

AN INVITATION TO BID

MICHIGAN DEPARTMENT OF NATURAL RESOURCES
PARKS AND RECREATION DIVISION

Michigan State Park Concession

Ortonville Recreation Area

Farm Activities

Bid Package Enclosures

Section 1. Standard Bid Requirements

Section 2. Specific Bid Information

Section 3. Bid Forms

- Bid Proposal Form
- Concession Bidder Qualification Statement
- Bank Statement of Credit

Section 4. Sample Contract

SECTION 1, STANDARD BID REQUIREMENTS:

Act 451, P.A. of 1994 authorizes the Director of the Department of Natural Resources to contract public service privileges in state parks. Through this authority, the Department desires to invoke the widest possible interest to obtain the most qualified and capable concession operator available.

The Department is seeking bids for farming activities within the Ortonville Recreation Area. The area to be farmed is approximately 20.9 acres in size. The selected bidder will be offered a three-year contract that may be renewed for an additional one-year term. Prior to beginning operations each season, the Contractor will be required to submit a Farming Plan that must be approved by the Department prior to commencing operations. The Farming Plan requirements are outlined in the attached sample Contract.

Bids must be enclosed in sealed envelopes. **Bid envelopes must be plainly marked** on the outside, **"Bid for Ortonville farming contract."** Other larger documents such as development plans must be enclosed and appropriately labeled. Only Sealed Bids properly addressed and identified can be accepted.

This bid will be opened on **December 14, 2021**, at **2:00 p.m.** Bid documents received after this date and time will not be accepted. Incomplete bids will not be accepted. Bids will be opened in the Roscommon Customer Service Center. You may either hand deliver your bid or mail it to:

Roscommon Customer Service Center
Attn: Concession and Lease Manager
8717 North Roscommon Road
Roscommon, MI 48653

To bid on this concession, you must complete the following:

1. Submit bid prior to **2:00 p.m.** on **December 14, 2021**
2. Bid Proposal Form
3. Concession Bidder Qualification Statement
4. Bid Guarantee Payment in the amount of **\$200**
5. Bank Statement of Credit in the amount of **\$5,000**
6. Sealed envelope and marked as "Bid for Ortonville farming contract"

Bidder Selection:

The bids will be evaluated on previous business experience, financial stability and monetary compensation to be paid to the State. Personal interviews may be required to assist in evaluating each bidder's proposal and qualifications. If such interviews are required, bidders will be contacted to make arrangements. Each bidder may select one (1) additional representative to monitor the interview.

General Bid Information:

1. Act 451, Public Acts of 1994, requires that the Director of the Department of Natural Resources shall provide that each concession is awarded at least every seven (7) years based upon extension, renegotiation or competitive bidding. The bids will be evaluated on previous experience, financial ability and monetary payment to be paid to the State.
2. The successful bidder will be required to sign a contract. The terms and conditions stated in the enclosed sample contract are to be considered as requirements for this Invitation to Bid. Contractors must pay the Department a fee for the privilege of operating concessions.
3. It is recommended that applicants make a personal visit to the park and the concession facilities to determine the conditions to be encountered, plus any factors affecting the operation. In so doing, it is best to contact the Unit Supervisor or representative. Bids received from applicants who fail to do this do not, as a rule, receive favorable consideration.
4. Bidders must accept all concession facilities in their present condition. Do not expect that the Department will perform any repairs or remodeling unless specifically stated in this Invitation to Bid.
5. The submission of a bid shall be deemed evidence that the bidder has carefully examined these instructions, the proposal form, and the sample contract terms and is fully aware of the responsibilities of the contractor. In addition, the bidder agrees to abide by all applicable laws relating to the operation of the concession if granted this concession contract.
6. Bids are to be made only on the basis of the Invitation to Bid. A bidder shall not be relieved of their bid because of mistakes.
7. Deviations from the specific terms, qualifications and requirements, as set forth in the Invitation to Bid are not permissible as a part of the bid. But, alternate or additional bids or suggested revisions, if any, may be submitted separately and apart from, but enclosed with, the proposal. Such alternate proposals will be reviewed only as to their merit and potential benefits to the

public and the Department and may or may not have a bearing in the selection of a bidder.

8. The Department of Natural Resources reserves the right to reject any or all bids.
9. Performance Bond: The bidder that is awarded a contract must provide the Department with a Performance Bond for the amount specified in the specific information and requirements for this concession sheet **within ten (10) days of receipt of the contract award**. Failure to do so will result in the forfeiture of the award. The bond guarantees that the bidder will perform all requirements and provisions in this Invitation to Bid. The Performance Bond will be due within 10 days of the Contract award. The Performance Bond for the Contract will be **\$500**.

Performance Bonds can be accepted in four different types. All types must be approved by the Department of Natural Resources, Parks and Recreation Division, and remain in effect for the entire contract term or be effective for the entire period of operation for each year of the contract. Bonds are to be mailed to:

DNR, Parks and Recreation Division
Roscommon Customer Service Center
Attn: Concession and Lease Manager
8717 North Roscommon Road
Roscommon, MI 48653

- a) Surety Performance Bond is issued by a bonding company. This type of Bond shall be executed by a surety company authorized to do business in the State of Michigan. The Bond shall be payable to the State of Michigan.
- b) Cash Bond can be paid by check or money order made payable to the State of Michigan, or currency in of the United States of America.
- c) Certificate of Deposit (CD) shall have a minimum maturity of one (1) year. Certificates must be negotiable and must be of a type that pays interest on maturity only. The State's Federal employee I.D. number (38-6001134) should be used on all certificates. The CD should be automatically renewable and must be registered as follows:

Chief, Parks and Recreation Division
Michigan Department of Natural Resources

- d) Letter of Credit is issued by a bona fide financial institution. Letters shall have a minimum maturity of one (1) year. They must be

registered as follows: Chief, Parks and Recreation Division, Michigan Department of Natural Resources.

