

August 22, 2014

By Fax and US Mail

Governor Steve Beshear
700 Capitol Avenue, Suite 100
Frankfort, Kentucky 40601
Fax: (502) 564-2517

Kentucky Tourism Development Finance Authority
Capital Plaza Tower
500 Mero Street, 24th Floor
Frankfort, Kentucky 40601
Fax: (502) 564-1512

Re: *Ark Encounter tax subsidies*

Dear Governor Beshear and Members of the Kentucky Tourism Development Finance Authority:

We have received complaints that Ark Encounter, a proposed Kentucky theme park in the final stages of applying for state tax subsidies, is discriminating on the basis of religion in hiring. A recent job posting on the website of Ark Encounter's parent company, Answers in Genesis, states that any applicant who desires to work on the project as a computer-assisted design (CAD) technician must submit a "[c]reation belief statement," as well as "[c]onfirmation of [their] agreement with the AiG Statement of Faith." Answers in Genesis, *Careers at Answers in Genesis and the Creation Museum - CAD Technician Designer, Ark Encounter*, www.answersingenesis.org/about/jobs/#cad-technician-designer (copy attached as Exhibit A).¹ Per the required Statement of Faith, an applicant must profess, *inter alia*, that homosexuality is a sin on par with bestiality and incest, that the earth is only 6,000 years old, and that the bible is literally true in order to be considered for the job. See Answers in Genesis, *Statement of Faith*, www.answersingenesis.org/about/faith/ (copy attached as Exhibit B).

Kentucky's Tourism Development Finance Authority ("the Authority") has, pursuant to the Kentucky Tourism Development Act, Ky. Rev. Stat. 148.850 *et seq.*, already given preliminary approval to Ark Encounter's latest application for state

¹ All websites last visited Aug. 21, 2014.

tax incentives, worth well over \$18 million. *See* Jack Brammer, *Noah's Ark Theme Park gets Preliminary Approval for Millions in State Tax Incentives*, Kentucky.com, July 29, 2014, www.kentucky.com/2014/07/29/3356998/noahs-ark-theme-park-gets-preliminary.html. Because Ark Encounter's ongoing religious discrimination violates terms to which it previously agreed in order to receive these tax incentives, *see* Exhibit C ("Tourism Development Agreement") at 6, and because state-subsidized religious discrimination raises serious concerns under Section 5 of the Kentucky Constitution, we urge the Authority to deny final approval of Ark Encounter's latest application for tax incentives under the Kentucky Tourism Development Act.

Ark Encounter originally sought and received approval for tax incentives to build its theme park in 2011. *See* Beth Musgrave, *\$43 Million Tax Break Approved for Ark Encounter Theme Park*, Kentucky.com, May 20, 2011, www.kentucky.com/2011/05/20/1745988/43-million-tax-break-approved.html.² At that time, Ark Encounter entered into a "Tourism Development Agreement" with the Authority, pursuant to which Ark Encounter agreed "not [to] discriminate on the basis of religion when hiring employees for the project." Exhibit C at 6. As the Authority apparently recognized, such discrimination disserves the underlying policy of the tax-incentive program, which was enacted to "reliev[e] unemployment by preserving and creating jobs" in Kentucky. Ky. Rev. Stat. 148.853(1)(b).

Ark Encounter has, however, already begun turning away the diverse citizens of Kentucky, hiring only from a particular religious sect. *See also* Dan Arel, *The Dishonesty Continues from Ken Ham and Answers in Genesis*, Danthropology, August 13, 2014, <http://www.patheos.com/blogs/danthropology/2014/08/the-dishonesty-continues-from-ken-ham-and-answers-in-genesis/>. This is inconsistent with the universal economic good that the tourism tax incentive program is meant to promote and with the deal Ark Encounter earlier struck with the State of Kentucky. Any contrary argument—for example, that it is Answers in Genesis rather than Ark Encounter that is discriminating on the basis of religion—is necessarily formalistic at the expense of the obvious intent of Ark Encounter's prior agreement with the State. While there have always been doubts as to the propriety and legality of Ark Encounter's participation in the tourism tax incentive program, the organization has by its recent actions demonstrated that it is unsuited to participate by any measure.

² This approval expired because the organization did not proceed with the project in a timely manner due to problems obtaining financing. *See* Travis Gettys, *Creationist Group to Ask Kentucky Taxpayers for Help Building Noah's Ark Theme Park*, Raw Story, July 28, 2014, www.rawstory.com/rs/2014/07/28/creationist-group-to-ask-kentucky-taxpayers-for-help-building-noahs-ark-theme-park/.

Ark Encounter's ongoing religious discrimination also raises concerns under Section 5 of the Kentucky Constitution, which forbids governmental "preference . . . given by law to any religious sect," as well as compelled support for religious ministries, and provides that "the civil rights, privileges or capacities of no person shall be taken away, or in anywise diminished or enlarged, on account of his belief or disbelief of any religious tenet, dogma or teaching." The Kentucky Tourism Development Act is designed to "creat[e] jobs that would not exist if not for the incentives offered by the authority to approved companies." Ky. Rev. Stat. 148.853(1)(b). If the Authority offers tax incentives to Ark Encounter, it will help create jobs open only to members of a particular sect. But it violates Section 5 for the state to create benefits made available solely along religious lines. *See Fiscal Court of Jefferson Cnty. v. Brady*, 885 S.W.2d 681, 686 (Ky. 1994) (noting that unconstitutional law granted benefits primarily to religious organizations without making them available to the general public).

