



Michigan Department of Natural Resources

OPERATING AGREEMENT NO: MISC-PRD-_____

BETWEEN

THE STATE OF MICHIGAN, AS PERMITTER

AND

_____, AS PERMITTEE

This Operating Agreement, hereinafter called "Agreement", is entered into by the State of Michigan through its **Department of Natural Resources** (DNR), hereinafter called "DNR" and/or "Permitter," and _____, hereinafter called "Permittee," whose address is _____.

WHEREAS, pursuant to Section 503(1) of Public Act 451 of 1994 (1994 PA 451), as amended, MCL 324.503(1), the DNR is required to: protect and conserve the natural resources of the State; provide and develop facilities for outdoor recreation; prevent the destruction of timber and other forest growth by fire or otherwise; promote the reforestation of forest lands belonging to the State; prevent and guard against the pollution of lakes and streams within the State and enforce all laws provided for that purpose with all authority granted by law; and foster and encourage the protection and propagation of game and fish.

WHEREAS, the Purpose of this Agreement is to allow Permittee the non-exclusive use of State Lands for the purpose of traversing state trails to commercially load and unload equipment and/or materials to be used in construction projects.

WHEREAS, the Director of the DNR, or his or her lawful designated Representative, has determined that the purpose of this Agreement is necessary to implement Part 5 of 1994 PA 451, as amended, because use of State lands in a regulated fashion will protect and conserve the natural resources and provide facilities for outdoor recreation.

WHEREAS, Permittee desires to commercially load and unload equipment and/or materials to be used in construction projects utilizing State Lands described as the **Betsie Valley Trail**, located within the State of Michigan.

THEREFORE, Permitter and Permittee, for consideration specified in this Agreement, agree to the following terms and conditions:

1. **DESCRIPTION OF PREMISES** - Permitter hereby grants to Permittee the right to non-exclusive commercial use of the Betsie Valley Trail, (see **Attachment A**),

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ONLY for the purpose of loading and unloading equipment and/or materials to be used in construction projects to be performed for private land owners.

This Agreement is subject to the DNR's public notice process.

COMMERCIAL APPLICATION PROCESS

NOTE: Before any commercial use is approved by Permitter:

- Permittee must first submit application to the Betsie Valley Trailway Management Council (BVTMC). (see **Attachment B**)
- BVTMC will meet on site with both property owner and Permittee.
- If approved by BVTMC, application will be provided to Permitter for processing.
- Signed commercial Operating Agreement will be binding by both property owner and Permittee.

USE OF PREMISES

A. Permittee hereby acknowledges that the use and occupancy of the Premises shall be subject to the provisions of 1994 PA 451, as amended, and confined to the following specific uses:

1) _____description of project entered here)_____

2) Property Owner: _____

() _____

3) Access to the Trail will be via Sunkissed Drive only. No permission is given to drive on the trail in the Railroad Point Natural Area, in the Crystal Lake BAS, or on other portions of the Betsie Valley Trail

4) No materials or equipment shall be allowed dropped and/or stored on the trail or trail easement.

5) Storage of equipment (including overnight storage of trailers or vehicles), placement of signs, or use of construction and/or camping trailers without prior written approval of Permitter is prohibited.

6) **Permittee must contact BVTMC at least three(3) business days prior to commercial use to coordinate day/time of commercial use.** Failure to do so will result in Permittee vehicles being turned away from the site.

Permittee shall contact: _____, Trail Care Coordinator
() _____

Or

Benzie County Administrator
(231) 882-0558

_____ INIT

- 7) In an effort to protect the integrity of the trail system, Permitter shall approve access in and out of site prior to use.
- 8) Permittee shall provide photo documentation of the condition of the trail site before project commences. At project completion, Permitter will provide photo documentation of any damages considered to be the Permittee responsibility.

Permittee agrees that it will be responsible for any damage it causes to the Premises during the course of its commercial operation. Permittee agrees to notify Permitter immediately if any site damage is caused by Permittee. Upon notice, Permitter will determine if damage needs repair before any further construction use occurs.

Repairable damage is described as any damage that exceeds the normal wear and tear expected from the lawful and proper use of an improved Trail. Permittee agrees to repair the damage, to the satisfaction of Permitter, at its own expense.