10. Bid Guarantee: The Bid Proposal form must be accompanied by either a certified or cashier's check on an open, solvent bank in the amount of \$200. Guarantee of the three (3) highest bidders will be retained until the Department has awarded the contract. Guarantee payments of all other bidders will be returned within three weeks of the bid letting. If the successful bidder fails to provide a Performance Bond or open the concession on the date set by the Parks and Recreation Division, the guarantee payment shall be forfeited to the State.
11. Statement of Credit: The Statement of Credit reflects a conservative estimate of what it will cost to set up and begin operations. The Statement of Credit amount required for this contract shall be **\$5,000**. To meet this requirement, the bidder must provide a certified document prepared by a licensed financial institution.

SECTION 2, SPECIFIC BID INFORMATION:

Contract Requirements:

1. Liability Insurance (see Sample Contract Section XI.A.7.):

| | |
|-----------------------|-----------|
| General Aggregate: | \$500,000 |
| Product Aggregate.: | \$500,000 |
| Personal Injury.....: | \$100,000 |
| Occurrence.....: | \$100,000 |
| Fire Damage Limit: | \$ 50,000 |
2. Workers Compensation Insurance pursuant to Sample Contract Section XI.B.
3. A **minimum** Contract Fee of **\$95.00 per acre** pursuant to Sample Contract Section II.B.

General Information:

Located in northern Oakland and southern Lapeer counties this approximately 5,400-acre recreation area contains high wooded hills and a variety of amenities. Recreational opportunities include hiking, bicycling, boating, camping, cross-country skiing, snowmobiling, fishing, and hunting.

A 25-site equestrian campground is located at the trailhead off Fox Lake Road. It is a rustic campground with vault toilets and a hand pump for water. The campground is on a first come first serve basis for campers. The equestrian trails offer eight and a half miles of designated trails wandering through Hadley Hills. The day-use area at Big Fish Lake offers 300 parking spaces, restroom facilities,

a picnic area, two picnic shelters, a playground, horseshoe pits and a designated swim area.

Products and Services:

The Department retains the right to approve the annual farming plan for the Premises, including but not limited to application of chemicals.

Equipment:

The necessary and required equipment for this contract is identified in Sample Contract, Section IX.

Maintenance Responsibilities:

The required maintenance responsibilities, which will be required of the successful contractor, are identified in Sample Contract, Section VIII.

Inspection of Facilities:

To arrange for a personal inspection of the facilities, contact the Unit Supervisor at (810) 797-4439.

SECTION 3, BID FORMS:

BID PROPOSAL FORM

Parks and Recreation Division
Michigan Department of Natural Resources
Roscommon Customer Service Center
8717 North Roscommon Road
Roscommon, Michigan 48653

I offer to operate and maintain the concession at **Ortonville Recreation Area**, for the convenience of the public, in accordance with the terms set forth in the Invitation to Bid and sample Concession Contract with a contract fee as follows:

An annual price per acre of \$_____, payable to the State, as identified in Sample Contract Section II.B, or in two (2) equal installments due and payable in the months of July and December of each contract year.

If selected, I agree, that within thirty (30) days of notification of acceptance of my offer, I will enter into negotiations with the Department of Natural Resources for a contract to furnish concession services as required, for the period specified within the sample Concession Contract, the provisions of which will be based on the Concession Contract template prescribed by the Department of Natural Resources and approved by the Michigan Attorney General.

Attached are the following documents and references to support my offer:

- Bid Proposal Form
- Concession Bidder Qualification Statement
- Bid Guarantee Payment in the amount of **\$200**
- Bank Statement of Credit in the amount of **\$5,000**
- Other: _____

Date: _____

Printed Name: _____

Signature: _____

Business Name: _____

Address: _____

Telephone: _____ Cell: _____

Email: _____

CONCESSION BIDDER QUALIFICATION STATEMENT

You must prepare a response for all questions listed below, numbered and in the order in which presented. Your response must be completed with a date, signature and the printed name of the signatory. The completion and submission of all questions and the required attachments reflects accurate and truthful statements of the signatory. Your response will be scored by Department staff on a scale of zero to thirty, with thirty being high.

1. Describe your farming experience. Please be as comprehensive as possible. (Score 0 to 30)
2. Do you plan to sublet or assign any portion or the entire contract to another party? If yes, explain. (Score 0 to 2)
3. Please describe your typical farming plan. (Score 0 to 30)
4. List all major equipment you will supply to provide products and services required in this bid document. (Score 0 to 30)
5. Describe your methods for daily bookkeeping, accounting, and recording revenues daily. (Score 0 to 20)
6. Provide financial statements prepared by a Certified Public Accountant in accordance with generally accepted accounting principles for your organization's last fiscal year demonstrating the firm's ability to operate. (Score 0 to 10)
7. Have you ever failed in business or compromised with creditors? (Score 0 to 20)
8. Have you or your company ever failed to fulfill the requirements of a contract? (Score 0 to 20)
9. Describe all infractions or notices of violation that have occurred in your operations in the past five years and explain how each infraction or violation was addressed. (Score 0 to 30)
10. Have any liens ever been filed against any of your work? (Score 0 to 2)
11. Are there any judgments, suits, or claims pending against you? (Score 0 to 2)
12. Are you acting as endorser for others on their notes or accounts? (Score 0 to 2)

- 13.** List names, address, phone number, and contact person of insurance carrier who will provide your liability and vehicle insurance. (Score 0 to 2)
- 14.** What is your insurance coverage deductible, if any? (Score 0 to 2)
- 15.** Provide a copy of the operational limitations required by your proposed insurance carrier. (Score 0 to 20)
- 16.** List a minimum of two (2) personal references with addresses and telephone numbers. (Score 0 to 20)
- 17.** List a minimum of two (2) business references with addresses and telephone numbers. (Score 0 to 20)
- 18.** Please provide a narrative that would include anything you feel might assist the Department in evaluating your experience or plan of operation. (Score 0 to 30)
- 19.** Submitter must sign, print name and date the response submittal. (Score 0 to 5)

**STATE OF MICHIGAN
DEPARTMENT OF NATURAL RESOURCES
PARKS AND RECREATION DIVISION**

CONCESSION CONTRACT

(Required under authority of Act 451, P.A. 1994.
Failure to comply with conditions may result in
cancellation or termination of Contract.)

