

Concession Contract
Crab Orchard National Wildlife Refuge
PLD Reservoir, LLC, dba PLD Landing, LLC

THIS CONTRACT, No. 14-16-0003-22-620, made and entered into this 22nd day of April, 2022, by and between the Regional Director, U.S. Fish and Wildlife Service (Service), Great Lakes Region, and the Refuge Manager of the Crab Orchard National Wildlife Refuge, hereinafter referred to as the Refuge Manager, acting on behalf of the Secretary of the U.S. Department of the Interior, hereinafter referred to as the Secretary, executing this Contract with PLD Reservoir, LLC, dba PLD Landing, LLC, hereinafter referred to as the Concessionaire.

WITNESSETH

THAT WHEREAS, the Crab Orchard National Wildlife Refuge, located in the county of Williamson, State of Illinois, has been established in accordance with Public Law 80-361 which in part states: "for the conservation of wildlife, and for the development of the agricultural, recreational, industrial, and related purposes specified in this Act."; and

WHEREAS, it is a purpose of the Secretary to facilitate enjoyment by the general public of the recreational opportunities in the area to an extent consistent and compatible with the primary purposes of the Refuge; and

WHEREAS, the accomplishment of said purpose includes providing certain facilities and services for the public visiting the Refuge; and

WHEREAS, the Secretary desires the Concessionaire maintain and operate such facilities and services at reasonable rates under the supervision and regulation of the Refuge Manager and in a manner that demonstrates sound environmental management, stewardship and leadership;

WHEREAS, the Secretary announced a public marina concession opportunity at Crab Orchard National Wildlife Refuge which included Prospectus Number 33610-22-001 (Jan. 3, 2022) that identified the potential for a concessionaire to operate and maintain Crab Orchard Marina which consists of 128 existing slips on the western edge of Crab Orchard Lake, at the Williamson/Jackson County line near Carbondale, Illinois, and possible future development opportunities;

WHEREAS, in response to the Secretary's Prospectus, PLD Reservoir, LLC submitted a proposal that includes operating and maintain the 128-slip marina, and additionally identified several phases of possible future development of the 200-acre area surrounding the existing 128-slip marina described as Phase I and Phase II;

WHEREAS, after undertaking the required proposal review and vetting process set out in the Prospectus and Service guidance, the panel recommended selection of PLD Reservoir, LLC, and Refuge staff met with PLD Reservoir, LLC to negotiate a proposed concession contract;

WHEREAS, following the negotiation and in consultation with Department of the Interior Solicitor's Office, the Refuge made minor revisions to the draft concession contract to confirm that the maintenance and operation authorized under this Concession Contract is for the existing 128-slip marina on Crab Orchard Lake, and that all additional uses, activities, development, and construction activities proposed by PLD Reservoir, LLC, dba PLD Landing, LLC, in the Marina and Development Plan under Phase I and Phase II must be (a) separately reviewed by the Refuge Manager at a later; (b) be subjected to federal environmental review and compliance laws; and (c) may not be authorized during the term of this contract;

WHEREAS, if the Concessionaire wishes to perform any use, activity or development described in Phase I and Phase II of the proposal, the parties will undertake all necessary environmental review and compliance, and will amend the Contract, in writing, to add any new use, activity, development and/or construction described in Phase I and Phase II that is approved by the Refuge Manager.

WHEREAS, the Concessionaire represents itself as capable, qualified and financially able to provide such facilities and services; and

WHEREAS, this Contract is not governed by the Federal Acquisition Regulations;

NOW, THEREFORE, pursuant to the authority contained in section 401 of the Act of June 15, 1935 (49 Stat. 383; 16 U.S.C. 715a); 16 U.S.C. 715s, and 16 U.S.C. 668dd-668ee, as amended, Public Law 80-361, and in consideration of the mutual promises herein expressed, the parties hereto do hereby mutually covenant and agree as follows:

Section 1. Term of Contract. This Contract shall be for a term of ten (10) years, beginning April 22, 2022, and ending April 21, 2032, except as it may be sooner terminated as herein provided. This Contract provides for an optional one-time renewal period at the discretion of the Refuge Manager of up to ten (10) additional years (April 22, 2032 through April 21, 2042), depending upon the performance of the Concessionaire.

In the event that changes are necessary due to new regulations or new legislation or other circumstances, the Service and the Concessionaire will, at the discretion of the Refuge Manager, renegotiate any material terms of the Contract affected by the changes. The Concessionaire may, at the discretion of the Refuge Manager, be relieved in whole or in part of any or all of the obligations of this Contract for such stated periods as the Refuge Manager may deem proper upon written application, showing circumstances beyond the control of Concessionaire, warranting such relief, and upon a written determination by the Refuge Manager that such action is in the interest of the United States.

The term of this Contract may not be extended beyond that stated within this section. If a subsequent Contract is not in place at the time this Contract expires or is terminated, an interim Contract may be issued for a term not to exceed two (2) years.

Section 2. Land and Improvements. The Refuge Manager hereby reserves to the Concessionaire, for and during the term of this Contract, the use of the following described land and facilities, hereinafter referred to as concession facility, for the improvements necessary or desirable to the privileges herein granted:

A 200-acre area including and surrounding the Crab Orchard marina on designated Refuge lands within (Carterville) T9S R1E, Section 18.

- (a) The Concessionaire will be expected to equip and maintain at its own expense, on the land described herein, all buildings, structures, infrastructure, above and below ground utility lines, and other improvements, subject however, to the right of the parties to mutually agree to changes in the types and quantities of facilities specified, in writing. The Refuge will not be responsible for facility maintenance or repairs of any kind. The Concessionaire will be expected to supply the following services, at a minimum:
 - 1. Marina dock slip rental
 - 2. Dockside gasoline sales and septic pump out service
 - 3. Boat rental
 - 4. Utilities associated with the concession operation
- (b) Construction, modification or alterations, other than normal and anticipated repairs of buildings, structures, facilities and other improvements shall be subject to the prior approval of the Refuge Manager for plans, specifications and locations thereof, and the Refuge Manager may prescribe the form and content of the application for such approval. Facility construction and improvements that involve life, safety, and building code compliance issues must be coordinated with the Regional Engineering Office and the Refuge Manager. These improvements must be approved by the U.S. Fish and Wildlife Service (Service). Title to all permanent improvements and/or fixtures erected or otherwise furnished by the Concessionaire shall vest in the United States at the end of the Contract term and will become the property of the Service when completed. No compensation will be given to the Concessionaire for the improvement.
- (c) If any buildings or improvements are removed or demolished by the Concessionaire, the site occupied by the building or improvement shall be restored to the satisfaction of the Refuge Manager. Any building or improvement destroyed by fire or other cause shall be restored promptly by the Concessionaire according to plans and specifications approved by the Refuge Manager.
- (d) In the event that an improvement owned by the Concessionaire is removed, abandoned, demolished, or substantially destroyed, and no other improvement is constructed on the site, the Concessionaire shall promptly upon approval by the Refuge Manager, restore the site as nearly as possible to its original condition at no cost to the United States.