Ark Encounter's participation in the tax incentive program would compel taxpayers in the state to support both religious discrimination and a religious ministry. The Ark Encounter's website proclaims that "the purpose of the Ark Encounter is to point people to the only means of salvation from sin, the Lord Jesus Christ, who also is the only God-appointed way to escape eternal destruction." Ark Encounter, *Genuine Ark, Part 3: Larger than Life*, December 10, 2013, www.arkencounter.com/blog/2013/12/10/genuine-ark-part-3-larger-than-life/ (copy attached as Exhibit D). According to the Ark Encounter job listing discussed above, "work at Ark Encounter is not just a job, it is also a ministry" that entails "edifying believers and evangelizing the lost." Exhibit A. By granting tax incentives in excess of \$18 million to Ark Encounter, the state would, at public expense, subsidize this "ministry," with any economic benefits accruing only to those who profess certain beliefs. Use of the public treasury to subsidize a particular sect's "edifying believers and evangelizing the lost" goes to the heart of Section 5's prohibition on compelled support for religion—regardless of whether the funds in question are granted directly or indirectly through tax benefits. *See City of Ashland v. Calvary Protestant Episcopal Church of Ashland*, 278 S.W.2d 708, 710, 712 (Ky. 1955) (noting that Section 170 of the Kentucky Constitution exempting church property from taxation must be construed strictly in light of the tension between such tax exemptions and the prohibitions of Section 5).

Ark Encounter's participation in the tourism tax incentives program has been problematic from the start. It has grown more so due to the organization's ongoing religious discrimination in employment. Accordingly, we urge the Authority to deny final approval to Ark Encounter's application for tax subsidies under the Kentucky Tourism Development Act.

Sincerely,



Ayesha N. Khan, Legal Director

Alex Luchenitser, Associate Legal Director

Charles Gokey, Steven Gey Fellow*

**Admitted in California only. Supervised by Ayesha N. Khan,
a member of the D.C. Bar.*

cc:

Secretary Bob Stewart
Kentucky Tourism, Arts and Heritage Cabinet
500 Mero Street
24th Floor, Capital Plaza Tower
Frankfort, KY 40601
Fax: (502) 564-1512

Attorney General Jack Conway
Office of the Attorney General
700 Capitol Avenue, Suite 118
Frankfort, Kentucky 40601-3449

EXHIBIT A



Careers at Answers in Genesis and the Creation Museum

Full-Time Career Opportunities in the United States

- Accounting Specialist (Cash Disbursements)
- Administrative Assistant
- Advancement Coordinator-Direct Mail
- CAD Technician Designer, Ark Encounter
- Graphic Artist/Production Designer, Creation Museum Exhibits
- Grounds Supervisor
- Guest Services Coordinator
- Security Console Operator
- Solutions Developer
- Web Managing Editor



We are accepting volunteers at the Creation Museum.

Other Employment (Not AiG or Creation Museum)

- Zip Line Tour Guide

All job applicants for the non-profit ministry of AiG/Creation Museum need to supply a written statement of their testimony, a statement of what they believe regarding creation, and a statement that they have read and can support the AiG Statement of Faith.

Those wishing to submit their information via the postal service should use the following mailing address:

Answers in Genesis
Attn: Human Resources
PO Box 510
Hebron, KY 41048

Note: The Ark Encounter LLC is the for-profit group that will be responsible for hiring staff for the Ark project. Available positions will be made public at a future time and will be posted on the Ark Encounter website.

Accounting Specialist (Cash Disbursements)

Reports To: Finance Manager

Summary

Accounting Specialist (Cash Disbursements) is a full-time staff position responsible for organizing, monitoring, and controlling the timely payment of ministry invoices via check processing.

EXHIBIT A

Items Needed for Possible Employment

- Resume
- Salary requirements
- How did you find out about this position
- Salvation testimony
- Creation belief statement
- Confirmation of your agreement with the AiG Statement of Faith

Please send, with cover letter, to: HR Department.

Send email.

CAD Technician Designer, Ark Encounter

Reports To: Lead Technical Designer, Ark Encounter

Summary

Our work at Ark Encounter is not just a job, it is also a ministry. Our employees work together as a team to serve each other to produce the best solutions for our design requirements. Our purpose through the Ark Encounter is to serve and glorify the Lord with our God-given talents with the goal of edifying believers and evangelizing the lost.

Every project is different and some may require more time and work than others. But our goal is to produce the very best product we can with the funds and time available.

As we move forward with the Ark Encounter project, and deadlines approach, we will be required to do whatever it takes to be sure our exhibits, signage, graphics, and sets are ready and on time. We have 24-month design build process, so you can expect to work 50 hours per week from time to time, and as we move closer to the deadline, even more time may be required, including weekends. This is a once-in-a-lifetime project and we want it to be the very best it can be.