PROPERTY: **Ortonville Recreation Area**

CONTRACTOR: _____

CONCESSION: **Farming Activities**

EXPIRES: **November 30, 2024**

PREFACE

The State of Michigan, Department of Natural Resources (“Department”), provides facilities for the use and enjoyment of the public. The responsibility of the Department is to operate or contract for the operation of the facilities so as to maximize service and benefit to the public according to approved standards. The facilities included in this Contract are made available to the Contractor with the intent that the Contractor will operate them according to those standards to provide maximum use, service, and benefit to the public.

It is fully understood that the granting of this Contract to the Contractor by the Department of Natural Resources **DOES NOT GRANT EXCLUSIVE RIGHTS** to the **ENTIRE PROPERTY** where the concession is located, unless expressly provided for herein. This Contract grants rights to the Contractor to provide goods and services specified under Section IV for the Premises identified in Section II.C.1. It is also understood that the Department is charged with the management of the property and shall make all decisions as to what concessions shall or shall not be located on the property and where these concessions shall be located.

I. GRANT OF CONCESSION CONTRACT

The Department in consideration of the covenants and representations in this concession Contract (“Contract”) grants to:

Business Name: _____

Owner Name: _____

Address: _____

Home/Office: _____ Cell: _____

Email address: _____

(“Contractor”), this Contract to operate a concession at **Ortonville Recreation Area in Oakland County** (the “Premises”). This Contract is subject to the right of the Department to terminate this Contract upon the Contractor’s failure to perform the required services in a satisfactory manner.

II. CONDITIONS

A. Contract Term. The Contract term shall begin at 12:01 a.m. local time on the date the Contract is executed by the Department, and end at midnight, local time on **November 30, 2024**. Upon satisfactory execution of the Contract requirements, the Contract Term may be renewed with Department approval through the **2025** operating season.

B. Contract Fee.

1. The fee payable (“Contract Fee”) by the Contractor to the Department for the rights and privileges conveyed in the Contract shall be as follows:

A Contract Fee of \$___ per acre (20.9 acres), (\$_____ per year), payable in annual installments, due on the following schedule:

| <u>Annual Due Date</u> | <u>Amount</u> |
|------------------------|---------------|
| July 1 | \$ |
| December 1 | \$ |

2. Payment of the Contract Fee shall be paid to the Department and made payable to the “State of Michigan” according to the above schedule. Payment must be mailed to: **Ortonville Recreation Area, 5779 Hadley Road, Route 2, Ortonville, MI 48462.**

3. A \$10 per day Late Fee must be paid to the Department by the Contractor for every day beyond the designated day of the month that the Contract Fee is paid late.

4. Failure to pay the Contract Fee on time will be grounds for the Department to terminate the Contract.

5. For purposes of this Section, Gross Income shall be the total amount of all receipts in cash, credits, property, or interest of whatever kind received by the Contractor from all business done under the provisions of this Contract, but it shall not include Recreational Passport sales, fishing and hunting licenses sales, internal sales, state lottery tickets, soft drink container deposits, sales tax receipts, or other taxes.

C. Department’s Property, Buildings, and Equipment.

1. The Department has provided the below listed property, buildings, and items of equipment, for the use of the Contractor for this Contract. The area included within this Contract (“Premises”) shall be:

Vacant land located within the boundaries of Oakland Recreation Area, Oakland County, as identified in Attachment A, consisting of 20.9 acres.

The locations within the mapped boundary that contain standing water may not be farmed. If actual number of acres available for planting is different from this number, the Contractor will work with Department to verify correct acreage number and adjust the Contract Fee accordingly.

The Department has the exclusive authority to restrict access to areas of the Premises the Department deems necessary for any safety or environmental concerns.

2. All grounds covered specifically in this Contract shall be open to inspection during normal business hours by persons authorized by the Department.
3. The Department does not warrant the provision of any water, sewer, gas, electric or telephone utilities to the Contractor. Such utilities are solely the responsibility of the vendors or governmental agencies providing such utilities. The Department is not responsible for any direct or consequential damages resulting from the failure of these utilities due to any cause whatsoever. In the case of Department-owned wells and septic fields, the Department endeavors to provide complying facilities, but is not responsible for any direct or consequential damages to the Contractor resulting from the failure of such facilities.
4. Smoking is prohibited in all State government facilities. This prohibition shall include all facilities operated by the Contractor.
5. Pets of any type are prohibited in all facilities, except service animals as defined in 28 CFR 36.104 which shall be allowed while performing their duties.

D. Operation of Concession.

1. The Department grants the Contractor the exclusive rights to provide the goods and services authorized by this agreement and identified in Section IV.

E. Visitors. The Department does not guarantee a specific number of visitors to the Property and accepts no responsibility for the lack of visitors for any reason.

F. Operating Schedule.

1. The season of operation shall be determined by weather and soil conditions.
2. The Contractor must not operate for lesser periods without the prior written approval of the Department unless circumstances beyond the control of either party make it necessary to take emergency action. In such cases, the Contractor must report the circumstances in writing to the Department at the earliest possible moment. In case of inclement weather, the concession may close early with the Department's permission.

