

LEASE

THIS LEASE, made and entered into this _____ day of 2017, between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT** (hereinafter called the "Lessor"), and **Wesley Pruitt dba Pruitt Farms** (hereinafter called the "Lessee"). The Lessor hereby leases to the Lessee and Lessee leases from Lessor approximately 90 (+ or -) partially fenced acres at 645 West Hickman Plant Road, Nicholasville, Kentucky, Jessamine County, Kentucky, ("Premises") on the following terms and conditions:

1. Term: The term of this Lease shall be for a period of one (1) year, beginning on April __, 2017 and ending on March 31, 2018. Lessee may renew this Lease for four (4) additional terms of one (1) year each by giving written notice to Lessor no less than ninety (90) days prior to the termination of each term. The Lessor, within thirty (30) days of receipt of Lessee's intent to renew, will notify Lessee in writing of Lessor's acceptance or rejection of the renewal offer. If Lessor does not accept or reject the renewal offer within thirty (30) days of receipt, the offer shall be deemed accepted.

2. Rent: The Lessee shall pay to the Lessor as rent for the use and possession of Premises the sum of **\$2000.00** due and payable simultaneously with the execution of the Lease. The annual rent for the subsequent renewal term of the Lease shall be paid on or before April 1 of each year.

3. Use: The Premises shall be used for cropland and hay and for no other purpose without the prior written consent of Lessor. The designated use of the acreage is shown on Exhibit A attached hereto and incorporated herein. The area plowed for cropland must be harrowed and sowed in wheat or rye at the rate of 1 and 1/2 bushels per acre prior to October 20, of each year by the Lessee unless otherwise agreed by Lessor. The hay area must be mowed and baled/rolled by the Lessee. All hay must be removed from the Premises within 30

days after cutting or within seven business days of notice given by the Lessor, whichever is sooner, unless written permission to do otherwise is given by the Lessor. Hay may not be stored on the tract without written permission from the Lessor and, in that event, shall be stored only in two (2) acres to be designated by the Lessor. Lessee's equipment may not be stored on the tract without written permission from the Lessor. The hay areas must be mowed at least twice during the period of April 1 - October 30 of each year.

4. Right of Entry: The Lessor reserves the right for itself, its agents, employees or assigns to enter the Premises at any time for any purpose.

5. Waste: The Lessee shall not commit or permit the commission by others of any waste on the Premises.

6. Maintenance: The Lessee shall at his own cost and expense keep and maintain the Premises, including fencing, in good order and repair, and in as safe and clean condition as it was when received by him from the Lessor, reasonable wear and tear excepted. Repairs made necessary by weather, casualty loss or vandalism shall be Lessor's responsibility, except to the extent such losses are caused by Lessee.

7. Inspection and Acceptance: Lessee has inspected the Premises and accepts the Premises in its present condition.

8. Indemnity: The Lessee agrees to indemnify, defend and hold the Lessor, and the Lessor's agents, officials, and employees, free and harmless from any and all claims, liabilities, loss, damage or expense of any nature whatsoever resulting from the Lessee's use of the Premises.

9. Subleasing and Assigning: The Lessee shall not encumber, assign, or otherwise transfer this Lease, any right or interest in this Lease, or any right or

interest in the Premises. Neither shall the Lessee sublet the Premises or any part thereof or allow any other persons, other than the Lessee's agents, family, and employees to occupy or use the Premises or any part thereof.

10. Alterations and Liens: The Lessee shall not make or permit any other person to make any alterations to the Premises or to any improvements thereon without the written consent of the Lessor. Lessee shall keep the Premises free and clear from any and all liens, claims, and demands for work performed, materials, furnished, or operations conducted thereon at the request of the Lessee_

11. Hazardous Substances: Lessee agrees that he will not bring on the Premises any hazardous substances, within the meaning of any federal, state or local law, rule, regulation or ordinance, including, but not limited to, the Comprehensive Environmental Response Compensation Act (CERCLA) and Resource Conservation and Recovery Act (RECRA), and further agrees to indemnify, defend and hold harmless the Lessor for any and all losses, cleanup, rededication, or removal costs, or whatever kind, resulting from any such hazardous substances brought onto the Premises by the Lessee, or Lessee's agents, contractors or employees.

12. Insurance: Lessee shall procure and maintain at his expense for the duration of this Lease:

A. Farm Owner's Personal Liability insurance against claims for injuries to persons or damages to property which may arise from or in connection with the use of the premises under this Lease by the Lessee, his agents, representatives, employees or subcontractors.