Duties and Responsibilities

- Serve as a CAD Technician Designer and Mechanical Draftsman working within the Design Department of a custom fabrication shop.
- Produce and check 2D fabrication detail drawings for production in a fabrication shop.
- Release drawings for fabrication.
- Work with fabrication shop personnel to answer questions and/or solve problems encountered during the manufacturing process.
- Create Bill of Materials including prices and sourcing vendors.
- Project costs and materials needed for production.
- Maintain CAD workstation, AutoCAD licenses, and subscriptions.
- Maintain equipment such as printers and copiers, including managing paper and toner inventory.
- Create clean 3D white mock-up models in conjunction with Design Department concepts.
- Perform other relevant duties as assigned.

Education and Experience

- Two years minimum work experience in drafting/engineering
- Experience working within a team
- Cabinetry and exhibit design is a plus

Items Needed for Possible Employment

- Resume
- Salary requirements
- How did you find out about this position
- Salvation testimony
- Creation belief statement
- Confirmation of your agreement with the AiG Statement of Faith

Please send, with cover letter, to: HR Department.

Send email.

Graphic Artist/Production Designer, Creation Museum Exhibits

Reports To: Supervisor, Artists

Skill Requirements

- Experience and skill in design, layout, and production of signage and exhibit display design from existing templates
- New design work capabilities resulting in creative imaging and exhibit design that expresses the AiG message in exciting and captivating ways
- Experience with setup and operation of wide format laminator (60") using thermal and pressure sensitive laminates a plus
- Proficient in Adobe Creative Suite software—Photoshop, InDesign, Illustrator (Mac platform) *Preferably CS4 or CS5*
- Good sense of typography, color and design
- Cut, bend, laminate, arrange, and fasten individual or mixed raw and manufactured materials and products to form works of art.
- Create finished art work as decoration, or to elucidate or substitute for spoken or written messages.
- Develop project budgets for approval, estimating time lines, and material costs.
- Strong attention to detail and craftsmanship
- Good communication skills and collaboration experience working within department as well as interdepartmentally to complete assigned projects on time and on budget
- Ability to work with, mentor, and train others in exhibit design and graphic arts
- Ability to manage time and project from conception and development to completion
- Familiar with and comfortable with use of power tools (including table saws) and other shop equipment
- Willing to become a part of, and contribute to a God-honoring team that strives for excellence in all it does

Training and Experience

- Prefer a minimum of four or more years of experience as a graphic designer
- Bachelor's degree in graphic design, fine art, or related field; or equivalent work experience

Items Needed for Possible Employment

- Resume
- Salary requirements
- How did you find out about this position
- Salvation testimony
- Creation belief statement
- Confirmation of your agreement with the AiG Statement of Faith

Please send, with cover letter, to: HR Department.

EXHIBIT B



Statement of Faith

In order to preserve the function and integrity of the ministry in its mission to proclaim the absolute truth and authority of Scripture and to provide a biblical role model to our employees, and to the Church, the community, and society at large, it is imperative that all persons employed by the ministry in any capacity, or who serve as volunteers, should abide by and agree to our Statement of Faith, to include the statement on marriage and sexuality, and conduct themselves accordingly.

Section 1: Priorities

- The scientific aspects of creation are important but are secondary in importance to the proclamation of the gospel of Jesus Christ as Sovereign, Creator, Redeemer, and Judge.
- The doctrines of Creator and Creation cannot ultimately be divorced from the gospel of Jesus Christ.

Section 2: Basics

- The 66 books of the Bible are the written Word of God. The Bible is divinely inspired and inerrant throughout. Its assertions are factually true in all the original autographs. It is the supreme authority in everything it teaches. Its authority is not limited to spiritual, religious, or redemptive themes but includes its assertions in such fields as history and science.
- The final guide to the interpretation of Scripture is Scripture itself.
- The account of origins presented in Genesis is a simple but factual presentation of actual events and therefore provides a reliable framework for scientific research into the question of the origin and history of life, mankind, the earth, and the universe.
- The various original life forms (kinds), including mankind, were made by direct creative acts of God. The living descendants of any of the original kinds (apart from man) may represent more than one species today, reflecting the genetic potential within the original kind. Only limited biological changes (including mutational deterioration) have occurred naturally within each kind since creation.
- The great Flood of Genesis was an actual historic event, worldwide (global) in its extent and effect.
- The special creation of Adam (the first man) and Eve (the first woman), and their subsequent fall into sin, is the basis for the necessity of salvation for mankind.
- Death (both physical and spiritual) and bloodshed entered into this world subsequent to and as a direct consequence of man's sin.

Section 3: Theology

- The Godhead is triune: one God, three Persons—God the Father, God the Son, and God the Holy Spirit.
- All mankind are sinners, inherently from Adam and individually (by choice), and are therefore subject to God's wrath and condemnation.
- Freedom from the penalty and power of sin is available to man only through the sacrificial death and shed blood of Jesus Christ and His complete and bodily resurrection from the dead.
- The Holy Spirit enables the sinner to repent and believe in Jesus Christ.
- The Holy Spirit lives and works in each believer to produce the fruits of righteousness.
- Salvation is a gift received by faith alone in Christ alone and expressed in the individual's repentance, recognition of the death of Christ as full payment for sin, and acceptance of the risen Christ as Savior, Lord, and God.
- All things necessary for our salvation are expressly set down in Scripture.