III. CONTRACTOR'S COVENANTS AND REPRESENTATIONS

A. Indemnification. Contractor hereby covenants and agrees to indemnify and save harmless, the State of Michigan, its departments, officers, employees and agents, from any and all

claims and demands, for all loss, injury, death or damage, that any person or entity may have or make, in any manner, arising out of any occurrence related to the issuance of this Contract, the activities authorized by this Contract, and the use or occupancy of the Premises which are subject of this contract by the Contractor, its employees, contractors, or its authorized representatives; arising from or in connection with any of the following:

1. Any claim, demand, action, citation or legal proceedings against the Department arising out of or resulting from the performance of the work, duties, responsibilities, actions or omissions of Contractor.
2. Any claim, demand, action, citation or legal proceeding against the Department arising out of or related to occurrences that Contractor is required to insure against as provided for in this Contract; and
3. Any claim, demand, action, citation or legal proceeding against the Department arising out of or resulting from the death or bodily injury of any person, or the damage, loss or destruction of any real or tangible personal property, in connection with the performance of services by Contractor, by anyone directly or indirectly employed by Contractor, or by anyone for whose acts Contractor may be liable; provided, however, that this indemnification obligation shall not apply to the extent, if any, that any claims, demands, actions, citations or legal proceedings are caused by the negligence or reckless or intentional wrongful conduct of the Department.

B. No Unnamed Partners. The Contractor represents that there are no unnamed partners legally interested in or having authority over the entity, operation or management of the concession and further represents that the Contractor is the only person/entity responsible for carrying out the Contractor's duties as written in the Contract.

C. Assignment and Delegation.

1. The Contractor shall not sell, mortgage, rent, assign or parcel out the Contract hereby granted, or any interest therein, or allow or permit any other person or party to use or occupy any part of the Premises, building, or spaces, covered by this Contract for any purpose whatsoever without first obtaining the prior written consent of the Department. Such action by the Contractor without the prior written approval of the Department shall be cause for the immediate termination of this Contract.
2. The Contractor may not assign this Contract or any of its obligations under this Contract to any other party (whether by operation of law or otherwise) without the prior written consent of the Department. Any purported assignment violating this Section is void. Further, the Contractor may not assign the right to receive money due under this Contract without the prior written consent of the Department.

D. Subcontractors.

1. The Contractor cannot delegate any duties or obligations under this Contract to a subcontractor other than a subcontractor named in the bid without the prior written consent of the Department.

2. The Contractor is responsible for performing all its obligations under this Contract, whether the obligations are performed by the Contractor or subcontractor. The Contractor is exclusively responsible for the adherence by subcontractors to all provisions of this Contract. Further, the State will consider the Contractor to be the sole point of contact regarding contractual matters, including but not limited to payment of any costs resulting from the Contract.
 3. The State reserves the right to approve any subcontractor hired to perform the Contractor's obligations under this Contract and the right to require the Contractor to replace any subcontractor found unacceptable by the Department.
- E. **Relationship of the Parties.** The relationship between the Department and the Contractor is that of client and independent Contractor. No agent, employee, or servant of the Contractor or any of its subcontractors shall be or shall be deemed to be an employee, agent, or servant of the Department for any reason. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants, and subcontractors during the performance of this Contract.
- F. **Contracts.** The Contractor may execute contracts or agreements as the operator of the concession. The language of the contracts or agreements shall not obligate the Department or conflict with the terms of this Contract and must contain a provision for automatic termination upon the termination of this Contract. The Contractor shall indemnify, defend, and exculpate the Department from any liability which may accrue or be asserted against the Department under such contracts or agreements.

IV. SALE OF PRODUCTS AND SERVICES

- A. The Department reserves the right to approve the sale of all products and services. The Contractor agrees to conduct and use the Premises for no other purpose than those stated in this Contract.
- B. **Products and Services.** The concession granted under the provisions of this Contract is as follows:
1. **Annually, prior to the planting and application season, the Contractor must submit a "Farming Plan" for Parks and Recreation Division approval.** The "Farming Plan" shall include: a list of crops to be planted and all products to be applied to the ground and/or crops. **No planting or product application may take place prior to approval of the annual "Farming Plan".**
 2. Planting, growing and harvesting of acceptable row crops is allowed on the Premises.
 3. Forage crops (hay, alfalfa) may be planted with prior written approval from Parks and Recreation Division. However, to protect nesting grassland birds, cutting will be prohibited prior to July 10th.
 4. No fall tillage will be allowed without prior written approval of Parks and Recreation Division. It is unlikely that fall tillage will be permitted.
 5. No winter wheat shall be planted without prior written approval of Parks and Recreation Division.