- (e) On or before the expiration of this Contract or its termination by the Concessionaire, the Concessionaire shall vacate the premises, remove the personal property of the Concessionaire and restore the premises to a condition satisfactory to the Refuge Manager. If, however, this Contract is revoked, or terminated, the Concessionaire shall vacate the premises, remove said personal property there from, and restore the premises to the aforesaid condition within such time as the Refuge Manager may designate. In either event, if the Concessionaire shall fail or neglect to remove said personal property and restore the premises, then, at the option of the Refuge Manager, said personal property shall either become the property of the United States without compensation therefore, or the Refuge Manager may cause the personal property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Concessionaire shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this Contract in restoring the premises.
- (f) The Concessionaire will maintain individual records of each item of government-owned property provided and must establish and administer a program to maintain, protect, preserve, and account for all government-owned property provided for the use in fulfilling the terms of this Contract.

Section 3. Location of Concession Facility: The Refuge is located in southern Illinois, between the cities of Marion and Carbondale, Illinois. The Refuge consists of approximately 44,000 acres and is a unit of the National Wildlife Refuge System (System). The Concession operation area consists of an area of approximately 200 acres and is located on the 7,000-acre Crab Orchard Lake near Carbondale, Illinois, on the west side of the Refuge. Access to the marina (physical address: 762 Playport Road Carbondale, Illinois) is via Playport Road, just off of Spillway Road, near State Route 13. A map of the location of the facility is included as Appendix A.

Section 4. Concession Operations.

- (a) The Concessionaire shall provide, during the term of this Contract, accommodations, facilities and services for the public as follows:

The Concessionaire shall make provisions for the sale of food and beverages, basic outdoor supplies for camping, boating and fishing, rental boat service, rental of dock slips, and miscellaneous services and articles, as authorized by the Refuge Manager consistent with the offeror's Marina and Development Plan (Exhibit B), excluding Phase I and Phase II activities.

- (b) The Refuge Manager reserves the right to determine and control the nature, type, and quality of the visitor services described in this Contract, including, but not limited to, the nature type and quality of merchandise, if any, to be sold or provided by the Concessionaire. The allowable services provided by the Concessionaire are found in the proposal for 2022 in the Marina and Development Plan, Exhibit B of this Contract, excluding proposed uses,

activities, development and construction described in Phase I and Phase II. Additional services described in the proposal at Exhibit B beginning in late 2023 (e.g., Phase I and Phase II developments) are not authorized at this time; however, the additional proposed uses may be amended into this contract, in writing, upon Refuge Manager approval after compliance with applicable federal laws. A Merchandising Plan determines the nature and type of merchandise the Concessionaire will sell. The Concessionaire, where applicable, will develop and implement a plan satisfactory to the Refuge Manager that will assure that gift merchandise, if any, to be sold or provided reflects the purpose and significance of the area, including, but not limited to, merchandise that reflects the conservation of the area's resources or the area's geology, wildlife, plant life, archeology, local culture, local ethnic culture, and historic significance. This is also part of the Contract and is attached as Exhibit C.

Promotional Material. All promotional material, regardless of media format (i.e., printed, electronic, broadcast media), provided to the public by the Concessionaire in connection with the services provided under this Contract must be approved in writing by the Refuge Manager prior to use. All such material will identify the Concessionaire as an authorized Concessionaire of the National Wildlife Refuge System, Department of the Interior.

Interpretation of Crab Orchard National Wildlife Refuge Resources.

- (1) The Concessionaire shall provide all visitor services in a manner that is consistent with and supportive of the interpretive themes, goals, and objectives of the Refuge as reflected in Refuge planning documents, mission statements, and/or interpretive plans.
 - (2) The Concessionaire may assist in Refuge interpretation at the request of the Refuge Manager to enhance visitor enjoyment of the Refuge. Any additional visitor services that may result from this assistance must be recognized in writing through written amendment of the Marina and Development Plan (Exhibit B) of this Contract.
 - (3) The Concessionaire may develop interpretive materials or means to educate visitors about environmental programs or initiatives.
 - (4) The Concessionaire must submit the proposed content of any interpretive programs, exhibits, displays or materials, regardless of media format (i.e., printed, electronic, first person, or broadcast media), to the Refuge Manager for review and approval prior to offering such programs, exhibits, displays, or materials to Refuge visitors.
- (c) Operation of the concession is mandatory from April 1 through October 31 of each year.

(d) In connection with the performance of work under this Contract, the Concessionaire agrees as follows:

- (1) The Concessionaire shall provide all personnel necessary to provide the visitor services required and authorized by this Contract.
- (2) The Concessionaire shall ensure that its employees are hospitable and exercise courtesy and consideration in their relations with the public. The Concessionaire shall have its employees who come in direct contact with the public, so far as practicable, wear a uniform or badge by which they may be identified as the employees of the Concessionaire.
- (3) The Concessionaire will provide a proposed Staffing Plan which shows the organizational chart with the principal lines of authority, describes the decision making authority, and describes how managers and staff are to be employed. This Staffing Plan will become part of this Contract as Exhibit D.
- (4) The Concessionaire shall establish pre-employment screening, hiring, training, employment termination and other policies and procedures for the purpose of providing visitor services through its employees in an efficient and effective manner and for the purpose of maintaining a healthful, law abiding and safe working environment for its employees. The Concessionaire shall conduct appropriate background reviews of applicants to whom an offer for employment may be extended to assure that they conform to the hiring policies established by the Concessionaire.
- (5) The Concessionaire will not discriminate against any employee or applicant for employment because of age, race, creed, sex, sexual orientation, disability, color, or national origin. The Concessionaire will take affirmative action to ensure that applicants are citizens of the United States, and that employees are treated during employment without regard to their age, race, creed, sex, sexual orientation, disability, color, or national origin. Such action shall include but not be limited to, the following:
 - (A) Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessionaire agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth this nondiscrimination policy.
 - (B) Training. The Concessionaire shall ensure that its employees are provided the training needed to provide quality visitor services and to maintain up-to-date job skills without regard to their age, race, creed, sex, sexual orientation, disability, color or national origin.

- (6) The Concessionaire will, in all solicitations or advertisements for employees placed by or on behalf of the Concessionaire, state that all qualified applicants will receive consideration for employment without regard of age, race, creed, color, sex, sexual orientation, disability, or national origin.
- (7) The Concessionaire will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, advising the said labor union or workers' representative of the Concessionaire's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (8) The Concessionaire shall publish and post a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and in the Crab Orchard National Wildlife Refuge and specifying the actions that will be taken against employees for violating this prohibition.