- Jesus Christ was conceived by the Holy Spirit and born of the virgin Mary.
- Jesus Christ rose bodily from the dead, ascended to heaven, and is currently seated at the right hand of God the Father, and shall return in person to this earth as Judge of the living and the dead.
- Satan is the personal spiritual adversary of both God and mankind.
- Those who do not believe in Christ are subject to everlasting conscious punishment, but believers enjoy eternal life with God.
- The only legitimate marriage sanctioned by God is the joining of one man and one woman in a single, exclusive union, as delineated in Scripture. God intends sexual intimacy to only occur between a man and a woman who are married to each other, and has commanded that no intimate sexual activity be engaged in outside of a marriage between a man and a woman. Any form of sexual immorality, such as adultery, fornication, homosexuality, lesbianism, bisexual conduct, bestiality, incest, pornography, or any attempt to change one's gender, or disagreement with one's biological gender, is sinful and offensive to God.
- It is the duty of Christians to attend a local Bible believing church, as portrayed in the New Testament.
- All human life is sacred and begins at conception (defined as the moment of fertilization). The unborn child is a living human being, created in the image of God, and must be respected and protected both before and after birth. The abortion of an unborn child or the active taking of human life through euthanasia constitutes a violation of the sanctity of human life, and is a crime against God and man.

Section 4: General

The following are held by members of the Board of Answers in Genesis to be either consistent with Scripture or implied by Scripture:

- Scripture teaches a recent origin for man and the whole creation, spanning approximately 4,000 years from creation to Christ.
- The days in Genesis do not correspond to geologic ages, but are six [6] consecutive twenty-four [24] hour days of creation.
- The Noachian Flood was a significant geological event and much (but not all) fossiliferous sediment originated at that time.
- The gap theory has no basis in Scripture.
- The view, commonly used to evade the implications or the authority of biblical teaching, that knowledge and/or truth may be divided into *secular* and *religious*, is rejected.
- By definition, no apparent, perceived or claimed evidence in any field, including history and chronology, can be valid if it contradicts the scriptural record. Of primary importance is the fact that evidence is always subject to interpretation by fallible people who do not possess all information.

Updated: December 12, 2012

EXHIBIT C

TOURISM DEVELOPMENT AGREEMENT

THIS TOURISM DEVELOPMENT AGREEMENT (hereinafter “Agreement”), dated as of May 19, 2011, is made by and between the **KENTUCKY TOURISM DEVELOPMENT FINANCE AUTHORITY** (hereinafter “KTDFFA”), a public body corporate and politic created under Section 148.850 of the Kentucky Revised Statutes (“KRS”), and **ARK ENCOUNTER, LLC**, a Missouri limited liability company, (hereinafter the “Company”).

WITNESSETH:

WHEREAS, KTDFFA is authorized by Kentucky law to enter into this Agreement in accordance with KRS Section (as defined below) 148.859; and

WHEREAS, the Company desires to establish a Tourism Attraction Project (as defined below) in the Commonwealth (as defined below) with planned estimated expenditures of one hundred seventy two million five hundred thousand dollars \$172,500,000; and

WHEREAS, KTDFFA has adopted Preliminary Resolution No. KTDFFA-2010-5 on December 20, 2010, approving: (i) the Company as an “approved company” (as defined pursuant to KRS 148.851; and (ii) the recreational facility located on property located in Grant County, Kentucky (the “Project”); authorizing the execution of a Memorandum of Agreement between KTDFFA and the Company relating to the Project; agreeing to enter into a tourism development agreement at the appropriate time for the granting of inducements in connection with the approved costs incurred for acquiring, constructing, installing, and equipping the Project; and

WHEREAS, KTDFFA has: (i) approved the application (as defined below) of the Company in connection with the Project; (ii) approved the Company as an “approved company”; (iii) authorized the execution and delivery of this Agreement; and (iv) authorized the execution and delivery of any other documents and the taking of any other action necessary to accomplish the terms of this agreement; and

WHEREAS, the Company desires KTDFFA to enter into this Agreement in order to provide the Company with the ability to receive the inducements (as defined below) in accordance with KRS 148.859;

NOW, THEREFORE, in consideration of these premises and the terms and conditions hereinafter set forth, the parties to this Agreement hereby agree as follows:

I. DEFINITIONS.

A. Defined Terms. The following terms shall have the following meanings, unless otherwise defined hereunder:

“Application” means the application of the Company dated November 15, 2010 seeking to qualify as an Approved Company and to receive the Inducements associated with such qualification.

