per square foot, excluding utilities and janitorial services, with a term expiring June 30, 2024 and a proposal to combine the proposed lease(s) for 337 and 345 Charles Drive at a total area of 2,919 square feet to be leased at a rental rate of \$16.80 per square foot, excluding utilities and janitorial services, with a term expiring June 30, 2023. The Cabinet for Health & Family Services and the Department of Corrections have both confirmed acceptance of the proposed lease terms defined herein.

Three of the five individual space requests included in the Invitation were resolved as follows:

Transportation Cabinet: Immediate temporary operations space was obtained under PR-5721 for the period between December 14, 2021 and February 28, 2022. The 355 Charles Drive suite noted above was considered for extended temporary use, however the longer term temporary need was accommodated in the 351 Charles Drive suite for the period between March 1 and September 30, 2022. The Transportation Cabinet relocated to fully renovated permanent operational space in the 355 Charles Drive suite, obtained under regular provisions of KRS 56.803, on August 1, 2022 (reference PR-5672). This portion of the Invitation will be terminated in accordance with applicable provisions of KRS 45A.105.

Department of Workforce Investment: The 355 Charles Drive suite noted above was utilized as temporary operations space (i.e., interagency agreement under PR-5720, Cabinet for Health & Family Services) by the Department with that use ending on or before February 28, 2022. The Department expressed interest in obtaining long term temporary or permanent space for the three staff included in their space request in a facility operated by the Purchase Area Development District, however space for the proposed use was not available of an ongoing basis. We have discussed the disposition of this request with the designated liaison from the Education & Labor Cabinet, and this portion of the Invitation will be terminated in accordance with applicable provisions of KRS 45A.105.

Labor Cabinet: The 355 Charles Drive suite noted above was utilized as temporary operations space (i.e., interagency agreement under PR-5720, Cabinet for Health & Family Services) by the Cabinet and it our understanding that their temporary use ended on or before February 28, 2022. We have discussed the disposition of this request with the designated liaison from the Education & Labor Cabinet, and this portion of the Invitation will be terminated in accordance with applicable provisions of KRS 45A.105.

Based on the terms arrived at via application of the Invitation to Lease process defined under KRS 56.803 as described above, and specifically based on both the considerations applied to all lease awards defined under KRS 56.803(14)(a) and to the Department of Facilities and Support Services authority to locate and negotiate for space suitable to meet the needs of appropriately certified emergency requests, we recommend issuance of two lease awards for the Cabinet for Health & Family Services and the Department of Corrections via emergency modifications to revise the terms applicable to PR-5720 and PR-5719 respectively. A brief description of the initial disposition of the requests from each agency follows:

Cabinet for Health & Family Services: Immediate temporary operations space was obtained under PR-5720 for the period between December 22, 2021 and February 28, 2022 in the 355 Charles Drive suite. The Cabinet retains use of the space under the provisions of KRS 383.160 (hold over tenancy) pending final disposition of a long term temporary award via terms and/or procedures applicable under KRS 56.803 and/or KRS 56.805(4).

Department of Corrections: Immediate temporary operations space was obtained under PR-5719 for the period between December 23, 2021 and February 28, 2022 in the 345/337 Charles Drive suites. The Department retains use of the space under the provisions of KRS 383.160 (hold over tenancy) pending final disposition of a long term temporary award via terms and/or procedures applicable under KRS 56.803 and/or KRS 56.805(4).

The recommendation to resolve the hold over status of the agreements for both agencies via emergency modifications is based on the following considerations:

1. Modification of the original lease agreements is informed by established procedures applied to lease agreements subject to regular renewal rental rate increases. While award under a newly assigned lease identification number would be permissible under statute, the circumstances unique to the identified requirements for emergency replacement space for both agencies created the need to apply a novel procurement method (i.e., incorporation of a modified competitive bidding process) to the established procedural mechanisms typically applied to emergency lease agreements. Accordingly, we would recommend maintaining all of the lease award records in the manner that best provides clear documentation of the Commonwealth's use of the facility under all applicable acquisition methods and emergency modifications best accomplish that purpose.
2. Award via regular provisions of KRS 56.803 would then indicate that Capital Projects and Bond Oversight is required for the proposed award for the Cabinet for Health & Family Services under KRS 56.823(2); however, the proposed award for the Department of Corrections would not be reportable since the annual cost of the lease does not exceed \$100,000.00. The overall designated award authority for the proposed action(s) remains under KRS 56.805(3)(a), therefore reporting for both agreements is required accordingly with modifications specifically addressed under KRS 56.823(1)(b).