6. The planting of seed (soybean and other crops) treated with a neonicotinoid or other systemic insecticide is prohibited on the Premises without prior written approval, except for corn. Planting of corn seed treated with a neonicotinoid or other systemic insecticide is strongly discouraged but allowed due to the lack of the commercial availability of untreated seed.
7. No chemicals may be applied to the ground or crops other than those specified in the approved annual "Farming Plan".
8. The application of herbicides containing Atrazine on the Premises is prohibited.
9. Any chemical or product applied as part of the approved "Farming Plan" shall be approved for legal agricultural use in Michigan and applied in accordance to the product label. The Contractor is encouraged to use the most environmentally benign product(s) that is effective.
10. All application setbacks from waterbodies, drainages, water wells etc. required by product labels shall be followed. All wetlands and low areas that seasonally hold water on or adjacent to the Premises, shall be considered waterbodies and label application setbacks shall apply to them.
11. The Contractor is encouraged, but not required to rotate (vary) the crops being planted in each field.
12. Any manure spread on the Premises must be incorporated into the ground at the time of application. A manure management plan may be requested as part of the annual "Farming Plan".
13. Setting fires on the Premises for any purpose is prohibited.
14. All pasturing of penning of animals on the Premises is prohibited.
15. Installation/use of an irrigation system on the Premises is prohibited.
16. Filling, surface draining and/or tiling of swales or other wet area on the Premises is prohibited.
17. Clearing of vegetation from fencerows is prohibited. Trimming and/or removing vegetation encroaching into a field is prohibited without prior written approval of Parks and Recreation Division.
18. When determined to be necessary to prevent erosion and sedimentation, Parks and Recreation Division may require waterways/drainages to be vegetated with grass or other soil holding plants. Existing vegetated waterways shall remain vegetated. The Contractor is strongly encouraged to employ best management practices to prevent soil erosion and sedimentation.
19. The Contractor is required to post advisory signage at all parking lots and other points of visitor entry prior to application. Signage shall remain in place after application for the Restricted Entry Interval for farm workers stated on the product label or for a minimum of one week depending on which is the longer time. All signage language and posting location(s) must be pre-approved by the Unit Supervisor. All signage must include:
 - a. Caution Farm Chemical Application – Do Not Enter Farm Field Until [DATE]"
 - b. Product name
 - c. Date of application
 - d. Web links (web addresses) to the Material Safety Data Sheet (MSDS) for the product and the product label.
20. When determined to be necessary by Parks and Recreation Division, the Contractor shall provide, install and/or maintain gates as needed to prevent unauthorized vehicle

entry to the Premises. All gates shall be reflectorized. All gates in the Premises shall be locked closed when the Premises is not being used. When the Contractor is using the Premises, all gates shall be either locked open or locked closed. Contractor shall furnish gate and lock. A key or combination must be provided to the Unit Supervisor.

21. Additional Contractor terms and conditions include:
22. The Department is not responsible for any delays or cancellations due to power outages or weather-related issues.
23. The Contractor is responsible to always maintain equipment in a safe and workable condition.
24. The Contractor acknowledges that the Department is not liable for any theft, vandalism, or damage that may occur to Contractor equipment and supplies.
25. The Contractor is responsible for adhering to all state laws, traffic laws, and local ordinances on the Premises.
26. If using a vehicle, the Contractor driver(s) must always carry valid operators' license in their possession.
27. If Contractor does not farm the leased acreage, the non-farmed ground area, excluding seasonally wet areas, must be mowed at least once July 15th and August 30th of each contract year.

V. ADDITIONAL TERMS

- A. No on-site storage will be allowed without the pre-approval of the Park Manager.
- B. The Department is not responsible for any delays or cancellations due to power outages or weather-related issues.
- C. The Contractor is always responsible to maintain equipment in a safe and workable condition.
- D. The Contractor acknowledges that the Department is not liable for any theft, vandalism, or damage that may occur to Contractor equipment/supplies.
- E. No motor vehicles will be allowed off paved surfaces, except as allowed by the Department for the purpose of meeting requirements as set forth within this Contract.
- F. The Contractor is responsible for adhering to all state laws, traffic laws, and local ordinances on the Premises.
- G. If using a vehicle, Contractor driver(s) must always carry valid operators' license in their possession.
- H. Contractor vehicles accessing the Premises will be required to have a valid Recreation Passport affixed.

VI. ACCOUNTING, REPORTING, AND ADVERTISING

- A. **Accounting Records.**

1. The Contractor shall keep or cause to be kept accurate books, records, and accounts of its operations under the Contract, separate and apart from other operations.
 3. All such records shall be maintained in accordance with generally accepted accounting practices (GAAP).
 4. The Contractor shall make all bank deposits, cash register tapes, pre-numbered tickets, permits, customer receipts, attraction logs and reports concerning the operation available to the Department at such times as the Department may require.
 5. Separate accounting records shall be maintained for each facility or operation in the Contract.
- B. Lien.** To secure the payment of all Contract Fees and liquidated damages, the Contractor acknowledges that the Department may place a lien on all personal property owned by the Contractor which is in the Premises used in the operation of the concession.
- C. Taxes.** The Contractor shall pay all federal, state, and local taxes, assessments, or fees which are, or which may become legally chargeable to the business operated under the terms of the Contract.
- D. Annual Reports Required.** Prior to conducting farming operations on the Premises each year, the Contractor shall provide the following reports to the Concession Manager:
1. Farming Plan. This plan must be approved prior to beginning operations.
 2. Updated certificate of general liability and workman compensation insurance listing the “State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insured.

VII. CONTRACT OPERATION

A. Standard of Performance.

1. The Contractor shall provide operation supervision and shall operate the business under the Contract in accordance with the laws of the State of Michigan.
2. Any dispute arising under this Contract must be resolved in the Michigan Court of Claims.
3. In performing services for the State under this Contract, the Contractor must comply with Department of Civil Service Rules 2-20 regarding Workplace Safety and 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor must comply with any applicable state agency rules that the Department provides to the Contractor.
4. Use of the Premises for purposes other than those permitted in this Contract shall be grounds for termination of the Contract.

B. Supervision by Property Manager. The Department is responsible for the general management of the area on which this concession is located. The day-to-day oversight of the Contract, with respect to the quality of service rendered, hours the concession is open, sanitation, exterior building maintenance and other operational matters as the Department may designate, shall be determined by the Department.