“Approved Costs” means:

- (a) obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, and installation of a Tourism Attraction Project;
- (b) the costs of acquiring real property or rights in real property and any costs incidental thereto, including all depreciable or amortizable costs;
- (c) the cost of contract bonds and of issuance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping, and installation of a Tourism Attraction Project which is not paid by the vendor, supplier, deliveryman, contractor, or otherwise provided;
- (d) all costs of architectural and engineering services, including (but not limited to): estimates, plans and specifications, preliminary investigations, and supervision of construction and installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping, and installation of a Tourism Attraction Project;
- (e) all costs required to be paid under the terms of any contract for the acquisition, construction, equipping, and installation of a Tourism Attraction Project;
- (f) all costs required for the installation of utilities, including (but not limited to): water, sewer, sewer treatment, gas, electricity, and communications, including off-site construction of the facilities paid for by the Company;
- (g) all other costs comparable with those described in this definition including depreciable or amortizable costs; and
- (h) the maximum amount of approved costs shall not exceed \$172,500,000. Any amounts refunded to the company as a result of tax credits under KEIA or similar programs shall be deducted from the total approved costs and shall not be eligible to be calculated for the purposes of inducements under this agreement.

“Commonwealth” means the Commonwealth of Kentucky;

“Completion Date” means the date, not later than May 19, 2014, that the Project is substantially completed;

“Inducements” means the Kentucky sales tax refund as prescribed in KRS 139.536;

“KRS Section” means a section of the Kentucky Revised Statutes, as it may be amended from time to time;

“Person” means an individual, sole proprietorship, partnership, registered limited liability partnership, joint venture, unincorporated organization, association, corporation, limited liability company, institution, entity or government, whether federal, state, county, city or otherwise, including without limitation, any instrumentality, division, political subdivision, district, court, agency, or department thereof; and

“Recreational Facility” means a structure or outdoor area that:

- (a) Provides visitors recreational opportunities, including but not limited to amusement parks, boating, hiking, horseback riding, hunting, fishing, camping, wildlife viewing, live theater, rock climbing, and all-terrain vehicle trails; and
- (b) Serves as a likely destination where individuals who are not residents of the Commonwealth would remain overnight in commercial lodging at or near the recreational facility;

“Tourism Attraction Project” means the acquisition, including the acquisition of real estate by a leasehold interest with a minimum term of ten (10) years, construction, and equipping of a tourism attraction; the construction and installation of improvements to facilities necessary or desirable for the acquisition, construction, and installation of a tourism attraction, including (but not limited to) surveys; installation of utilities, which may include water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are to be used to improve the economic situation of the approved company in a manner that shall allow the approved company to attract persons. The Project, as a Recreational Facility, is a Tourism Attraction Project.

B. Sections. References to “Sections” shall be to sections of this Agreement, unless otherwise expressly designated.

C. Section Headings. Section headings are for reference only and shall have no interpretative weight or value.

D. Plural. The plural and singular form of words shall impart either or both a plural and/or singular meaning, as the case may be.

II. TERM.

The term of this Agreement shall be ten (10) years from the Completion Date.

III. REPRESENTATIONS, WARRANTIES, COVENANTS AND ACKNOWLEDGEMENTS

A. The Company hereby represents and warrants to KTDFFA that on the date hereof:

1. It is a limited liability company duly organized and existing under the laws of the State of Missouri and that it is qualified to do business in the Commonwealth of Kentucky.

2. It has the necessary power and authority to execute, deliver, and perform this Agreement and to enter into and carry out the transactions contemplated herein.

3. The execution, delivery, and performance of this Agreement do not and will not violate any provision of law applicable to the Company or the Articles of Organization and Operating Agreement of the Company, and do not and will not conflict with or result in a default under any agreement, indenture, or instrument to which the Company is a party or by which the Company is bound.

4. All written information and statements made by the Company in, pursuant to, and in relation to the Application were, at the time of execution and delivery, true and accurate in all material respects. It is acknowledged that since the date the Application was made the budget for the project has changed and may continue to change and that the sources of financing the Project reflected in the application may change.

5. Absent the assistance provided to the Company by KTDFFA through the Inducements, the Company would not engage in the Project.

6. The fiscal year of the Company commences each January 1 and ends on the following December 31.

7. In the judgment of the Company, the Project is likely to: (a) attract at least 25% of its visitors from among persons who are not residents of the Commonwealth; (b) have Approved Costs in excess of One Million Dollars; (c) have a significant and positive economic impact on the Commonwealth considering, among other factors, the extent to which the Project will compete directly with existing Tourism Attractions in the Commonwealth and the amount by which increased tax revenues from the Project will exceed the Inducements given to the Company; (d) produce sufficient revenues and public demand to be operating and open to the public for a minimum of 100 days per year; and (e) not adversely affect existing employment in the Commonwealth

B. The Company hereby covenants:

1. The Company shall provide to KTDFFA within three months after the Completion Date, a certificate substantially in the form of Exhibit A, attached hereto, from the independent certified public accountants of the Company related to the Approved Costs actually expended on the Project.

2. On or before each February 14th, which is 45 days after the end of each fiscal year of the Company after the Completion Date, the Company shall supply KTDFFA with a certificate, substantially in the form of Exhibit B, attached hereto, which certificate demonstrates to the reasonable satisfaction of KTDFFA that the Company is in compliance with the provisions KRS 148.853(2)(a), as same is written on the date hereof, which, in substance, provides that: (a) in any year following the fourth full fiscal year of the Company after the Completion Date, the Project fails to attract at least 25% of its visitors from among persons who are not residents of the Commonwealth, or (b) in any year following the first full fiscal year of the Project it is not operating and open to the public for at least 100 days, then the Company shall not receive a sales tax refund from the Kentucky sales tax imposed by KRS Section 139.200 with respect to such fiscal year.