Memo to: Holly M. Johnson, Secretary
PR-5718, Graves County
Finance & Administration Cabinet
PR-5719, Graves County
Department of Corrections
PR-5720, Graves County
Cabinet for Health & Family Services
April 14, 2023
Page Five

3. Modifications to the both original agreements eliminates certain requirements for duplicative document processing, for duplication commissioning actions (e.g., code enforcement inspections, etc.), and simplifies the final resolution of the multi-agency Invitation processed under PR-5718A-D.

Subsequent to internal review, and also in the interest of maintaining consistency with established processing procedures and methods, we anticipate that the resulting modifications will include a modification page defining the authority and acquisition methods for signature purposes and an exhibit/addendum that includes the Commonwealth's standard contract form identifying the revised terms for each agreement as described herein and the general and specific requirement specifications applicable to each agreement

Should you require additional information, please advise.

JSA/BSH/bh
Attachment



RECOMMENDED: _____

Sam Ruth, Commissioner
Dept. for Facilities & Support Services



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

Andy Beshear
GOVERNOR

Holly M. Johnson
SECRETARY

Bush Building, 3rd Floor
403 Wapping Street
Frankfort, Kentucky 40601
Phone: (502) 564-2205
Fax: (502) 564-8108

Sam Ruth
COMMISSIONER

Scott Aubrey
DIRECTOR

MEMORANDUM

TO: Katherine Halloran, Committee Staff Administrator
Capital Projects and Bond Oversight Committee

FROM: Brien S. Hoover, Leasing Manager *BJS*
Division of Real Properties

DATE: April 20, 2023

SUBJECT: PR-5779, Breathitt County
Transportation Cabinet
Emergency Lease

As outlined, attached please find notification of a lease agreement being processed by the Division's Leased Properties Branch.

If you have questions or require additional information concerning this matter, please advise.

BSH/bh
Attachment

Cc: Capital Construction Log
OSBD
PR-5779 File
BSH

REPORT TO CAPITAL PROJECTS AND BOND OVERSIGHT COMMITTEE

EMERGENCY LEASE AGREEMENT

Lease No.: PR-5779		County: Breathitt	
Using Agency: Transportation Cabinet			
Lessor (identify all parties having 5% or more ownership): Attach extra sheet if necessary		Breathitt County Board of Education	
Property Location: 1140 Lakeside Drive, Jackson, KY			
Check One: <input checked="" type="checkbox"/> New Lease <input type="checkbox"/> Renewal <input type="checkbox"/> Modification			
Type Space: Forty-five (45) Non-congregate Shelter Site(s)		Cost Per Square Foot: \$N/A - \$100.00 per site per month	
Annual Rental Cost: \$54,000.00		Average Cost Per Square Foot of Leased-In Space in County: \$N/A No comparable agreements	
Utilities Included: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Cancellation Clause:	<input checked="" type="checkbox"/> Yes If yes, explain terms: 30 Days		<input type="checkbox"/> No If no, explain why not:
Effective Date: December 16, 2022		Expiration Date: Month to month until terminated.	
Justification for Lease: Please see attached SPR1			
Has the Finance & Administration Cabinet complied with statutory requirements: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If no, explain:			
Explain why the Finance & Administration Cabinet chose this lessor (see attached approval memo and modification): Please see attached			



Commonwealth of Kentucky Strategic Purchase Request

SPR1 Information

Doc ID: SPR1 605 22000002976 Version: 3 Status: pending

Short Description: Non-Congregate Sheltering Program

Vendor Name: various

Cost: \$20,000,000.00

Request Date: 7/29/22

Request Department: 605

Type of Request: Non-IT No Bid Requests

Sub Category: EMERGENCY PURCHASE REQUEST

Proc Folder:

Proc Type ID:

APPROVED

Holly Johnson

DocuSigned by:
Holly Johnson
81C993F6FA23433

Contact Information

Requestor ID: RMJ0418

Requestor Name: Laura Hagan

Phone Number: 502-782-3980

Email: laura.hagan@ky.gov

Purpose and Justification

Will Personal Security Information & Breach provisions apply to contract per KRS61.9317? n/a

Purpose, Justification, Method of Procurement:

Modification (8/2/22) - Requesting authority to utilize the awarded Master Agreements (Haul/Install and Maintenance/ Inspection) for Non-Congregate Sheltering Program for areas devastated by July 2022 flooding. Also requesting authority to initiate rental leases for temporary trailer sites as discussed with Finance Real Properties.

Not to exceed amount increased to \$20,000,000.

Modification - Requesting authority to initiate rental leases for temporary trailer sites as discussed with Finance Real Properties.

The Transportation Cabinet is requesting authority to contract for the following services related to recovery from the tornado event December 10-11, 2021 in 16 Kentucky counties:

- . Construction of pads for sheltering units (travel trailers / RVs)
- . Installation / modification of utilities at these sites to include water, sewer / septic, and electric
- . Hauling and installation for sheltering units
- . Maintenance and Inspection of sheltering units

This request is for not to exceed amount of \$7,900,000.

NON-COMPETITIVE PROCUREMENT REQUEST

Pursuant to Competitive Bidding Exceptions: FAP111-09-00 Not Practicable or Feasible, FAP111-10-00 Sole Source, FAP111-39-00 Emergency Purchases, the Finance Cabinet is responsible for approving non-competitive procurements. ATTACH THIS FORM TO THE SPR1

DATE: 7/28/22

AGENCY INFORMATION

Cabinet: KY Transportation Cabinet
Department: State Highway Engineer's Office
Agency Contact Name: Jason Siwula
Contact Email: jason.siwula@ky.gov
Contact Phone: 502-782-5537

SUGGESTED SUPPLIER

Name: various
Address:
Website:

Amount of Purchase: \$20,000,000.00 Duration of Contract: unknown

CHOOSE ONE OF THE FOLLOWING:

- NOT PRACTICABLE OR FEASIBLE
SOLE SOURCE
EMERGENCY (checked)

Modification - Requesting authority to utilize the awarded Master Agreements for Non-Congregate Sheltering Program for areas devastated by July 2022 flooding.
The Transportation Cabinet is requesting authority to contract for the following services related to recovery from the tornado event December 10-11, 2021:
• Construction of pads for sheltering units (travel trailers / RVs)
• Installation / modification of utilities at these sites to include water, sewer / septic, and electric
• Hauling and installation for sheltering units
• Maintenance and Inspection of sheltering units
Governor Andy Beshear has tasked the Transportation Cabinet with project management of the non-congregate sheltering (NCS) solution. As such, the Transportation Cabinet wishes to handle all procurements needed for this project in house within our Division of Purchases. These services are necessary for the sheltering units (travel trailers) that will serve as temporary shelters for individuals and households of residences that were destroyed, suffered major damage, or are otherwise uninhabitable from the tornadoes. The Commonwealth is seeking to provide these non-congregant temporary shelters in accordance with FEMA policies as part of the Emergency Declaration and in cooperation with Kentucky Emergency Management.

NON-COMPETITIVE PROCUREMENT REQUEST

FUTURE PURCHASES

Explain how this purchase will obligate the Commonwealth to a particular vendor for future purchases, if applicable. For example, will future maintenance require future contracts with this vendor or can contracts for maintenance be competitively awarded? Will "like" or "proprietary" items be required to be purchased from only this vendor? Explain in detail.

This request is solely for contracts related to the disaster declaration from the events on December 10-11, 2021.

IMPACT TO COMMONWEALTH

Explain the impact to the Commonwealth if this request is not approved.