C. Discrimination.

1. The Contractor shall comply with the Elliot-Larsen Civil Rights Act, 1976 PA 435, as amended, MCL 37.2101 *et seq.*, the Persons with Disabilities Civil Rights Act, 1976 PA 220, as amended, MCL 37.1101 *et seq.*, and all other Federal, State, and local fair employment practice and equal opportunity laws, and covenants that Contractor shall not discriminate against any employee or applicant for employment to be employed in the performance of this Contract, with respect to his or her hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of his or her race, religion, color, national origin, age, sex, height, weight, marital status, or physical or mental disability that is unrelated to the individual's ability to perform the duties of a particular job or position.
2. The Contractor agrees to include, in every subcontract entered into for the performance of this Contract, covenants not to discriminate in employment.
3. No individual shall be denied ingress or egress to the property covered in this Contract on the basis of race, religion, color, national origin, age, sex, height, weight, marital status, or physical or mental disability.
4. Contractor's breach of the covenants in VII.C.1, VII.C.2. and VII.C.3. shall be regarded as a failure to comply with this Contract and is cause for its termination.

D. Unfair Labor Practices. Under the State Contracts with Certain Employers Prohibited Act, MCL 423.321 *et seq.*, the Department must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under Section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A contractor of the State, in relation to the Contract, must not enter into a contract with a subcontractor, manufacturer, or supplier whose name appears in this register. Pursuant to MCL 423.324, the Department may void any contract if, after award of the contract, the name of contractor as an employer or the name of the subcontractor, manufacturer, or supplier of the contractor appears in the register.

VIII. MAINTENANCE

A. Alterations.

1. Alterations and repairs incidental to the operation of the concession may be made by the Contractor at the expense of the Contractor, but only with the specific written approval of the Department.

2. Any additions or improvements made to the buildings or surrounding premises shall become the property of the Department at the termination of this Contract, except as may be otherwise stated in the Contract.

B. Special Contractor Responsibilities.

1. The Contractor is responsible for disposing of Contractor-owned equipment.
2. Comply with all licensing and permit requirements, including but not limited to: Health Department, Fire Marshall, EGLE, LARA.
3. Submit copies of all approved permits and inspection reports to the Department Representative within seven (7) days of receipt.

C. Cleanliness.

1. The Contractor shall maintain standards of cleanliness which will reflect favorable public opinion on the Contractor and the Department.
2. The Department may perform or have others perform the duties of the Contractor under this section, if the Department determines the Contractor has failed to maintain an acceptable standard of cleanliness.
3. The Contractor shall pay 105% of the cost of such work, whether performed by the Department, or by others, at the discretion of the Department.
4. If the Department determines the need for cleaning after the Contractor returns the facility at the termination of this Contract, the Contractor must reimburse the Department at the above rate for all cleaning costs incurred during that cleaning.

D. Environmental.

1. The parties agree that they will not bring onto the Premises any hazardous substances, hazardous wastes, pollutants, asbestos, polychlorinated biphenyls (PCBs), petroleum or other fuels (including crude oil or any fraction or derivative thereof), other than fuel necessary to operate Contractor's backup generator on the Premises, or underground storage tanks (collectively Environmental Hazards).
2. For purposes of this Contract, the term hazardous substances shall mean the term as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, *et seq.*, and any subsequent or amended regulations thereto and as defined in the Natural Resources and Environmental Protection Act, MCL 324.20101, *et seq.*, and any subsequent amendment thereto. The term hazardous wastes shall be as defined in the Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.*, and any subsequent or amended regulations thereto.

3. For purposes of this Contract, the term pollutants shall be as defined in the Clean Water Act, 33 U.S.C. §1251, *et seq.*, and any subsequent or amended regulations thereto.
 4. Each party shall promptly notify the other party in writing of any environmental accident, claim, or complaint involving the Premises or the Contractor's activities thereon.
 5. The Contractor shall not use or permit the storage of any illuminating oils, gas, candles, oil lamps, turpentine, benzene, naphtha, or other similar substances of any kind, or any substances or things in any buildings erected or any property covered by the Contract except in buildings specifically designated for this purpose.
- E. **Waste.** The Contractor shall not use or permit the storage of any illuminating oils, gas, candles, oil lamps, turpentine, benzene, naphtha, or other similar substances of any kind, or any substances or things in any buildings erected or any property covered by the Contract except in buildings specifically designated for this purpose.

IX. EQUIPMENT AND SUPPLIES

A. Equipment.

1. The Contractor must equip the concession with all needed equipment.
2. All equipment and materials used in connections with the concession shall be supplied at the Contractor's own cost and expense.
3. No storage of equipment and/or materials shall be allowed at the Premises between harvest and planting seasons.

- B. **Alteration of Premises.** The Contractor shall not install, move, or alter any permanent or temporary equipment belonging to the Department in or about the Premises. The Contractor shall not modify water supply lines, waste lines, electric lines, or other utility, machinery or fixtures, except upon written permission from the Department.

X. EMPLOYEES

A. Employment.

1. The Contractor shall employ and maintain such help and labor as may be necessary to operate the concession in a manner acceptable to the Department.
2. Annually, the Contractor shall provide the Department with the names and position of all employees, agents, and volunteers.
3. With the prior approval of the Department, the Contractor may employ a manager who is satisfactory to the Department.

4. If, at any time, the Department shall be of the opinion that any employee, agent and volunteer of the Contractor has engaged in improper conduct on the Premises, the Department shall notify the Contractor and the Contractor shall take appropriate action to correct the employee, agent and volunteer related problem, including discharge of employee, agent and volunteer or reassigning such employee, agent and volunteer to duties not related to the park concession contract.

B. Moral Conduct.

1. The Contractor shall prohibit gambling, drinking, discourtesy to guests, and other illegal and/or undesirable acts by employees, agents, and volunteers, whether on or off duty on the Premises.
2. All employees, agents, and volunteers must use appropriate (“G” always rated) language and actions.
3. The Department reserves the ability to suspend or remove a concession employee, agent, and volunteer who has violated a law or park rule or performed inappropriate customer service. The Department will work cooperatively with the Contractor to ensure enough time for proper staffing.