1. Coverage outlined in Attachment A – Risk Management Provisions Insurance and Indemnification(See Below)

2. Lessee shall provide a cashier's check or an irrevocable letter of credit in the amount of \$3,000.00 to the benefit of the Lexington-Fayette Urban County Government and valid for at least 365 days to ensure the performance of all the terms and conditions of this lease for each year. If Lessee fails to perform or follow any of the terms or conditions of the Lease, Lessor shall collect on the insuring instrument and Lessee will be entitled to a refund of amount not required to compensate for damages to Premises as a result of any breach of the terms of this Lease.

3. Insurance is to be placed with insurers with a Best rating of no less than A VIII.

B. Proof of insurance as described above shall be available and shall be delivered to Lessor upon request.

13. Default: All covenants and agreements contained in this Lease are declared to be conditions to the Lease. Should the Lessee default in the performance of any covenant, condition, or agreement contained in this Lease, the Lessor may terminate this Lease and reenter and regain possession of the Premises.

14. Access: Lessee shall have such access to the Premises via existing farm roads as is necessary and reasonable for the uses of the Premises set forth in paragraph 3 above.

15. Heirs and Successors: This Lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto, but nothing in this paragraph shall be construed as a consent by the Lessor to any assignment of this Lease or any interest therein.

16. Waiver: The waiver of any breach of any provisions of this Lease by the Lessor shall not constitute a continuing waiver or waiver of any subsequent breach by the Lessee either of the same or of another provision of the Lease.

17. Governing Law: This Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky in all respects, including all matters of construction, validity and performance.

18. Final Agreement: This instrument contains the final, complete and exclusive agreement between the parties, and no statements, promises or inducements made by any party hereto, or by an agent of a party hereto, which is not contained in this Lease shall be valid or binding, and no modification, variation or amendment of this Lease shall be of any force unless such modification, variation or amendment is in writing and has been signed by all parties to this Lease.

IN WITNESS WHEREOF, witness the signatures of the parties hereto, effective as of the day first above written.

**LESSOR: LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT**

By:

Mayor Jim Gray

LESSEE: _____

By:

RISK MANAGEMENT PROVISIONS INSURANCE AND INDEMNIFICATION

A. 1.0 DEFINITIONS.

The CONTRACTOR understands and agrees that the Risk Management Provisions of this Contract define the responsibilities of the CONTRACTOR to the OWNER.

As used in these Risk Management Provisions, the terms "CONTRACTOR" and "OWNER" shall be defined as follows:

- a. "CONTRACTOR" means the contractor or "LESSEE" and its employees, agents, servants, owners, principals, licensees, assigns and subcontractors of any tier.
- b. "OWNER" means the Lexington-Fayette Urban County Government(LESSOR) and its elected and appointed officials, employees, agents, boards, consultants, assigns, volunteers and successors in interest.

2.0. INDEMNIFICATION AND HOLD HARMLESS PROVISION

CONTRACTOR shall defend, indemnify, and hold harmless OWNER from and against all liability, claims, losses, actions, costs, expenses, obligations, fines, and assessments of whatever kind, including defense costs and attorney's fees, that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, in whole or in part, from or by: (a) CONTRACTOR's negligent acts or misconduct, or errors or omissions, in connection with the performance of this contract; (b) CONTRACTOR's performance or breach of the contract provided the claim or loss is attributable to death, illness, personal injury, or property loss or damage or loss of use, and not caused by a negligent act or omission, or the willful misconduct of the OWNER; or (c) the condition of any premises, equipment or other property being used or operated by the CONTRACTOR in connection with the performance of this contract. In the event OWNER is alleged to be liable based upon the actions or inactions of CONTRACTOR, CONTRACTOR shall defend such allegations and shall bear all costs, fees and expenses of such defense, including but not limited to, all attorneys' fees and expenses, court costs, and expert witness fees and expenses, using attorneys approved in writing by OWNER, which approval shall not be unreasonably withheld. This Indemnification and Hold Harmless Provision shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this contract.

3.0 FINANCIAL RESPONSIBILITY

The CONTRACTOR understands and agrees that it shall, prior to final acceptance of its bid and the commencement of any work, demonstrate the ability to assure compliance with the Indemnity Agreement and other provisions of this Contract.

4.0 **INSURANCE REQUIREMENTS**

BIDDERS' ATTENTION IS DIRECTED TO THE INSURANCE REQUIREMENTS BELOW, AS BIDDERS MUST CONFER WITH THEIR RESPECTIVE INSURANCE AGENTS, BROKERS, OR CARRIERS TO DETERMINE IN ADVANCE OF BID SUBMISSION THE AVAILABILITY OF THE INSURANCE COVERAGES AND ENDORSEMENTS REQUIRED HEREIN. IF AN APPARENT LOW BIDDER FAILS TO COMPLY STRICTLY WITH THE INSURANCE REQUIREMENTS BELOW, THAT BIDDER MAY BE DISQUALIFIED FROM AWARD OF THE CONTRACT.