3. The Company shall pay: (a) upon execution and delivery of this Agreement (and prior to its effectiveness) all reasonable out-of-pocket costs and expenses of KTDFFA in connection with the preparation, execution, and delivery of this Agreement and any other documents which may be delivered in connection with this Agreement; (b) including without limitation all professional fees, including the fees and expenses of counsel to KTDFFA, and KTDFFA will incur no liability whatsoever in respect of such services. Furthermore, the Company agrees to indemnify, defend and hold harmless KTDFFA, the Cabinet and the Commonwealth or any other agency thereof, their officers, employees, and agents against any and all losses, liability or judgments, including reasonable attorney fees, in any legal challenge relating to the Memorandum of Agreement, this Agreement or the incentives to be offered by KTDFFA. and (c) all costs and expenses, if any, in connection with the enforcement of this Agreement. The Company also agrees to pay on the date of execution of this Agreement an administrative fee to KTDFFA in an amount equal to \$43,125.00 which is one-tenth of one percent of twenty-five percent of the estimated Approved Costs, (in addition to the \$500 application fee).

4. The Company shall provide prompt written notice to KTDFFA of any change in the fiscal year of the Company.

5. The Company has completed and filed with KTDFFA on or prior to the date of the final approval by KTDFFA of this Agreement the Kentucky Tourism, Arts and Heritage Cabinet Incentive Disclosure Statement.

6. The Company shall provide the following to the Kentucky Department of Revenue within 45 days after each fiscal year of the Company (except that with respect to 6.a., the Company shall not be in violation of this Agreement for failure to obtain the

information required thereunder so long as the Company has used reasonable efforts to obtain such information), where applicable:

a. name and Kentucky sales tax number of each tenant engaged in retail sales activity at the Project;

b. for each such tenant that is new to the project, a copy of the Assignment Agreement between such tenant and the Company which allows the Company to receive the sales tax refund;

c. dates during the prior fiscal year when each such tenant of the project occupied space in the Project; and

d. for each such tenant that is new to the Project, a waiver signed by such tenant which allows the Company to review the sales tax records of the tenant at the Kentucky Department of Revenue.

7. The Company shall require each such tenant at the project, as a condition of its lease with the tenant, to maintain a separate sales tax account number for its business at the Tourism Attraction Project to be used exclusively to report sales generated at the Project.

8. The Company will not discriminate on the basis of religion when hiring employees for the Project.

9. The Project will be open to the general public without regard to religious faith or creed.

10.. The Company is qualified to do business in Kentucky.

C. KTDFFA hereby represents and warrants to the Company that, on the date hereof:

1. It is a public body corporate and politic created under Section 148.850 of the KRS.

2. It has the necessary power and authority to execute, deliver, and perform this Agreement and to enter into and carry out the transactions contemplated herein. Specifically, it is authorized by Kentucky law to enter into this Agreement in accordance with KRS Section 148.859

3. The execution, delivery, and performance of this Agreement do not and will not violate any provision of law applicable to KTDFFA, and do not and will not conflict with or result in a default under any agreement, indenture, or instrument to which KTDFFA is a party or by which KTDFFA is bound.

4. The Company is an “eligible company” within the meaning of KRS 148.851 (17).

5. The Company has represented to the Authority that absent the assistance provided to the Company by KTDFFA through the Inducements, the Company would not engage in the Project.

IV. PERMITTED INDUCEMENTS.

A. **Permitted Inducements.** In consideration of the execution of this Agreement and notwithstanding any provision of KRS 139.770 to the contrary, the Company shall be granted Inducements equal to a sales tax refund from the Kentucky sales tax imposed by KRS 139.200, on the sales by the Company and the tenants generated by or arising at the Project. The Company shall have no obligation to refund or otherwise return any amount of this sales tax refund to the Persons from whom the sales tax was collected.

B. **Total Maximum Inducements.** The total Inducements allowed to the Company over the term of this Agreement shall be equal to the lesser of the total amount of the sales tax liability or 25% of the Approved Costs. The Inducements shall accrue over the term of this Agreement in an annual amount equal to 2.5% of the Approved Costs. Notwithstanding the foregoing 2.5% limitation, the Company may carry forward any unused Inducements from a previous fiscal year of the Company to any succeeding tax period during the term of this Agreement.

C. **Availability of Records.** The Company shall make its books and records available to KTDFFA at such reasonable times as KTDFFA shall request, and the Company shall file with KTDFFA such documentation respecting the Inducements as KTDFFA may reasonably require.

D. **Inducement Payment Assistance.** Upon request of the Company, KTDFFA agrees to use its best efforts to assist the Company in securing timely payment from the Commonwealth of the Inducements to which the Company is entitled.

V. ASSIGNMENTS.

A. The Company may not assign or transfer its rights, including (but not limited to) the Inducements, or have its obligations assumed under this Agreement without the express prior written consent of KTDFFA, which consent shall not be unreasonably withheld, conditioned or delayed in the event that the Person assuming this Agreement from the Company has or is acquiring the Project from the Company or is affiliated with the owners of the company.