In addition, the Concessionaire shall establish a drug-free awareness program to inform employees about the danger of drug abuse in the workplace and the concession area, the availability of drug counseling, rehabilitation, and employee assistance programs, and the Concessionaire's policy of maintaining a drug-free environment both in the workplace and in the concession area.

- (9) The Concessionaire shall review the conduct of any of its employees whose action or activities are considered by the Concessionaire or the Refuge Manager to be inconsistent with the proper administration of the area and enjoyment and protection of visitors and shall take such actions as are necessary to fully correct the situation.
 - (A) The Concessionaire shall maintain a drug-free environment, both in the workplace and in any Concessionaire employee housing, within the concession area.
 - (B) The Concessionaire shall take appropriate personnel action, up to and including termination or requiring satisfactory participation in a drug abuse or rehabilitation program which is approved by a Federal, State, or local health, law enforcement or other appropriate agency, for any employee that is found to be in violation of the prohibition on the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

- (10) The Concessionaire shall comply with the requirements of all Applicable Laws relating to employment and employment conditions including but not limited to, the following:

(A) Zero Tolerance of Discrimination:. You must not discriminate against anyone on the basis of race, color, national origin, sex (including pregnancy, gender identity, transgender status, and sexual orientation), religion, disability, age, status as a parent, or genetic information, with regard to any program, activity, or service, including employment. You are subject to the following Equal Opportunity Employment Laws:

- * Title VII of the Civil Rights Act of 1964,;
- * Age Discrimination Act of 1967;
- * Rehabilitation Act of 1973;
- * Americans with Disabilities Act of 1990 (amended in 2008 to broaden the definition of disability);
- * Genetic Information Act of 2008

(B) The Concessionaire shall also comply with regulations heretofore or hereafter promulgated, relating to non-discrimination in employment and providing accessible facilities.

Please see Exhibit G for Executive Orders 11246, as amended by 11375.

- (e) The Concessionaire shall obtain at his own expense all necessary Federal, State, and local licenses and permits, such licenses and permits to be acquired and displayed on the premises before the establishment is opened to the public, and shall observe all Federal, State, and local laws pertaining to its operations and all orders and regulations relating to the administration and management of the Crab Orchard National Wildlife Refuge or the operations of the Concessionaire as may be presently in effect or promulgated from time to time during the period of this Contract.
- (f) Utilities: The Concessionaire shall secure, at his own expense, necessary water, electric light and power, telephone, sewage, trash and garbage disposal, as required, to be used in connection with the performance of this Contract. The Concessionaire is liable for prompt payment of all utilities including, but not necessarily limited, to electricity, fuel, refuse collection, telephone, sewage disposal, water, or any other utility or service bills, whether provided by the public or a community service company.
- (g) Sale or Transfer: Concessionaires or parties holding an ownership in a concession may not sell, assign, or transfer their interests or part of their interest in this Contract, to another party without prior written approval from the Regional Director. No sub-contracts will be allowed under this contract. This prohibition does not include any contract or agreements that the Concessionaire may have with suppliers.
- (h) Residential Management: This Contract requires the presence of, and the Concessionaire will provide for an on-site manager at the concession facility 24-hours per day, 7 days a week during the months of April through October of each year.

Section 5. Annual Financial Reports and Accounting System.

- (a) Upon the execution of this Contract, the Concessionaire shall pay to the Service, as stipulated in the Marina and Development Plan a sum equal to five percent (5%) of gross receipts, as hereinafter defined. Payments will be due May 1 each year.
- (b) The term "gross receipts", as used herein, shall be construed to mean the total amount received or realized by, or accruing to the Concessionaire from all sales, for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the privileges authorized in this Contract, but excluding earnings derived from intracompany earnings on account of charges to other departments of the operation (such as laundry, charges to employees for meals, transportation, etc., cash discounts on purchases, interest on money loaned or in bank accounts, income from investments from subsidiary companies outside of the Refuge, refunded sales and allowances, sales of property other than that purchased in the regular course of business for the purpose of resale, sales, and excise taxes, fishing licenses (except fees received therefrom), postage stamps (except any return in addition to the face value of such stamps), gasoline taxes, whether or not the Concessionaire is accountable therefore, and items for which the Concessionaire is accountable in full.
- (c) Interest. An interest charge will be assessed on overdue amounts for each thirty (30) day period, or portion thereof, that payment is delayed beyond specified due date. The percent of interest charged will be based on the current value of funds to the United States Treasury as published quarterly in the Treasury Fiscal Requirements Manual. The Refuge Manager may also impose penalties for late payment to the extent authorized by Applicable Law.
- (d) The Concessionaire shall submit for the approval of the Refuge Manager a balance sheet showing assets and liabilities pertaining to the operations hereunder as of the beginning of such operations accompanied by a schedule describing the items sufficiently in detail to clearly establish their identity and respective values. The Refuge Manager shall notify the Concessionaire in writing of his approval or disapproval of the balance sheet within sixty (60) days after its receipt. If the balance sheet as submitted is disapproved, the Refuge Manager shall set out in the notification of his finding upon which such disapproval is based. If no notice is given within the time herein specified, the balance sheet as submitted shall be deemed to have received the approval of the Refuge Manager.
- (e) The Concessionaire shall maintain such accounting records as may be prescribed by the Refuge Manager. The Concessionaire shall submit to the Refuge Manager an annual financial report, under oath, not later than thirty (30) days following the anniversary date of the Contract giving details of this concession operation during the year as well as other reports and data required from time to time by the Refuge Manager. The Refuge Manager, or his authorized representative, may verify said reports from the books, correspondence, memoranda, and other records of the Concessionaire, which shall be maintained intact for not less than three (3) years following the close of the Concessionaire's fiscal year and which

shall be available for such three (3)-year period at the Concessionaire's principal place of business on the Refuge.

- (f) The Concessionaire shall maintain a financial accounting system under which its accounts can be readily identified with its system of accounts classification. Such an accounting system shall be capable of providing the information required by this Contract. If the Concessionaires' annual gross receipts are \$250,000 or more, the Concessionaire must use the accrual accounting method. If annual gross receipts are less than \$250,000, the financial statements may be prepared without involvement of an independent certified public accountant (CPA), unless otherwise directed. The Concessionaire shall submit annually, as soon as possible but not later than 30 days after the last day of its fiscal year, a financial statement for the preceding fiscal year or portion of a year.
- (g) The Service reserves the right to require an audit to be performed by an independent certified public accountant in the event questions arise concerning the annual financial report.
- (h) Nothing in this Contract shall be construed as in any way modifying, altering, or affecting any rights, claims or demands which the United States may have as a result of a final audit of the Concessionaire's accounts covering its operations during the term of this Contract.

Section 6. Performance Bond and Lien.