The individuals and households that experienced the devastating loss of their homes will not be provided temporary housing solutions until their homes can be repaired or rebuilt.

2022 NON-CONGREGATE SHELTER (NCS) SITE LEASE AGREEMENT

WHEREAS communities within the Commonwealth of Kentucky, sustained catastrophic damage from severe flooding beginning July 25, 2022; and

WHEREAS the Commonwealth of Kentucky, Transportation Cabinet, Department of Highways has partnered with the Kentucky Division of Emergency Management to carry out an emergency non-congregate sheltering program and Breathitt County Board of Education hereinafter **OWNER**, is the owner of 45 lots suitable for the location of a non-congregate shelter located on 1140 Lakeside Drive, Jackson, KY 41339 (collectively, "the parties"); and

WHEREAS the floods beginning on July 25, 2022, created the need for temporary sheltering for residents affected by the aforementioned floods in Eastern Kentucky;

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree as follows:

This Lease Agreement is made this 10th day of April 2023, by and between Breathitt County Board of Education, 420 Court Street, Jackson, KY 41339 as Lessor, and the Commonwealth of Kentucky, Transportation Cabinet, Department of Highways (hereinafter, "Department"), 200 Mero Street, Frankfort, 45 lots from the **OWNER** located at on 1140 Lakeside Drive, Jackson, KY 41339, for the location of non-congregate shelters (NCS) for families, as determined by the Department, whose homes were destroyed or are suffered housing instability due to the aforementioned weather event. The **DEPARTMENT** shall have full control of said leased space.

1. The term of this lease shall be month to month commencing on the 16th day of December 2022, but shall run from this date until such time as the **DEPARTMENT** shall give 30 days written notice of termination of the lease to **OWNER**, with time to be computed from date of mailing notice. The **OWNER** understands that the Commonwealth's funds cannot be committed beyond its current fiscal year and its applicable appropriation, and the related allotment from rental payments will be made.
2. The sole consideration for this Lease Agreement is the payment of \$100 per lot/site per month by the **DEPARTMENT** to the **OWNER** and no cash or other payment shall be required of or made by the **DEPARTMENT** to the **OWNER**.
3. The **DEPARTMENT** shall have the right during the existence of this Lease to make alterations, attach fixtures and erect additional structures or signs in or upon the leased premises. Fixtures, additions, structures or signs placed in or upon or attached to the premises shall remain the Commonwealth's property and must be removed by it prior to the termination of this Lease.
4. Unless otherwise specified, the **OWNER** shall maintain the premises (expressly excluding the NCSs) in good repair and tenantable condition, except in case of damage arising from the intentional or negligent acts of the Commonwealth's agents or employees, or the intentional or negligent acts of the tenants and guests of tenants utilizing the NCSs placed by the **DEPARTMENT**. For the purpose of maintaining the premises and to make necessary repairs, the **OWNER** reserves the right to enter and inspect the premises at reasonable times.
5. The **DEPARTMENT** agrees to take good care of the premises and to return them at the expiration of their Lease in as good order as received, ordinary wear and tear and natural decay excepted.
6. The **DEPARTMENT** may terminate this lease pursuant to KRS 56.806(6) without cause by giving 30 day's written notice of such termination to the **OWNER**

7. This lease shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. Any action brought against the Commonwealth on the contract, including but not limited to actions either for breach of contract or for enforcement of the contract, shall be brought in Franklin Circuit Court, Franklin County, Kentucky

8. If any one of the provisions of this Lease shall contravene or be invalid under the laws of the Commonwealth of Kentucky, such contravention or invalidity shall not invalidate the whole Lease, but it shall be construed as if not containing that particular provision or provisions, and the rights and obligations of the parties shall be construed accordingly.