VI. EVENTS OF DEFAULT.

Each of the following shall constitute an “Event of Default” hereunder:

A. The Company shall fail to comply with any or all of the Company's covenants, agreements, duties, or obligations set forth in this Agreement and such failure shall have continued for a period of 30 days following receipt of written notice of such failure to the Company from KTDFFA. Such 30 day cure period shall be extended if such failure is not reasonably capable of being cured within such 30 day cure period and the Company commences such cure and thereafter utilizes reasonably diligent efforts to cure such failure.

B. Any certification made by the Company to KTDFFA after the date hereof pursuant to the terms of this Agreement is untrue or inaccurate in any material respect when made.

VII. REMEDIES.

Upon the occurrence of any Event of Default hereunder, KTDFFA shall have any and all of the following remedies, cumulatively, without limitation, and not exclusive of any other remedies KTDFFA may have at law or otherwise:

A. KTDFFA may suspend the availability to the Company of any and all Inducements;

B. KTDFFA may terminate this Agreement, including (but not limited to) the termination of any and all rights to Inducements; and/or

C. KTDFFA may immediately recover from the Company funds equal to any Inducements taken by the Company after the date of an occurrence of any Event of Default that the Company is not entitled to receive under the terms of this Agreement.

VIII. MISCELLANEOUS.

A. **Binding Effect.** This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective permitted successors and assigns subject, however, to the limitations contained in this Agreement.

B. **Authority Liability.** All covenants, agreements, and obligations (collectively hereinafter referred to as "Covenants") of KTDFFA contained in this Agreement shall be effective to the extent authorized and permitted by applicable law as it exists on the date hereof. No such Covenant shall be deemed to be a Covenant of any present or future director, officer, agent, or employee of KTDFFA, the Commonwealth, or any agency or political subdivision thereof in other than his/her official capacity, and neither the directors of KTDFFA nor any official executing this Agreement, nor any official, employee, or agent of KTDFFA, the Commonwealth, or any agency or political subdivision thereof, shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the Covenants of KTDFFA contained in

this Agreement. No officer, member or agent of the Company shall have any personal liability under this Agreement or in connection with any certifications given on behalf of the Company in connection with or pursuant to the terms of this Agreement.

C. **Notices.** All notices, requests, or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when mailed by registered or certified mail, postage prepaid or sent by a nationally recognized next day delivery service, fees prepaid, to:

If to KTDFFA: Kentucky Tourism Development Finance Authority
24th Floor, Capital Plaza Tower
Frankfort, Kentucky 40601
ATTN: CHAIRMAN

If to the Company: Ark Encounter, LLC
P. O. Box 417
Hebron, Kentucky 41048

KTDFFA or the Company, by appropriate notice, may designate any further or different addresses to which subsequent notices, requests, or communications shall be sent. Notices sent by mail shall be effective three days after posting and notices sent by a nationally recognized next business day delivery service shall be effective one business day after being sent.

D. **Severability.** In case any section or provision of this Agreement, or any covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered, or taken under this Agreement, or any application thereof, is held to be illegal or invalid for any reason, or is inoperable at any time, that illegality, invalidity, or inoperability shall not affect the remainder thereof or any other section or provision of this Agreement or any other covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered, or taken under this Agreement, all of which shall be construed and enforced at the time as if the illegal, invalid, or inoperable portion were not contained thereof.

Any illegality, invalidity, or inoperability shall not affect any legal, valid, and operable section, provision, covenant, agreement, stipulation, obligation, act or action, or application, all of which shall be deemed to be effective, operative, made, assumed, entered, or taken in the manner and to the full extent permitted by law from time to time.

E. **Amendments.** If the Company desires to amend this Agreement, then the Company must submit in writing to KTDFFA the desired amendment. After submission, such amendment will be subject to the express prior written consent of KTDFFA after passage of a resolution approving such desired amendment.

F. **Entire Agreement.** This Agreement constitutes the entire agreement among the parties and no other writings or communications (oral or otherwise) shall have any legal effect unless made pursuant to the terms of this Agreement.

G. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

H. **No Waiver.** No failure by KTDFFA to insist upon the strict performance by the Company of any provision hereof shall constitute a waiver of KTDFFA's right to strict performance, and no express waiver shall be deemed to apply to any other existing or subsequent right of KTDFFA to require the Company to remedy any and all failures by the Company to observe or comply with any provision hereof.