The Refuge Manager requires the Concessionaire to furnish and keep in force a joint and several bond with a surety company acceptable to the Secretary of the Treasury, conditioned upon the faithful performance of this Contract in such amount as the Refuge Manager deems adequate but not in excess of \$250,000. As additional security for the faithful performance by the Concessionaire of all of its obligations under this Contract and the payment to the United States of all damages or claims that may result from the Concessionaire's failure to observe such obligations, the United States shall have at all times a first and prior lien on all assets of the Concessionaire within the concession area, including but not limited to all personal property of the Concessionaire used in performance of this Contract hereunder within the concession facility.

Section 7. Insurance.

(a) Insurance in General.

- (1) The Concessionaire shall obtain and maintain during the entire term of this Contract at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of this Contract as determined by the Refuge Manager and commensurate with the guidelines found in Exhibit E. The initial insurance requirements are set forth below. Any changed or additional requirements that the Refuge Manager determines necessary must be reasonable and consistent with the types and coverage amounts of insurance a prudent businessperson would purchase in

similar circumstances. The Refuge Manager must approve the types and amounts of insurance coverage purchased by the Concessionaire.

- (2) The Refuge Manager will not be responsible for any omissions or inadequacies of insurance coverage and amounts in the event the insurance purchased by the Concessionaire proves to be inadequate or otherwise insufficient for any reason whatsoever.
- (3) At the request of the Refuge Manager, the Concessionaire shall at the time insurance is first purchased and annually thereafter, provide the Refuge Manager with a Certificate of Insurance that accurately details the conditions of the policy as evidence of compliance with this section. The Concessionaire shall provide the Refuge Manager immediate written notice of any material change in the Concessionaire's insurance program hereunder, including without limitation, cancellation of any required insurance coverage.

(b) Commercial Public Liability

- (1) The Concessionaire shall provide commercial general liability insurance against claims arising out of or resulting from the acts or omissions of the Concessionaire or its employees, agents or contractors, in carrying out the activities and operations required and/or authorized under this Contract.
- (2) This insurance shall be in the amount commensurate with the degree of risk and the scope and size of the activities required and/or authorized under this Contract, and no less than \$5,000,000. Furthermore, the commercial general liability package shall provide no less than the coverage and limits described in Exhibit E.
- (3) All liability policies shall specify that the insurance company shall have no right of subrogation against the United States of America and shall provide that the United States of America is named an additional insured.
- (4) From time to time, as conditions in the insurance industry warrant, the Refuge Manager may modify Exhibit E to revise the minimum required limits or to require additional types of insurance, provided that any additional requirements must be reasonable and consistent with the types of insurance a prudent businessperson would purchase in similar circumstances.

(c) Property Insurance

- (1) In the event of damage or destruction, the Concessionaire will repair or replace those concession facilities and personal property utilized by the Concessionaire in the performance of the Concessionaire's obligations under this Contract.

- (2) For this purpose, the Concessionaire shall provide fire and extended insurance coverage on concession facilities for all, or part of its replacement cost as specified in Exhibit E in amounts no less than it may require during the term of the Contract. The minimum values currently in effect are set forth in Exhibit E.
- (3) Commercial property insurance shall provide for the Concessionaire and the United States of America to be named insured as their interests may appear.
- (4) In the event of loss, the Concessionaire shall use all proceeds of such insurance to repair, rebuild, restore, or replace concession facilities and/or personal property utilized in the Concessionaire's operations under this Contract, as directed by the Refuge Manager. Policies may not contain provisions limiting insurance proceeds to *in situ* replacement. The lien provision of Section 6 shall apply to such insurance proceeds. The Concessionaire shall not be relieved of its obligations in the event that insurance proceeds are not sufficient to repair or replace damaged or destroyed property.
- (5) Insurance policies that cover concession facilities shall contain a loss payable clause approved by the Refuge Manager which requires insurance proceeds to be paid directly to the Concessionaire without requiring endorsement by the United States. The use of insurance proceeds for repair or replacement of concession facilities will not alter their character as properties of the United States and, notwithstanding any provision of this Contract to the contrary, the Concessionaire shall gain no ownership, Leasehold Surrender Interest or other compensable interest as a result of the contract or use of these insurance proceeds.
- (6) The commercial property package shall include the coverage and amounts described in Exhibit E.

Section 8. Termination, Expiration, and Suspension.

- (a) The Refuge Manager may terminate this Contract in whole or part, to protect visitors to the Refuge and concession facility or to protect, conserve, and preserve resources in the area of the concession operation. The Refuge Manager may terminate this Contract if the Refuge Manager determines that the Concessionaire has materially breached any requirement of this Contract. The Contract includes the general requirements to:
 - Maintain and operate visitor services to the satisfaction of the Refuge Manager.
 - Provide only the visitor services required by the Refuge Manager pursuant to this concession contract.
 - Implement all activities, excluding Phase I and Phase II, the Marina and Development Plan.
 - Pay the established franchise fee and/or percentage of gross receipts
 - Prepare and comply with an Environmental Plan

- Comply with Applicable Laws.

In addition, the Contract will be subject to termination and the Refuge Manager shall reserve the right to collect penalties and administrative costs and shall terminate this Contract for default and non-performance at any time. The operations authorized hereunder may be suspended in whole or in part at the discretion of the Refuge Manager to protect the health and safety of visitors and employees or to protect area resources. Termination or suspension shall be by written notice to the Concessionaire and, in the event of proposed termination for default, the Refuge Manager shall give the Concessionaire a reasonable period of time to correct stated deficiencies.

Termination for default shall be utilized in circumstances where the Concessionaire has breached any requirements of this Contract, including, but not limited to, failure to maintain and operate the required accommodations, facilities and services to the satisfaction of the Refuge Manager, unsafe operations, and failure to provide and adhere to the Contract requirements. In the event of a monetary breach, the Refuge Manager will give the Concessionaire a 15-day period to cure the breach. If the breach is not cured within that period, the Refuge Manager may terminate this Contract for default. In the event of a non-monetary breach, if the Refuge Manager considers that the nature of the breach so permits, the Refuge Manager may give the Concessionaire 30 days to cure the breach or to prepare a plan to cure the breach that is approved by the Regional Office and 30 days to implement the plan. If the breach is not cured within this specified period of time, the Refuge Manager may terminate this Contract for default. Notwithstanding this provision, repeated breaches (two or more) of the same nature shall be grounds for termination for default without a cure period. In the event of a breach of any nature, the Refuge Manager may suspend the Concessionaire's operation as appropriate.

The Refuge Manager may terminate this Contract upon the filing or the execution of a petition in bankruptcy by or against the Concessionaire; a petition seeking relief of the same or a different kind under and provision of the Bankruptcy Act or its successor; an assignment by the Concessionaire for the benefit of creditors; a petition or other proceeding against the Concessionaire for the appointment of a trustee, receiver or liquidator; or the taking by any person or entity of the rights granted by this Contract or any part thereof upon execution, attachment, or other process of law or equity. The Refuge Manager may terminate this Contract if the Refuge Manager determines that the Concessionaire is unable to perform the terms of the Contract because of bankruptcy or insolvency.