- 9) Permittee agrees that their commercial use shall not impede recreational activities of the Betsie Valley Trail
 - 10) Permittee shall provide a cash Performance Bond in the amount of **\$500** to Permitter, which shall be held to guarantee Trail and/or roadway repair funds are available if damage caused by Permittee shall occur. Such Performance Bond shall be current and in place for the life of this Operating Agreement and shall not be refunded until approved by BVTMC.
 - 11) No commercial use will occur when Permitter has temporarily closed the Trail.
 - 12) No equipment repair services will be allowed on site. Equipment must be removed to Permittee place of business for completion of actual repairs.
 - 13) Permitter reserves the right to adjust the amount of commercial activity as necessary to reduce facility and/or resource impacts or user conflicts, including but not limited to: noise, congestion, dust, wildlife/fish habitat, site events, and/or emergency services.
 - 14) Permittee agrees that Permitter is not liable for any damage to equipment or materials caused during use of the site.
 - 15) Any other use which is agreed to in writing by both parties.
- B. Permittee shall obtain Permitter's prior consent, in writing, to use the Premises for any purpose not listed in this Section. Permitter may terminate this Agreement if, at any time, Permittee uses the Premises, without express written permission by Permitter, for purposes other than those enumerated in this Section.
- C. **PROHIBITED ACTIVITIES** - The following activities on the Premises are prohibited:
- 1) Commercial use of the Trail while site is closed.

- 2) Authorizing public use of Premises in violation of any State law, order or regulation.
- 3) Use of non-native species in any re-vegetation effort on the Premises.
- 4) Any clearing activity inside or outside of the Premises.
- 5) Dumping or disposal of garbage/trash, spare parts, hazardous material, scrap metal and other waste onto the Premises.
- 6) Disposal of trees, tree tops, branches, roots, stumps, and other vegetative debris onto the Premises.
- 7) Authorization of "Naming rights" for any portion of the Premises without prior Permitter approval.

D. Permitter may terminate this Agreement if prohibited activities occur on the Premises at any time during the term of this Agreement.

2. **WASTE** - Permittee agrees not to commit, or allow to be committed, any waste or nuisance on the Premises and will not use, or permit to be used, the Premises for any unlawful purpose.

3. **PERMITTER'S OPERATIONS** - Permittee covenants that its use of the Premises is non-exclusive and shall, at no time, interfere with the uses or operations of Permitter or the Public (including other Permittees) on the Premises. Permittee covenants that its use of the Premises shall, at no time, interfere with the Public's use of any State land that may be adjacent to the Premises. Permittee shall not prevent Permitter, its agents, or the public from crossing the Premises to access the adjoining State lands.

A. **PERMITTEE REQUIREMENTS:** Permittee agrees to the following requirements:

1. All Permittee equipment must be clearly identified with business name.
2. All Permits (DEQ, etc) must be approved and in place prior to commercial use of the Trail. Permittee shall make copies of all permits available to Permitter upon request.
3. Permission to commercially use the Trail shall expire on the date of this Agreement, unless terminated sooner.
4. Only vehicles actively involved in delivering and/or picking up material/equipment are allowed on the Trail. Workers may not drive on the Trail to gain access to the work site.
5. Use not in compliance with the Betsie Valley Trailway Ordinance and/or Betsie Valley Trail Management Agreement is not permitted.
6. Permittee shall maintain the area under Agreement in a clean and usable area.
7. The rights accruing under this Agreement shall not be assigned or transferred without the written permission of the Permitter.
8. Within three(3) business days of project completion, Permittee shall notify BVTMC of project completion.

B. PERMITTER'S REQUIREMENTS:

1. Permitter agrees to work in cooperation with the BVTMC in dealing with commercial use of the Betsie Valley Trail.
4. **ADMINISTRATION** - The Permitter's Representative is Parks and Recreation Division (PRD) Cadillac District Recreation Specialist. The Permittee shall designate in writing to the Permitter's Representative one(1) person and one(1) alternate person responsible to be the contact person for the Permitter regarding the administration of the Agreement. This person shall be authorized to make decisions regarding the maintenance and operation of the Premises.
5. **CONDITION OF PREMISES** - Permittee stipulates, represents and warrants that Permittee has examined the Premises, and that they are utilizing the Premises in it's "as is" condition. Permittee acknowledges that it has not made an independent environmental assessment of the Premises.

Permittee agrees that it will be responsible for any damage it causes to the Premises during the course of its' commercial operation. Permittee agrees to repair the damage, to the satisfaction of Permitter, at its' own expense. (see Section 13)

Permittee acknowledges that the Premises or portions thereof may be subject to restrictions or closures in the event that endangered species are present.