I. **Indemnification.** The Company releases KTDFFA and the Kentucky Tourism, Arts and Heritage Cabinet from, holds KTDFFA and the Kentucky Tourism, Arts and Heritage Cabinet harmless against, and agrees that KTDFFA and the Kentucky Tourism, Arts and Heritage Cabinet shall not be liable for, and fully indemnifies KTDFFA and the Kentucky Tourism, Arts and Heritage Cabinet against, any and all losses, liabilities, claims, actions, proceedings, costs, and expenses imposed upon, incurred by, asserted against, or with respect to KTDFFA and the Kentucky Tourism, Arts and Heritage Cabinet on account of: (i) any loss or damage to property or injury to or death of, or loss by, any person that may be occasioned by any cause whatsoever pertaining to the maintenance, operation, and use of the Project; (ii) any loss or damage alleged by any third-party related to KRS Sections 148.850 to 148.859 (or successor statutes) and the Project; (iii) any breach or default on the part of the Company in the performance or non-performance of any Covenant arising from any act or failure to act by the Company or its agents, contractors, servants, employees, licensees, successors, or assigns; and (iv) any action taken or omitted to be taken by KTDFFA and the Kentucky Tourism, Arts and Heritage Cabinet in accordance with the terms of this Agreement (except acts of willful misconduct).

In the event that KTDFFA seeks indemnity hereunder with respect to any action or proceeding brought against KTDFFA, KTDFFA shall give notice of such action or proceeding to the Company, and the Company upon receipt of that notice shall have the obligation to assume the defense of KTDFFA in such action or proceeding provided, however, that failure of KTDFFA to give such notice shall not relieve the Company from any of its obligations under this Section to assume such defense unless the failure by KTDFFA to give such notice so prejudices the defense of KTDFFA in such action or proceeding by the Company that the Company cannot duly conduct such defense. KTDFFA may employ separate counsel and participate in the defense.

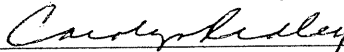
The indemnification set forth above and all references to KTDFFA in this Section are intended to and shall include all officials, directors, officers, employees, agents, and representatives of KTDFFA.

J. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth.

K. **Company Authorization of Release of Information.** The Company, by execution of this Agreement, hereby authorizes and agrees that: (i) KTDFFA or any of its agents, employees, or employees of the Kentucky Tourism, Arts and Heritage Cabinet of the Commonwealth (the "Cabinet") is permitted to share, with the Kentucky Department of Revenue (the "Kentucky Department of Revenue") information, data, research, and other materials (including this Agreement and any attachments hereto) that the Company delivers or provides to, or that is otherwise made available to or discovered by, KTDFFA or any of its employees, agents, or Cabinet employees; and (ii) the Kentucky Department of Revenue may provide to KTDFFA, as KTDFFA may request from time to time, copies of any and all Kentucky tax information, including income tax returns and sales and use tax returns, of the Company filed with or otherwise made available to the Kentucky Department of Revenue (collectively hereinafter the "Tax Information") (such Tax Information KTDFFA shall retain confidentially, except as otherwise may be required to be disclosed by law or in order to enforce the terms of this Agreement).

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed in their respective names, all as of the date first above written.

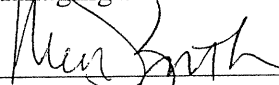
**Kentucky Tourism Development Finance
Authority**



Carolyn Ridley, Chairperson
Date: 7/10/11

ARK ENCOUNTER, LLC

By: CROSSWATER CANYON, INC, its
Managing Member



Michael D. Zovath, Executive Director

Date: 29 June '11

EXHIBIT D

← Genuine Ark, Part 2: Float Your Boat
Has Noah's Ark Already Been Discovered? →

GENUINE ARK, PART 3: LARGER THAN LIFE

Posted on December 10, 2013 by Ark Encounter

We have received so many questions about the Ark Encounter based on misconceptions about the project itself. Some come from people who are supporters and others come from critics and skeptics. These types of questions give us an opportunity to correct these misunderstandings, so we'll devote several posts to addressing these issues.

Question: Why would you claim that your Ark is "larger than life" if you want people to think that you are building an Ark of biblical proportions?

The phrase "larger than life" is typically used to describe something much more interesting, captivating, and exciting than an ordinary thing or person. It is in this sense that we are using it as a tagline for the Ark Encounter. Compared to other wooden ships and other zoos, the Ark would have been much more impressive. Furthermore, when we look at local catastrophes today (like regional flooding), they pale in comparison to the global Flood of Noah's day. Also, comparing the judgment of the Flood to the judicial sentences handed down in human courts, these human rulings are insignificant compared to the Judge of all the earth deciding to "destroy from under heaven all flesh in which is the breath of life" (Genesis 6:17).

The Ark Encounter is designed to make a person think on these things: the great wickedness of mankind and the righteous anger of God at sin. In addition, the account in Genesis depicts the colossal scope of Noah's task in building the Ark, making preparations for a long voyage and preserving animal life. It also celebrates God's providential care of the Ark and all its passengers during a catastrophic global Flood and a year-long stay on the Ark. Most importantly, as the purpose of Noah's Ark was to save life from destruction, so the purpose of the Ark Encounter is to point people to the only means of salvation from sin, the Lord Jesus Christ, who also is the only God-appointed way to escape eternal destruction (2 Thessalonians 1:9). We think these things are indeed "larger than life"—they are essential.

I hope this adequately explains the reason why we have chosen to use the phrase as we have. Ultimately, our vision for the Ark Encounter is that it be a place designed to point people to the glory of God, who is very much "larger than life."

This entry was posted in Ark and tagged Ark, global flood, Jesus Christ, Noah, salvation. Bookmark the permalink.

← Genuine Ark, Part 2: Float Your Boat
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Comments are closed.

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