C. Appearance.

1. All concession personnel who meet the public shall be neat, clean.
2. All Contractor employees, agents, and volunteers will assure proper hygiene is maintained, including, but not limited to, showering daily, maintaining a clean and acceptable appearance, and removal/covering of un-family friendly body piercings and tattoos.

D. Parking.

1. The Contractor, and all agents of the Contractor, shall park in areas designated by the Department.
2. The designated parking area may be changed by the Department to facilitate construction, to protect the public or the property.
3. The Department is not responsible for damage or theft to vehicles of the Contractor or the Contractor’s agents.

F. Special Conditions.

1. No motor vehicles will be allowed, without Department prior approval, except on paved surfaces intended for vehicle use.

2. This Contract does not provide Contractor with the ability to go directly to the front of the line when entering the Property. Contractor must wait in line with all other park guests.
3. A valid Recreation Passport is required by all Contractor owned, and employees, agents, and volunteers owned vehicles entering the Property.

XI. INSURANCE AND PERFORMANCE GUARANTEE

A. General.

1. The Contractor is required to provide annual proof of the minimum levels of insurance coverage as indicated below. The purpose of this coverage shall be to protect the State from claims which may arise out of or result from the Contractor's performance of services under the terms of this Contract, whether such services are performed by the Contractor, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.
2. The Contractor hereby releases, waives, discharges and covenants not to sue the State of Michigan, its departments, officers, employees and agents, from any and all liability to Contractor, its officers, employees and agents, for all losses, injury, death or damage, and any claims or demands thereto, on account of injury to person or property, or resulting in death of Contractor, its officers, employees or agents, in reference to the activities authorized by this Contract.
3. The insurance shall be written for not less than any minimum coverage herein specified or required by law, whichever is greater. All deductibility amounts for any of the required policies must be approved by the Department.
4. The Department reserves the right to reject insurance written by an insurer the State deems unacceptable.
5. Before starting work the Contractor must furnish to the Department, certificate(s) of insurance verifying insurance coverage. The certificate must be on the standard "ACCORD" form. All such certificate(s) are to be prepared and submitted by the insurance provider and not by the Contractor. All such certificate(s) shall contain a provision indicating that coverages afforded under the policies will not be cancelled or materially changed without thirty (30) days prior written notice having been given to Department.
6. The insurance must include as an additional insured – **State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents.**
7. The Contractor is required to provide Commercial General Liability Insurance with the following minimum limits:

General Aggregate (other than Products-Completed Operations): \$500,000

| | |
|------------------------------------------------|-----------|
| Products-Completed Operations Aggregate Limit: | \$500,000 |
| Personal & Advertising Injury Limit | \$100,000 |
| Each Occurrence Limit | \$100,000 |
| Fire Damage Limit - Any One Fire | \$50,000 |

B. Workers Compensation. To the extent as required by law, the Contractor is required to provide Worker's Disability Compensation, disability benefit or other similar employee benefit act with minimum statutory limits. Any citing of a policy of insurance must include a listing of the States where that policy's coverage is applicable. Any policy of insurance must contain a provision or endorsement providing that the insurers' rights of subrogation are waived. This provision shall not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

C. Automobile/Watercraft Insurance. The Contractor must maintain automobile and/or Watercraft insurance required by law for claims arising from ownership, maintenance, or use of a motor vehicle or any watercraft equipment as may be required by this Contract.

D. Proof of Insurance.

1. All required Insurance shall be kept in force during the period of the Contract and shall be written for not less than the limits of liability specified above.
2. The Contractor is responsible for making each subcontractor comply with these insurance requirements.
3. All certificates of Insurance, or changes in insurance coverage, require approval by the Department and shall be filed with the Department prior to the Contractor's occupancy of the Premises and operation of the concession, for each year of the Contract.
4. The certificates shall contain a provision that the coverage's afforded under the policies will not be modified or cancelled until after at least thirty (30) days written notice to the Department.
5. Failure to comply with all insurance requirements specified in this contract may result in termination of this Contract.

E. Performance Guarantee.

1. The Contractor, as a prior condition to any rights under this Contract, shall furnish a performance guarantee in a manner and amount acceptable to the Department.
2. All performance guarantees must be written in such a manner so that they provide continuous coverage for the term of the Contract or written so that they remain in effect throughout the entire operating season for each year of the Contract.

3. The guarantee shall be in continuous effect during the entire Contract period.
4. The condition of said guarantee shall be that the Contractor will faithfully keep and perform all covenants on the part of the Contractor as set forth in the Contract.
5. Proof of a guarantee currently in force must be kept continuously on file with the Department.
6. If such valid guarantee is not kept in force with written documentation provided to the Department, this Contract will be terminated by the Department.
7. **The guarantee shall contain a provision that it may not be cancelled except by written approval by the Department.** The performance guarantee requirement for this Contract is **\$500**.

XII. LIQUIDATED DAMAGES

- A. This Contract has been established to provide services, goods, or both, to the visitors of the Department's facilities and the citizens of the State of Michigan. The Contractor's failure to comply with the various provisions of the Contract may cause a loss of services or goods to those visitors, and also may cause untimely delays in the administration of this Contract, depriving the Department of the agreed upon services or causing a loss of revenue. The Contractor's failure to comply with the provisions of this Contract will subject the Contractor to a system of liquidated damages as stated below.
- B. **Violations.**
1. The Contractor will be provided with a written "Violation Notice" stating which provision of this Contract has been violated and a date by which the stated violation must be corrected.
 2. If the violation has not been corrected by the date specified, the Contractor agrees to pay the Department liquidated damages in the sum of \$50 per day, per violation.
 3. If after the seventh (7th) day, the violation is still not corrected, the Contractor agrees to pay an additional \$100 per day, per violation. This fee shall increase \$100 per violation every seven (7) days, until corrected.
 4. If during the contract period a "Violation Notice" is issued for recurrent violation(s) the initial sum of the liquidated damages shall be \$100 per day, per violation; and increase every seven (7) days in the sum of \$200 per violation, per day.
 5. The system of progressive liquidated damages is not intended to be in lieu of the Contractor performing according to the Contract provisions.
 6. This liquidated damage provision does not waive or modify any rights the Department must terminate this Contract pursuant to Section IX for violations of this Contract's terms.