9. The **OWNER, an agency of the Commonwealth of Kentucky**, certifies by the signature of its authorized agent hereinafter affixed that it is legally entitled to enter into contracts with the Commonwealth of Kentucky and that by holding and performing this contract will not be violating either any conflict of interest statute (KRS 45A.330 - 45A.340 or 45A.990) of the Executive Branch Code of Ethics, KRS Chapter 11A, or any other applicable statute or principle by the performance of this Lease, nor will it realize any unlawful benefit or gain directly or indirectly from it. The **OWNER** further certifies that it has not knowingly violated any provision of the campaign finance law of the Commonwealth, and that by entering into this Lease Agreement it will not be in violation of the campaign finance laws of the Commonwealth.

10. To the extent applicable, the **DEPARTMENT** has administered the Commonwealth Sheltering Program in cooperation with the Governor's Office, Public Protection Cabinet and Kentucky Emergency Management. Other than its obligation to generally maintain the premises as required by Paragraph 4, the **OWNER** expressly disclaims any knowledge of standards established by the Department of Housing, Buildings and Construction, the Division of Building Codes Enforcement, and the Kentucky Occupational Safety and Health Standards Board, and the Americans with Disabilities Act (ADA) relating to landlord/tenant or residential property, and further expressly disclaims any duty or ability to comply with or enforce such standards.

11. The **OWNER** agrees that the contracting agency, 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 this contract for the purpose of financial audit or program review as required by Kentucky law. Records received during such a financial audit or program review may be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884.

12. The **OWNER** enjoys governmental immunity. The **OWNER's** liability for damages, if any, is expressly limited to those caused by the acts or omissions of the **OWNER's** officers, employees, or agents. The **OWNER** otherwise is legally prohibited indemnifying or holding harmless any other public or private entity. The **OWNER** and **DEPARTMENT** expressly disclaim any intent to create third-party rights through the execution of this Agreement.

13. The undersigned, authorized representatives of both the **OWNER** and **DEPARTMENT**, certify that he/she accepts and acknowledges the aforementioned terms and conditions of this Lease Agreement.

DocuSigned by:
Phillip Watts 4/11/2023
E9E30817C8314ED
Vendor/Lessor Date

DocuSigned by:
Todd Shipp 4/10/2023
88A9A3E2A82646E
Approved as to form & legality:
Attorney, Transportation Cabinet Date

DocuSigned by:
JS 4/12/2023
3D00017031511E
Secretary, Transportation Cabinet Date

Patrick M. Deane 4/19/2023
Approved as to form & legality:
Attorney, Finance & Administration Cabinet Date

Heey M. Johnson 04.20.2023
Secretary, Finance & Administration Cabinet Date

License ID: SR# 23-031 PR# 5779



Andy Beshear
GOVERNOR

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

Bush Building, 3rd Floor
403 Wapping Street
Frankfort, Kentucky 40601
Phone: (502) 564-2205
Fax: (502) 564-8108

Holly M. Johnson
SECRETARY

Sam Ruth
COMMISSIONER

Scott Aubrey
DIRECTOR

MEMORANDUM

TO: Holly M. Johnson, Secretary
Finance and Administration Cabinet

FROM: Scott Aubrey, Director *SA*
Division of Real Properties

DATE: April 17, 2023

SUBJECT: PR-5779, Breathitt County
Transportation Cabinet

Attached for your review and signature is a lease between the Breathitt County Board of Education and the Commonwealth of Kentucky, Department of Highways for forty-five (45) Non-Congregate Shelter sites located in Jackson Kentucky. The flooding that occurred on or about July 28, 2022 created a need for temporary housing for persons displaced by flood related damage. The lease will be effective December 16, 2022 and includes provisions allowing the Commonwealth to terminate the agreement with a thirty (30) day notice. For and in consideration of this lease, the Commonwealth will pay \$100.00 per site per month (\$54,000.00 annually).

Therefore, since it is in the best interest of the Commonwealth to provide assistance to those affected by the aforementioned flooding, and in accordance with applicable provisions of KRS 45A.095, Subsections 2, 4, and/or 5, I recommend approval of the attached agreement, between the Transportation Cabinet and the Breathitt County Board of Education.

Should you require additional information, please advise.

JSA/BSH/bh
Attachment

RECOMMENDED: _____

Sam Ruth, Commissioner
Dept. for Facilities & Support Services