6. **TERM** - Permitter shall grant non-exclusive use of the Premises to Permittee for a _____(____) (month/year) term of possession to complete the approved project, beginning upon actual possession at 12:01 a.m. on _____, and ending at midnight on _____, or such later date as provided in Section 8. The beginning and ending Agreement term dates may be altered by mutual written consent to reflect the actual date of occupancy. If the occupancy date is changed, this Section shall also be changed accordingly.
7. **RENT** - Permittee shall pay rent, and/or goods or services, to Permitter at the following yearly rates:

\$ _____

Permitter reserves the right to review and adjust fees based on changes and the scope of the Permittee's operation or revisions of the Permitter's fee schedule. Payment shall be sent to: **Cheboygan Field Office, PRD Concession/Lease Manager, 120 'A' Street, Cheboygan, MI 49721.**

Checks should be made payable to the State of Michigan. Payment is due upon signing of Agreement. Failure to pay rent and provide required Performance Bond will result in non-issuance of commercial Operating Agreement.

8. **OPTION TO RENEW** - The initial term of this Agreement may be extended for additional terms as shall be agreed to between the parties, if Permittee gives Permitter written notice before this Agreement or any extension expires, and agrees to any additional terms and rent modifications proposed by Permitter. Permitter's written consent is necessary for any Agreement term extension. Permitter's rental rate for the Premises during an extended term will be re-negotiated prior to renewal.

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9. **SERVICES BY PERMITTEE** - Permittee shall furnish the following services at its own expense:
- A. Permittee will provide and maintain in good condition its' equipment used commercially at the Premises, at its' sole expense.
 - B. Permittee shall maintain standards of cleanliness while performing services on State Lands that will reflect favorable public opinion on the Permittee and Permitter. If Permitter determines that the Permittee has failed to maintain an acceptable standard of cleanliness, and, if after forty-eight(48) hours or two(2) working days, following verbal and written notification by the Permitter, the problem is not rectified to the satisfaction of Permitter, Permitter may perform or have the duties of the Permittee performed by others at Permittee's sole expense.
10. **ASSIGNMENT AND SUBLEASE** - Permittee shall neither assign, sublet, nor grant any license for use of the Premises, or any part thereof. Permittee may, however, enter into maintenance agreements with third parties to fulfill Section 9 above.
11. **ALTERATIONS** - No alterations, modifications, or improvements shall be made to the Premises without Permitter's specific written consent, which Permittee shall request at least thirty(30) days in advance of such alteration, modification, or improvement. At the expiration or cancellation of the Agreement, all alterations, modifications, and improvements to the Premises shall become the property of Permitter unless otherwise agreed to in writing by Permitter. In the event that the parties agree that Permittee may remove Permittee improvements, Permittee shall restore the Premises to its original condition.
12. **LAWS, CODES AND PERMITS** - Permittee shall comply with all applicable federal, state or local regulations, including, but not limited to, all environmental laws, and codes and will obtain any necessary permits in connection with its use of the Premises.
- Furthermore, Permittee shall comply with all acquisition and development grant obligations existing at the time of this Agreement.
13. **DAMAGE and REPAIRS** - Permittee shall make repairs to the Premises resulting from damage that exceeds the normal wear and tear expected from the lawful and proper use of the Premises. Permittee agrees to notify Permitter within twenty-four(24) hours of any site damage caused.
14. **INSPECTION of PREMISES** - Permitter and Permitter's agents and employees shall have the right at all reasonable times during the term of this Agreement, and any renewal thereof, to enter the Premises for the purposes of making any inspections, repairs, additions, or alterations as may be deemed appropriate by Permitter for the preservation of the Premises.
15. **INDEMNIFICATION** - Permittee hereby covenants and agrees to indemnify and save harmless, the **State of Michigan** and **BVTMC**, their 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 (1) issuance of this Agreement; (2) the activities authorized by this Agreement; and (3) the use or occupancy of the

Premises which are the subject of this Agreement by the Permittee, its employees, contractors, or its authorized representatives.

16. **LIABILITY** - Permittee 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 Permittee, 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 Permittee, its officers, employees or agents, in reference to the activities authorized by this Agreement.

Permittee shall report to Permitter and BVTMC any incident that may result in personal injury or property damage. Permittee shall make complete reports in writing to Permitter on forms provided by the Permitter (see **Attachment C**) within twenty-four(24) hours of any such incident. Incidents resulting in serious personal injury, death, or property damage estimated to exceed \$300 are to be reported to the Permitter immediately, by telephone or in person. A written report is to follow as described above.