7. The Department reserves the right to waive liquidated damages.

XIII. EXTENSION / RENEGOTIATION / MODIFICATION

A. Extension and Renegotiation.

1. This Contract is subject to an annual review by the Department.
2. At the expiration date of the Contract, the Department, at its option, may grant an extension of the Contract, or renegotiate the Contract with the Contractor.

B. Modification.

1. This Contract shall not be modified by or interpreted by reference to any course of dealing or usage of trade and shall not be modified by any course of performance.
2. No modifications of this Contract are effective unless in writing, signed by the parties, and executed in the same manner as this Contract was originally executed.
3. A party may waive or release the other party's breach or default only in writing.

- C. Severability.** Each provision of this Contract is severable from all other provisions of this Contract, and if one or more of the provisions of this Contract are declared invalid, the remaining provisions of the Contract remain in full force and effect.

IX. TERMINATION

- A. Act of God.** Whenever, as a result of any cause beyond the Department or Contractor's control (such as fire, flood, windstorm, or other acts of God or emergency declared by federal or state governments), the Department or the Contractor is prevented from complying with any obligation of this Contract, the Department or Contractor shall not be liable for any damages for default of this Contract. In the event of an Act of God causing noncompliance with the Contract, at the option of the Department, this Contract shall terminate, and each party hereto shall be released from further obligation under the Contract.

B. Cancellation.

1. In the event that the Contractor wishes to cancel this Contract, Contractor may do so only with the prior written approval of the Department.
2. If the cancellation request is approved, it is understood that the Contractor will not be considered as a prospective bidder for that concession until after it has been determined that no other party is interested.
3. The Contractor may not cancel, and the Department may not approve any request to cancel this Contract where the effective date for cancellation falls during any operating season established in accordance with Section II.D. above.

C. Termination.

1. Upon the failure of the Contractor to comply with any provision, stipulation, or condition of the Contract, including the regular payment of rent and fees as agreed upon, this Contract and concession may be terminated at the option of the Department.
2. In the event of the termination of this Contract for any cause, the Contractor shall be liable for that portion of the Contract Fee, Pro-rated to the effective date of such termination (see Section II B).

D. Cancellation for Convenience.

1. The Department may cancel this Contract for its convenience, in whole or part, if the Department determines that such a cancellation is in the Department's best interest.
2. Reasons for such cancellation shall be left to the sole discretion of the Department and may include, but not necessarily be limited to:
 - a. The Department no longer needs the services or products specified in the Contract.
 - b. Changes in laws, rules, or regulations that make implementation of the Contract services no longer practical or feasible.
 - c. Change in ownership of the State property or damage to the Premises.
 - d. Unacceptable prices for additional services requested by the Department.
3. The Department may cancel the Contract for its convenience, in whole or in part, by giving the Contractor written notice thirty (30) days prior to the date of cancellation.
4. If the State chooses to cancel this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those services that are cancelled.

E. Vacating Premises.

1. The Contractor shall vacate the Premises by the expiration date of the Contract.
2. If termination shall occur, then the Contractor shall vacate the Premises within fifteen (15) days of termination.
3. No personal property on which the Department has placed a lien shall be removed from the Premises until all Contract Fees and other sums owed to the Department have been paid.

- F. **Waiver of Default.** The failure of a party to insist upon strict adherence to any term of this Contract does not deprive the party of the right to insist upon strict adherence to that term, or any other term, of this Contract.
- G. **Integration.** This Contract constitutes the complete and exclusive agreement and understanding of the parties as it relates to this transaction. This Contract supersedes all proposals or other prior agreements and all other communications between the parties relating to this transaction.

SAMPLE

**DEPARTMENT
STATE OF MICHIGAN
DEPARTMENT OF NATURAL RESOURCES**
WITNESSED BY:

Signature Date
Printed Name: _____

Ronald A. Olson, Chief Date
DNR, Parks and Recreation Division

STATE OF MICHIGAN, COUNTY OF INGHAM

The foregoing instrument was acknowledged before me this _____, day of _____, 2021 by Ronald A. Olson, Parks and Recreation Division Chief, for the Michigan Department of Natural Resources.

DIANE MARIE MUNSON, Notary Public
My Commission Expires: 07/04/2022
Acting in the County of: Ingham

CONTRACTOR

IN WITNESS WHEREOF, the parties to this Concession Contract subscribe their names on the date set forth below:

Each of the signatories below herein represents and warrants that the execution, delivery, and performance of this Agreement has been duly authorized and signed by a person who has legal authority to sign on behalf of its business or organization as named in this Agreement.

Witness

Contractor

Printed Name

Printed Name

Witness Signature Date

Contractor Signature Date

Title

STATE OF MICHIGAN, COUNTY OF _____ The foregoing instrument was acknowledged before me this _____, day of _____, 2021 by _____, for Contractor.


_____, Notary Public
State of Michigan, County of _____
My Commission Expires: _____
Acting in the County of: _____


Ortonville Recreation Area - Ag Lease Area (20.9 acres)

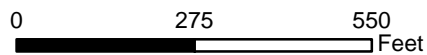
ATTACHMENT A



Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

 Lease Fields

 State Park Boundaries



MICHIGAN DEPARTMENT OF NATURAL RESOURCES
PARKS & RECREATION DIVISION
STEWARDSHIP UNIT