- (b) In the event of termination of this Contract when necessary for the protection of visitors or area resources or for default, the Government will provide no compensation to the Concessionaire for such termination. The United States is not responsible for losses and expenses incurred by the Concessionaire due to conditions beyond its control. Closure of the Refuge or concession facilities for longer than a day because of a natural disaster, natural phenomenon, or because of the risk to public health and safety are examples. The United States only provides the opportunity for Concessionaires to supply visitor services to the general public; we do not guarantee it. No compensation is due the Concessionaire from the Secretary or a successor Concessionaire for the Concessionaire's personal property used in operations under this Contract. However, the Refuge Manager or a successor Concessionaire

may wish to purchase such personal property from the Concessionaire. If personal property is sold, the purchase price of the personal property shall be determined by mutual agreement between the Concessionaire holding this Contract and the successor Concessionaire and the Refuge Manager. Personal property not removed from the area by the Concessionaire in accordance with the terms of this Contract shall be considered abandoned property subject to disposition by the Refuge Manager.

- (c) In the event it is deemed necessary to suspend operations hereunder in whole or in part to protect the visitors or resources of the area, the Refuge Manager shall not be liable for any compensation to the Concessionaire for losses occasioned thereby, including but not limited to lost income, profit, wages, or other monies which may be claimed.
- (d) To avoid interruption of service to the public upon the expiration or termination of this Contract for any reason, the Concessionaire upon the request of the Refuge Manager, will:
 - (1) Continue to conduct the operations authorized hereunder for a reasonable time to allow the Refuge Manager to select a successor; or
 - (2) Consent to the use by a temporary operator, designated by the Refuge Manager, of the Concessionaire's improvements and personal property, if any, not including current or intangible assets, used in the operations authorized hereunder upon fair terms and conditions.
- (e) The Refuge Manager may temporarily suspend operations under this Contract in whole or in part, as deemed necessary for reasons including but not necessarily limited to the following: to protect area visitors; or to protect, conserve, and preserve area resources. This Contract may be suspended in whole or in part for Contract violations that include, but are not limited to, administrative deficiency, operational deficiency, health and safety, employee problems, or issues, and environmental regulation noncompliance as deemed necessary by the Refuge Manager. No compensation of any nature shall be due the Concessionaire by the Refuge Manager in the event of a suspension of operations, including, but not limited to, compensation for losses based on lost income, profit, wages, or the necessity to make expenditures as a result of the suspension.

Section 9. Requirements in the Event of Termination or Expiration.

Upon termination or expiration of this Contract for any reason, and except as otherwise provided, the Concessionaire shall, at the Concessionaire's expense, promptly vacate the area, remove all the Concessionaires' personal property, repair any injury occasioned by installation or removal of such property, and ensure that concession facilities are in at least as good condition as they were at the beginning of the term of this Contract, reasonable wear and tear excepted. The removal of such personal property must occur within 30 days after the termination of this Contract or its expiration, unless the Refuge Manager, in particular circumstances, requires immediate removal. At the end of 30 days, if the subject property is not removed, it will be considered abandoned

property and may become the property of the United States Government or removed by the Government. The former Concessionaire will be billed and responsible for all costs of removal.

To avoid interruption of services to the public upon termination of this Contract for any reason or upon its expiration, the Concessionaire, upon the request of the Refuge Manager, shall consent to the use, by another operator, of the Concessionaire's personal property, excluding inventories, if any, not including current or intangible assets, for a period of time not to exceed one (1) year from the date of such termination or expiration..

Section 10. Work Standards.

Except as otherwise stated herein, the Concessionaire agrees to equip and maintain the buildings, utilities, and other facilities described in this Contract. The Concessionaire will also comply with codes and governing regulations, as applicable to the work, including, but not limited to, that which is either required by law or imposed hereby for the following:

- (a) OSHA – Occupational Safety and Health Administration, 29 CFR Parts 1910 and 1926.
- (b) UBC – Uniform Building Code.
- (c) UMC – Uniform Mechanical Code.
- (d) NEC – National Electric Code.
- (e) NFPA – National Fire Code.
- (f) UPC – Uniform Plumbing Code.
- (g) ADA – Americans with Disabilities Act

Section 11. Contract operations. During the term of this Contract the Concessionaire shall provide all services for the public under the guidelines set forth in the Concessionaire's Marina and Development Plan (See Exhibit B), except uses and activities described in potential future development as Phase I and Phase II.

Section 12. Disputes. All disputes arising under or relating to this Contract shall be resolved under this clause.

"Claim," as used in this clause, means a written demand or written assertion by the Concessionaire, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of Contract terms, or other relief arising under or relating to this Contract. However, a written demand or written assertion by the Concessionaire seeking the payment of money exceeding \$100,000 is not a claim under this Contract until certified as required in subparagraph a(1) below.

- (a) A claim by the Concessionaire must be made in writing and submitted to the Refuge Manager for a written decision. A claim by the Government against the Concessionaire s hall be subject to a written decision by the Regional Director.

- (1) For Concessionaire claims exceeding \$100,000, the Concessionaire shall submit with the claim a certification that:
 - (A) The claim is made in good faith;
 - (B) Supporting data are accurate and complete to the best of the Concessionaire's knowledge and belief; and
 - (C) The amount requested accurately reflects the Contract adjustment for which the Concessionaire believes the Government is liable.
- (2) If the Concessionaire is:
 - (A) An individual, the certificate shall be executed by that individual.
 - (B) Not an individual, the certification shall be executed by:
 - (I) A senior company official in charge of the concession facility involved; or
 - (II) An officer or general partner of the Concessionaire having overall responsibility of the conduct of the Concessionaire's affairs.
- (b) For Concessionaire claims of \$100,000 or less the Refuge Manager must, if requested in writing by the Concessionaire, render a decision within 60 days of the request. For Concessionaire-certified claims over \$100,000, the Refuge Manager must, within 60 days, decide the claim or notify the Concessionaire of the date by which the decision will be made.
- (c) The Refuge Manager's decision shall be final.
- (d) At the time a claim by the Concessionaire is submitted to the Refuge Manager, or a claim by the Government is presented to the Concessionaire, the parties by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in a(1) of this clause, and executed in accordance with a(2) of this clause. The Government must pay interest on the amount found due and unpaid by the Government as required by federal law.
- (e) The Concessionaire shall proceed diligently with the performance of the Contract, pending final resolution of any request for relief, claim, appeal, or action arising under the Contract, and comply with any decision of the Refuge Manager.

Section 13. Accident Prevention. The Concessionaire shall comply with all Occupational Safety and Health Administration (OSHA) regulations. In addition to OSHA, the Concessionaire shall adhere to the requirements set forth within the solicitation provision, Prospectus and Contract clauses; and all current local, Federal, and State safety requirements. In the event any safety standard referenced herein conflicts with another, Federal law shall govern.

The United States is not responsible for any costs associated with losses and/or injuries to Concessionaire employees.