17. **INSURANCE:** Permittee shall provide certificates of insurance listing the State of Michigan, its departments, boards, agencies, commissions, officers, and employees as additional insureds, to Permitter within thirty(30) calendar days following the execution and delivery of this Agreement to Permittee, and every year thereafter, for the following insurance coverage. The insurance policies shall provide that they may not be modified, canceled, or allowed to expire without thirty(30) days' prior written notice given to Permitter.

- A. Permittee shall obtain General Liability Insurance, naming Permitter, its officers and employees as additional insureds and protecting against all claims, demands, suits, actions or causes of action and judgments, settlements or recoveries, for bodily injury or property damage arising out of a condition of the Premises, or arising in connection with or as a direct or indirect result of the Permittee's use and occupancy of the Premises or its exercise of the right and privileges granted in the Agreement. Permittee agrees to maintain a minimum policy limit, in the amount of:

\$1,000,000 per occurrence for property damage

\$1,000,000 per occurrence for bodily injury

\$1,000,000 aggregate

\$ 500,000 Personal & Advertising Injury

Certificate must include the following language: State of Michigan, its Departments, Boards, Agencies, Commissions, Officers, and employees are listed as Additional Insureds.

- B. Permittee shall obtain Workers' Compensation Insurance for Permittee's employees' claims under Michigan Workers' Compensation Act or similar employee benefit act or any other state act applicable to an employee, along with Employer's Liability Insurance for claims for damages because of bodily injury, occupational sickness or disease or death of an employee when workers compensation may not be an exclusive remedy, subject to a limit of liability of not less than \$100,000 each accident.
- C. Permittee shall maintain automobile no-fault coverage as required by law.

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- D. Permitter reserves the right to reassess the minimum policy limits requirement set forth above every five(5) years, or as determined necessary by Permitter.
18. **NON-DISCRIMINATION** - Permittee, its agents, employees and subcontractors shall comply with the Elliott-Larsen Civil Rights Act, 1976 PA 453 as amended, MCL 37.2101 *et seq.*; MSA 3.548 (101) *et seq.*; the Persons with Disabilities Civil Rights Act, 1976 PA 220, as amended, MCL 37.1101; MSA 3.550 (101) *et seq.*, and all other federal, state and local fair employment practices and equal opportunity laws and covenants that it shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to his/her hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of his/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. Permittee agrees to include in every subcontract entered into for the performance of this Agreement, this covenant not to discriminate in employment. A breach of this covenant is a material breach of this Agreement. This covenant is cross-referenced in Section 22.
19. **UNFAIR LABOR PRACTICES** - Permittee shall comply with the Employers Engaging in Unfair Labor Practices Act, 1980 PA 278, as amended, MCL 423.321 *et seq.*; MSA 17.458(21) *et seq.* This covenant is cross-referenced in Section 22.
20. **DISPUTES** - Except as otherwise provided for in this Agreement, any dispute among any multiple Permittees that have executed Agreement with Permitter to maintain and operate portions of the contiguous Premises, that concern obligations and benefits arising under this Agreement, which is not disposed of by this Agreement, shall be decided by DNR Director or director's authorized designee, who shall make a written decision and mail or otherwise furnish a copy of the decision to all of the parties.
- A. The written decision of the Director or Director's authorized designee provided for above shall be binding upon the parties and shall constitute a final decision of the agency.
- B. This "Disputes" clause does not preclude consideration of questions of law in connection with decisions provided for in the dispute subparagraph above. Nothing in this Agreement, however, shall be construed as making final the decision of any administrative official, representative or board on the question of law.
22. **CANCELLATION** -
- A. Permitter may cancel this Agreement provided Permittee is notified in writing at least three(3) days prior to the effective date of cancellation and any one of the following occur:
- 1) The Premises are no longer being used for the purposes identified in this Agreement.

- 2) Permittee provided the Permitter with information, in its application for this Agreement or at any time during the Agreement term, that was false or fraudulent.
- 3) Permittee fails to perform any of its obligations under this Agreement, and Trail is not made usable within three(3) calendar days and completely repaired/restored within seven(7) calendar days after written notice of default to Permittee.
- 4) Permittee or any subcontractor, manufacturer or supplier of Permittee appears in the register compiled by the Michigan Department of Labor and Economic Growth, pursuant to 1980 PA 278, as amended, MCL 423.321 et seq.; MSA 17.458(21) et seq. (Employers Engaging in Unfair Labor Practices Act). This covenant is cross-referenced in Section 19.