4.1 Required Insurance Coverage

CONTRACTOR shall procure and maintain for the duration of this contract the following or equivalent insurance policies at no less than the limits shown below and cause its subcontractors to maintain similar insurance with limits acceptable to OWNER in order to protect OWNER against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by CONTRACTOR. The cost of such insurance shall be included in any bid:

<u>Coverage</u>	<u>Limits</u>
General Liability million aggregate (Insurance Services Office Form CG 00 01) limit	\$1 million per occurrence, \$2 or \$2 million combined single limit
Commercial Automobile Liability per occurrence (Insurance Services Office Form CA 0001) regate	combined single, \$1 million
Worker's Compensation	Statutory
Employer's Liability	\$500,000.00

The policies above shall contain the following conditions:

- a. All Certificates of Insurance forms used by the Contractor's insurance carrier shall be properly filed and approved by the Department of Insurance for the Commonwealth of Kentucky. OWNER shall be named as an additional insured in the General Liability Policy and Commercial Automobile Liability Policy using the Kentucky DOI approved forms.
- b. The General Liability Policy shall be primary to any insurance or self-insurance retained by OWNER.
- c. OWNER shall be provided at least 30 days advance written notice via certified mail, return receipt requested, in the event any of the required policies are canceled or non-renewed.

d. Said coverage shall be written by insurers acceptable to OWNER and shall be in a form acceptable to OWNER. Insurance placed with insurers with a rating classification of no less than Excellent (A or A-) and a financial size category of no less than VIII, as defined by the most current Best's Key Rating Guide shall be deemed automatically acceptable.

4.2. Additional insurance coverage and amounts required, if any, are stated below:

NONE

4.3. Renewals

After insurance has been approved by OWNER, evidence of renewal of an expiring policy must be submitted to OWNER, and may be submitted on a manually signed renewal endorsement form. If the policy or carrier has changed, however, new evidence of coverage must be submitted in accordance with these Insurance Requirements.

4.4. Deductibles and Self-Insured Programs

IF CONTRACTOR INTENDS TO SUBMIT SELF-INSURANCE PLAN FOR BID, THIS MUST BE FORWARDED TO LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, DIVISION OF RISK MANAGEMENT, 200 EAST MAIN STREET, LEXINGTON, KENTUCKY 40507 NO LATER THAN A MINIMUM OF FIVE (5) WORKING DAYS PRIOR TO BID OPENING DATE.

Self-insurance programs, deductibles, and self-insured retentions in insurance policies are subject to separate approval by Lexington-Fayette Urban County Government's Division of Risk Management, upon review of evidence of CONTRACTOR'S financial capacity to respond to claims. Any such programs or retentions must provide OWNER with at least the same protection from liability and defense of suits as would be afforded by first-dollar insurance coverage. If CONTRACTOR satisfies any portion of the insurance requirements through deductibles, self-insurance programs, or self-insured retentions, CONTRACTOR agrees to provide Lexington-Fayette Urban County Government, Division of Risk Management, the following data prior to the final acceptance of bid and the commencement of any work:

- a. CONTRACTOR'S latest audited financial statement, including auditor's notes.
- b. Any records of any self-insured trust fund plan or policy and related accounting statements.
- c. Actuarial funding reports or retained losses.
- d. CONTRACTOR'S Risk Management Manual or a description of CONTRACTOR'S self-insurance and risk management program.
- e. A claim loss run summary for the previous five (5) years.

f. Self-Insured Associations will be considered.

4.5. Verification of Coverage

Prior to award of bid, CONTRACTOR agrees to furnish OWNER with all applicable Certificates of Insurance signed by a person authorized by the insurer to bind coverage on its behalf. If requested, CONTRACTOR shall provide OWNER copies of all insurance policies, including all endorsements.

4.6. Right to Review, Audit and Inspect

CONTRACTOR understands and agrees that OWNER may review, audit and inspect any and all of CONTRACTOR'S records and operations to insure compliance with these Insurance Requirements.

5.0 DEFINITION OF DEFAULT

CONTRACTOR understands and agrees that the failure to comply with any of these insurance, safety, or loss control provisions shall constitute default under this Contract. CONTRACTOR also agrees that OWNER may elect at its option any single remedy or penalty or any combination of remedies and penalties, as available, including but not limited to purchasing insurance and charging CONTRACTOR for any such insurance premiums purchased, or suspending or terminating this Contract.

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