- (a) The Concessionaire shall initiate and maintain, throughout the performance of this Contract, an effective safety program that provides adequate systematic, policies, procedures, and

practices to protect its employees from and allow them to recognize job-related safety and health hazards. The program shall include provisions from the systematic identification, evaluation, prevention and control of general work site hazards, specific job hazards, and potential hazards that may arise from foreseeable work methods and conditions, as well as providing a competent person to conduct frequent and regular inspections. Each employee must be instructed in the recognition and avoidance of unsafe conditions and the regulations applicable to the work environment.

- (b) The Concessionaire shall immediately notify the Refuge Manager of any accident, incident or exposure resulting in a fatality, lost-time injury, or property loss/damage of \$2,500 or more arising out of work performed under this Contract. The Concessionaire shall investigate all work-related accidents/incidents to the extent necessary to determine their cause(s) and furnish the Refuge Manager an investigation of the accident/incident and submit a comprehensive report of findings and recommendations to the Refuge Manager. The Refuge Manager shall consult with the Regional Safety Officer in reviewing the investigation report and corrective action. If the Concessionaire fails or refuses to institute prompt corrective action, as required by this clause, the Refuge Manager may invoke any remedy available to the Government. Any delay or cost resulting from a safety related suspension of work shall be borne by the Concessionaire.
- (c) In the event of an accident/incident, the Concessionaire shall be responsible for providing and obtaining appropriate medical and emergency assistance. Except for rescue and emergency measures, the scene of the accident/incident shall not be disturbed, or the operation resumed, until the on-site aspect of the investigation has been completed.
- (d) Regional Safety Officer and representatives from Federal, State, and local government agencies shall have the right to examine and conduct an investigation at sites or areas where work under the Contract is being performed. The absence of such investigations shall not relieve the Concessionaire of its safety program responsibilities.
- (e) The Refuge Manager and/or the Regional Safety Officer shall have the authority to request immediate correction of unsafe conditions and safety violations. If the Concessionaire is unable to immediately correct the situation, the Concessionaire shall halt work until the situation is corrected. The Refuge Manager or the Regional Safety Office shall immediately notify the Concessionaire of the situation.

Section 14. Inspections: The Refuge Manager, or his designee, will conduct inspections to ensure that the Concessionaire provides safe, sanitary, and high-quality visitor services and facilities. The evaluations will consider the following: (1) operation and facilities; (2) safety and environmental; and (3) contract compliance.

Inspection responsibilities are allocated to the local Refuge staff to conduct the most accurate and efficient evaluations possible. Local Refuge reviewers, because of their familiarity with the concession operation, are well-suited to conduct the highly detailed operation and facilities

evaluation. Non-local reviewers may be used periodically to provide an objective overall evaluation of the Concessionaire, the property, and the operations of the concession. The operation and facilities evaluation will be conducted semi-annually by staff from the Refuge. Inspections by non-local staff will occur at least once, midterm, for contracts with a term of five (5) years or less period. The safety and environmental evaluations will be conducted by Service “reviewers,” who are staff members with expertise in safety and environmental evaluations, as well as the Illinois Department of Public Health and Franklin-Williamson Bi-County Health Department.

Section 15. Construction Standards. All facility construction and improvements must be coordinated with the Regional Engineering Office and the Refuge Manager. These improvements must be approved by the Service and meet all applicable laws and regulations. Title to all permanent improvements and/or fixtures erected or otherwise furnished by the Concessionaire shall vest in the United States at the end of the Contract term and will become the property of the Service when completed. No compensation will be given to the Concessionaire for the improvement.

Section 16. Right of Entry by Authorized Officer or Designated Representative. Concessionaires will cooperate with authorities in the event of emergencies, investigations, and other events. The Refuge Manager or his/her designated representative shall have the right at any time to enter upon any lands within the concession area for any purpose deemed reasonable and necessary for the administration of the area and the services therein. This right shall include periodic and unscheduled inspections. However, since it is the general intent of the inspections to increase the quality of concession operations and to document compliance without disadvantage to the Concessionaire, the Refuge Manager shall make reasonable attempts to include the Concessionaire in the inspection process.

Section 17. General Obligations of the Concessionaire. The Concessionaire shall:

- (a) Comply with all applicable Federal, State, and local laws, ordinances, and regulations set by the Refuge Manager, not limited to the regulations, cited herein, but also as promulgated by the Refuge Manager as part of the Concession inspections.
- (b) Comply with State standards for public health and safety, environmental protection, and operation and maintenance of, or for, such use if those standards are more stringent than applicable Federal standards.
- (c) Comply with air and water quality standards established pursuant to applicable Federal and State laws.
- (d) Minimize damage to scenic, cultural and aesthetic values, and fish and wildlife habitat and otherwise protect the environment.

- (e) Weed and Pest Management. The Concessionaire shall be responsible for managing weeds, and through an integrated pest management program, harmful insects, rats, mice, and other pests in and around concession facilities assigned to the Concessionaire under this Contract. All such weed and pest management activities shall be in accordance with Applicable Laws and guidelines established by the Refuge Manager.
- (f) Protect Federal property and economic interests.
- (g) Manage efficiently the public lands which are subject to the use under this Contract or are adjacent to or occupied by the use under this Contract.
- (h) Protect lives and property.
- (i) Groundskeeping. Maintain concession facility grounds in a neat and clean manner using materials and techniques to provide an attractive landscape for visitors to use. Trash service pickup is required at least weekly or more often, if necessary, during periods of heavy use. The grounds should be checked for litter at least twice daily.
- (j) Facilities. Paint and/or clean buildings and facilities, as needed. Public restrooms should be cleaned at least twice daily and additionally, as needed.
- (k) Otherwise protect the public interest.
- (l) Protection of archeological and cultural resources. The Concessionaire shall ensure that any protected sites and archeological resources with the concession area are not disturbed or damaged by the Concessionaire, including the Concessionaire's employees, agents and contractors, except in accordance with Applicable Laws, and only with the prior approval of the Refuge Manager. Discoveries of any archeological resources by the Concessionaire shall be promptly reported to the Refuge Manager. The Concessionaire shall cease work or other disturbance which may impact any protected site or archeological resource until the Refuge Manager grants approval, upon such terms and conditions as the Refuge Manager deems necessary, to continue such work or other disturbance.
- (m) Not use the public lands for any purposes other than those specified in this Contract without the approval of the Refuge Manager.
- (n) The Concessionaire agrees that the concession facility is at all times subject to the dominant use and regulation of the Secretary of the Interior in his/her control and conservation of fish and wildlife and the Concessionaire shall not do or suffer to be done by the agents or employees any act that interferes with the Secretary's control over the same. The Concessionaire specifically waives any and all claims for damage resulting from activities of the Secretary or his/her representatives or employees in connection with the program of fish and wildlife conservation. The Secretary reserves the right to enter the area at any time and

further right to construct, maintain, and operate roads, trails, paths, bridges, automobile parking space, comfort stations and other sanitary facilities, electric, telephone, water, and area lines provided the same do not damage or interfere with the improvements and facilities operated by the Concessionaire.