B. Permitter may cancel this Agreement provided Permittee is notified, in writing, at least ninety(90) days prior to the effective date of cancellation, if Permitter deems cancellation is in the best interest of the State of Michigan.

23. **QUIET ENJOYMENT** - Upon payment of the rent and the performance of the conditions outlined herein, Permittee may peacefully and quietly have, hold, and enjoy the Premises, provided that the use of the Premises by Permittee is maintained open to the general public.
24. **RESERVATION** - Permitter reserves the right to grant rights-of-way and easements of any kind and nature over and across said Premises and to grant or exercise all other rights and privileges of every kind and nature not herein specifically granted.
25. **HOLDOVER TENANCY** - If Permittee remains in possession of the Premises after the natural expiration of this Agreement, with the consent of Permitter but without a renewal of this Agreement, pursuant to Section 8, a new tenancy from year-to-year shall be created between Permitter and Permittee. The new tenancy shall be subject to all of the terms and conditions of this Agreement.
26. **NOTICES** - Any notice(s) to Permitter or to Permittee required by this Agreement shall be complete if submitted in writing and transmitted by personal delivery (with signed delivery receipt), or certified or registered mail, return receipt requested. Unless either party notifies the other in writing of a different mailing address, notices to Permitter and Permittee shall be transmitted to the addresses listed below:

To PERMITTER:

Land Administering Division (LAD)
 State of Michigan
 Department of Natural Resources
 Chief, Parks and Recreation Division
 PO Box 30257
 Lansing, MI 48933

and LAD Administrator

State of Michigan
 Cadillac Operations Service Center
 8015 Mackinaw Trail
 Cadillac, MI 49601
 Attn: PRD Recreation Specialist
 (231) 775-9727

_____ INIT

TO PERMITTEE:

and Permittee Alternate

Attn: _____

() _____

- 27. **NOTICES – EFFECTIVE TIME/DATE** - Notices shall be deemed effective as of 12:00 noon, Eastern Standard Time (EST) on the third (3rd) business day following the date of mailing, if sent by mail. Business day is defined as any day other than a Saturday, Sunday, or legal holiday. A receipt from the U.S. Postal Service, or comparable agency performing such function, shall be conclusive evidence of the date of mailing.
- 28. **INTERPRETATION** - This Agreement shall be interpreted in accordance with the laws of the State of Michigan.
- 29. **NO UNNAMED ENTITIES/ PARTNERS** - Permittee covenants that there are no unnamed entities or partners having authority over the operation or management of the Premises and further represents that Permittee is the only entity responsible for carrying out Permittee's responsibilities.
- 30. **SEVERABILITY** - Should any provision of this Agreement, or any addenda thereto, be found to be illegal, or otherwise unenforceable by a court of law, such provision shall be severed from the remainder of the Agreement, and such action shall not affect the enforceability of the remaining provisions of the Agreement.
- 31. **REQUIRED APPROVALS** - This Agreement shall not be binding or effective on either party until executed (and witnessed and notarized as necessary) by Permitter and Permittee.
- 32. **ENTIRE AGREEMENT AND ENCLOSURES** - This Agreement constitutes the entire agreement between the parties with regard to this transaction and may be amended only in writing and executed in the same manner as this Agreement was originally executed.

_____ INIT

**PERMITTER
WITNESS(ES) TO PERMITTER**

**STATE OF MICHIGAN
BY THE
DEPARTMENT OF NATURAL RESOURCES**

Witness(es)

Witness Signature

Date

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

Date

(please print name)

Witness(es)

Witness Signature

Date

(please print name)

STATE OF MICHIGAN, COUNTY OF _____

The foregoing instrument was acknowledged before me on this _____, day of _____, 2014, by Ronald A. Olson, Parks and Recreation Division Chief, for the Michigan Department of Natural Resources.

(please print name), Notary Public

My Commission Expires: _____

Acting in the County of: _____

PERMITTEE –

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

WITNESS TO PERMITTEE

Witness

(please print)

Witness Signature

Date

Permittee

(please print)

Permittee Signature

Date

Title: _____

Federal ID No. _____

Witness

(please print)

Witness Signature

Date

Permittee

(please print)

Permittee Signature

Date

Title: _____

Federal ID No. _____

State of Michigan, County of _____

The foregoing instrument was acknowledged before me on this _____ day of _____, 2014, by _____, for Permittee.

_____, Notary Public

State of Michigan, County of _____

My Commission expires: _____

Acting in the County of _____

INIT

R.R. PT