- (o) The Concessionaire shall have the privilege of ingress and egress through and across the lands of the Refuge adjacent to the concession facility for the purpose of complying with this Contract.
- (p) The Service requires the Concessionaire to attend certain meetings and workshops. Additional meetings identified by the Refuge Manager may be required. The Service does not pay for the cost for attendance by the Concessionaire or his/her employees at such meetings. These meetings may be local or may require travel to the Midwest Regional Office in Bloomington, Minnesota. These meetings will not be required more than one time a year.

Section 18. Prohibited Uses. The Service is responsible for ensuring the safe operation and maintenance of the land, water, and facilities on the Refuge, including Crab Orchard Marina. To facilitate this, the following uses are prohibited:

- (a) No gambling devices or games shall be operated on the premises.
- (b) The Concessionaire must refuse services or accommodations to drunk or disorderly persons and any difficulty with such shall be reported to law enforcement officials and/or the Refuge Officer in charge.
- (c) The Concessionaire shall not provide, sell, distribute, manufacture, or allow any substances or activities considered illegal by the United States or the State of Illinois on the concession facility.
- (d) The Concessionaire shall not publicize any facility operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of age, race, creed, sex, sexual orientation, disability, color, ancestry, or national origin.
- (e) The Concessionaire shall not discriminate by segregation or other means against any person because of age, race, creed, sex, sexual orientation, disability, color, ancestry, or national origin in furnishing or refusing to furnish such person the use of any such facility.

Section 19. Notices. All notices required by this Contract shall be in writing and shall be served on the parties at the following addresses. The mailing of a notice by registered or certified mail, return receipt requested, shall be sufficient service.

(a) Notices sent to the Refuge Manager shall be sent to the following mailing address:

U.S. Fish and Wildlife Service
Attn: Refuge Manager
8588 Route 148
Marion, IL 62959

(b) Notices sent to the Concessionaire shall be sent to the following address:

PLD Reservoir, LLC, dba PLD Landing, LLC
15460 Moellers Road
Marion, IL 62959

Section 20. Miscellaneous.

- (a) Condition of Concession Facilities. The Concessionaire has inspected the concession facilities and any assigned government-owned personal property, is thoroughly acquainted with the condition, and accepts the concession facilities, and any assigned government owned personal property, "as is."
- (b) Indemnification. The Concessionaire agrees to assume liability for and does hereby agree to save, hold harmless, protect, defend, and indemnify the United States of America, its agents and employees from and against any and all liabilities, obligations, losses, damages, or judgments (including without limitation penalties and fines), claims, actions, suits, costs and expenses (including without limitation attorney's fees and experts' fees) of any kind and nature whatsoever on account of fire or peril, bodily injury, death or property damage, or claims for bodily injury, death or property damage of any nature whatsoever, and by whomsoever made, in any way connected with or arising out of the activities of the Concessionaire, its employees, agents, or contractors under this Contract. This indemnification shall survive the termination or expiration of this Contract.
- (c) Release of Information. All information required to be submitted to the Refuge Manager by the Concessionaire pursuant to this Contract is subject to public release by the Refuge Manager to the extent provided by Applicable Laws.
- (d) Negotiating Rights. The Concessionaire is not entitled to be awarded or to have negotiating rights to any Federal procurement or service contract by virtue of any provision of this Contract.
- (e) State Taxes. Any and all taxes or assessments of any nature that may be lawfully imposed by any State or its political subdivisions upon the property or business of the Concessionaire shall be paid promptly by the Concessionaire.
- (f) Members of Congress Not to Benefit. No member of, or delegate to, Congress or Resident

Commissioner shall be admitted to any share or part of this Contract or to any benefit that may arise from this Contract, but this restriction shall not be construed to extend to this Contract if made with a corporation or company for its general benefit.

- (g) Entire Agreement. This Contract contains the sole and entire agreement of the parties. No oral representations of any nature form the basis of or may amend this Contract. This Contract may be extended, renewed or amended only when agreed to in writing by the Refuge Manager and the Concessionaire.
- (h) Third Party Rights. This Contract does not grant rights or benefits of any nature to any third party.
- (i) Invalidity of Specific Provision. The invalidity of a specific provision of this Contract shall not affect the validity of the remaining provisions of this Contract.
- (j) Waiver. Waiver by the Refuge Manager or the Concessionaire of any breach of any of the terms of this Contract by the other party shall not be deemed to be a waiver or elimination of such term, nor of any subsequent breach of the same type, nor of any other term of the Contract. The subsequent acceptance of any payment of money or other performance required by this Contract shall not be deemed to be a waiver of any preceding breach of any term of the Contract.

Section 21. Environmental Protection Program.

- (a) Environmental Management Objectives. The Concessionaire shall meet the following environmental management objectives (hereinafter "Environmental Management Objectives") in the conduct of its operations under this Contract:
 - (1) The Concessionaire, including its employees, agents and contractors, shall comply with all Applicable Laws pertaining to the protection of human health and the environment.
 - (2) The Concessionaire shall incorporate Best Management Practices (BMPs) in its operation, construction, maintenance, acquisition, provision of visitor services, and other activities under this Contract.
- (b) Environmental Plan
 - (1) The Concessionaire shall develop, document, implement, and comply fully with, to the satisfaction of the Refuge Manager, a comprehensive written Environmental Plan. The initial Plan shall be developed and submitted to the Refuge Manager for approval within sixty days of the effective date of this Contract.
 - (2) The Environmental Plan shall account for all activities with potential environmental impacts conducted by the Concessionaire or to which the Concessionaire contributes. Its

scope and complexity may vary, based on the type, size and number of Concessionaire activities under this Contract.

(3) The Environmental Plan shall include, without limitation, the following elements:

- (i) Policy. The Environmental Plan shall provide a clear statement of the Concessionaire's commitment to the Environmental Management Objectives.
- (ii) Goals and Targets. The Environmental Plan shall identify environmental goals established by the Concessionaire consistent with all Environmental Management Objectives. The Environmental Plan shall also identify specific targets (i.e., measurable results and schedules) to achieve these goals.
- (iii) Responsibilities and Accountability. The Environmental Plan shall identify environmental responsibilities for Concessionaire employees and contractors. The Environmental Plan shall include the designation of an environmental program manager. The Environmental Plan shall include procedures for the Concessionaire to implement the evaluation of employee and contractor performance against these environmental responsibilities.
- (iv) Documentation. The Environmental Plan shall identify plans, procedures, manuals, and other documentation maintained by the Concessionaire to meet the Environmental Management Objectives.
- (v) Documentation Control and Information Management System. The Environmental Plan shall describe (and implement) document control and information management systems to maintain knowledge of Applicable Laws. In addition, the Environmental Plan shall identify how the Concessionaire will manage environmental information, including without limitation, plans, permits, certifications, reports, and correspondence.
- (vi) Reporting. The Environmental Plan shall describe (and implement) a system for reporting environmental information on a routine and emergency basis, including providing reports to the Refuge Manager under this Contract.
- (vii) Communication. The Environmental Plan shall describe how the environmental policy, goals, targets, responsibilities and procedures will be communicated throughout the Concessionaire's organization.
- (viii) Training. The Environmental Plan shall describe the environmental training program for the Concessionaire, including identification of staff

to be trained, training subjects, frequency of training and how training will be documented.

(ix) Monitoring, Measurement, and Corrective Action. The Environmental Plan shall describe how the Concessionaire will comply with the Environmental Plan and how the Concessionaire will self-assess its performance under the Environmental Plan, at least annually, in a manner consistent with inspections requirements at Service sites. The self-assessment should ensure the Concessionaire's conformance with the Environmental Management Objectives and measure performance against environmental goals and targets. The Environmental Plan shall also describe procedures to be taken by the Concessionaire to correct any deficiencies identified by the self-assessment.

(c) Environmental Performance Measurement. The Concessionaire shall be evaluated by the Refuge Manager on its environmental performance under this Contract, including, without limitation, compliance with the approved Environmental Plan, on at least an annual basis.

(d) Environmental Data, Reports, Notifications, and Approvals

(1) Inventory of Hazardous Substances and Inventory of Waste Streams. The Concessionaire shall submit to the Refuge Manager, at least annually, an inventory of Federal Occupational Safety and Health Administration (OSHA) designated hazardous chemicals used and stored in the Area by the Concessionaire. The Refuge Manager may prohibit the use of any OSHA designated hazardous chemical by the Concessionaire in operations under this Contract. The Concessionaire shall obtain the Refuge Manager's approval prior to using any extremely hazardous substance, as defined in the Emergency Planning and Community Right to Know Act of 1986, in operations under this Contract. The Concessionaire shall also submit to the Refuge Manager, at least annually, an inventory of all waste streams generated by the Concessionaire under this Contract. Such inventory shall include any documents, reports, monitoring data, manifests, and other documentation required by Applicable Laws regarding waste streams.

(2) Reports. The Concessionaire shall submit to the Refuge Manager copies of all documents, reports, monitoring data, manifests, and other documentation required under Applicable Laws to be submitted to regulatory agencies. The Concessionaire shall also submit to the Refuge Manager any environmental plans for which coordination with Area operations are necessary and appropriate, as determined by the Refuge Manager in accordance with Applicable Laws.

(3) Notification of Releases. The Concessionaire shall give the Refuge Manager immediate written notice of any discharge, release or threatened release (as these terms are defined by Applicable Laws) within or at the vicinity of the Area (whether

solid, semi-solid, liquid or gaseous in nature), of any hazardous or toxic substance, material, or waste of any kind, including, without limitation, building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.

- (4) Notice of Violation. The Concessionaire shall give the Refuge Manager in writing immediate notice of any written threatened or actual notice of violation from other regulatory agencies of any Applicable Law arising out of the activities of the Concessionaire, its agents or employees.
- (5) Communication with Regulatory Agencies. The Concessionaire shall provide timely written advance notice to the Refuge Manager of communications, including without limitation, meetings, audits, inspections, hearings and other proceedings, between regulatory agencies and the Concessionaire related to compliance with Applicable Laws concerning operations under this Contract. The Concessionaire shall also provide to the Refuge Manager any written materials prepared or received by the Concessionaire in advance of or subsequent to any such communications. The Concessionaire shall allow the Refuge Manager to participate in any such communications. The Concessionaire shall also provide timely notice to the Refuge Manager following any unplanned communications between regulatory agencies and the Concessionaire.

(e) Corrective Action.

- (1) The Concessionaire, at its sole cost and expense, shall promptly control and contain any discharge, release or threatened release, as set forth in this section, or any threatened or actual violation, as set forth in this section, arising in connection with the Concessionaire's operations under this Contract, including, but not limited to, payment of any fines or penalties imposed by appropriate agencies. Following the prompt control or containment of any release, discharge or violation, the Concessionaire shall take all response actions necessary to remediate the release, discharge or violation, and to protect human health and the environment.
- (2) Even if not specifically required by Applicable Laws, the Concessionaire shall comply with directives of the Refuge Manager to clean up or remove any materials, product or by-product used, handled, stored, disposed, or transported onto or into the Area by the Concessionaire to ensure that the Area remains in good condition.

(f) Indemnification and Cost Recovery for Concessionaire Environmental Activities.

- (1) The Concessionaire shall indemnify the United States in accordance with Section 21. of this Contract from all losses, claims, damages, environmental injuries, expenses, response costs, allegations or judgments (including, without limitation, fines, and penalties), and expenses (including, without limitation, attorneys' fees, and experts'

fees) arising out of the activities of the Concessionaire, its employees, agents, and contractors pursuant to this section. Such indemnification shall survive termination or expiration of this Contract.

(2) If the Concessionaire does not promptly contain and remediate an unauthorized discharge or release arising out of the activities of the Concessionaire, its employees, agents, and contractors, as set forth in this section, or correct any environmental self-assessment finding of non-compliance, in full compliance with Applicable Laws, the Refuge Manager may, in its sole discretion and after notice to the Concessionaire, take any such action consistent with Applicable Laws as the Refuge Manager deems necessary to abate, mitigate, remediate, or otherwise respond to such release or discharge, or take corrective action on the environmental self-assessment finding. The Concessionaire shall be liable for and shall pay to the Refuge Manager any costs of the Refuge Manager associated with such action upon demand. Nothing in this section shall preclude the Concessionaire from seeking to recover costs from a responsible third party.

In Witness Whereof, the duly authorized representatives of the parties have executed this Contract as of the 22nd day of April, 2022.

PLD Reservoir, LLC,
dba PLD Landing, LLC

By: [Signature]
Title: owner
Date: 4-25-22

By: _____
Title: _____
Date: _____

Seal:



Notary:

By: [Signature]
Date: 4/25/2022

U.S. DEPARTMENT OF THE INTERIOR

SUZANNE
By: BAIRD
Title: Regional Chief, NWRS, Region 3
Date: _____

Digitally signed by
SUZANNE BAIRD
Date: 2022.04.26
08:27:06 -05'00'

CHARLES WOOLEY
By: _____
Title: Regional Director, Region 3
Date: _____

Digitally signed by CHARLES
WOOLEY
Date: 2022.04.29 11:06:16 -05'00'

JUSTIN SEXTON
By: _____
Title: Refuge Manager,
Crab Orchard National Wildlife Refuge
Date: _____

Digitally signed by JUSTIN
SEXTON
Date: 2022.04.25 10:57:08 -05'00'