



State of Delaware
Department of Natural Resources and Environmental Control
Delaware Division of Parks and Recreation
89 Kings Highway
Dover, Delaware 19901

April 25, 2016

TO: ALL STATE AGENCIES, SCHOOL DISTRICTS, MUNICIPALITIES, VOLUNTEER
FIRE COMPANIES AND POLITICAL SUBDIVISIONS

ISSUED BY: Susan Risbon
Paralegal I
302-739-9225

SUBJECT: **AWARD NOTICE**
CONTRACT NO. NAT16004_AGLEASE
AGRICULTURAL LAND LEASES AT WHITE CLAY CREEK STATE PARK
AND TRAP POND STATE PARK

TABLE OF CONTENTS
OF
KEY CONTRACT INFORMATION

1. CONTRACT PERIOD.....	2
2. VENDORS (BY SITE LOCATION).....	2
3. PRICING (BY SITE LOCATION).....	2
4. ADDITIONAL TERMS AND CONDITIONS.....	3
5. SPECIAL PROVISIONS/COVERED CROP REQUIREMENTS.....	7

KEY CONTRACT INFORMATION

1. CONTRACT PERIOD:

[\(Return to Table of Contents\)](#)

Each Tenant’s contract shall be valid for **from May 1, 2016 to December 31, 2023.**

The State reserves the right to extend this contract on a month-to-month basis for a period of up to three (3) months after the term of the full contract has been completed. In the event of an extended re-procurement effort and the contract’s available renewal options have been exhausted, Division of Parks and Recreation reserves the right to extend the contract. If exercised, the extension shall be for a reasonable period of time as mutually agreed to by the Division and the contractor at the same terms, conditions, provisions, and pricing in order to complete the procurement process and to transition to the new contract.

2. VENDORS (BY SITE LOCATION):

[\(Return to Table of Contents\)](#)

WHITE CLAY CREEK STATE PARK

Warihay Farms and Harvesting
580 North Colebrook Road
Manheim, Pennsylvania 17545
Phone: 717-664-0810
Fax: 717-664-2436
Email: warihay@warihay.com

TRAP POND STATE PARK

Vincent Farms, Inc.
P.O. Box 219
Delmar, DE 19940
Phone: 302-875-5707
Fax: 302-875-5723
Email: ray@vincentfarmsincl.com

3. PRICING (BY SITE LOCATION):

[\(Return to Table of Contents\)](#)

Prices will remain firm for the term of the Lease.

WHITE CLAY CREEK STATE PARK:

Annual Rental Fee: \$14,610.23 based on \$74.61 per acre for approximately 195.82 acres

TRAP POND STATE PARK:

Annual Rental Fee: \$30,723.22 based on \$377.76 per acre for approximately 81.33 acres

ADDITIONAL TERMS AND CONDITIONS

[\(Return to Table of Contents\)](#)

1. PAYMENT:

The annual rental fee shall be due on or before January 1st for that lease year during the term of the lease. Failure to pay lease rental fee timely may result in lease termination.

2. LAND USAGE:

The Land covered under this lease is to be used for the specific agricultural purposes as noted on the map and for no other purposes. Tenant covenants and agrees that it will farm in accordance with generally accepted farming practices and procedures. Failures to do so will be cause for immediate termination of the lease.

3. ASSIGNMENT OF LEASE:

Tenant shall not assign any interest in this lease without prior written consent of the Division. Tenant shall not sublease any part of the leased land.

4. SECURITY:

Tenant covenants and agrees that they will in no way interfere with the security of the Division's ability to carry out its mission.

5. SECURITY INTEREST:

Tenant hereby grants to Division a security interest in the agricultural commodities grown by Tenant on the leased land during the term of this Lease, whether such crops are standing, grown, in storage or in transit, and in any proceeds from the sale, exchange, transfer or other disposition of the collateral or proceeds, to ensure the performance by Tenant under all agreements with Division, as well as payment of any and all sums now, heretofore and hereafter owing to Division by Tenant as a result of Tenant entering into this Lease with Division.

6. USE OF LEASED LANDS:

The leased land may be used for producing agricultural commodities, including, but not limited to, grain, vegetable and forage crops and pasture. TENANT agrees to follow good farm management practices and to farm the land in a good and reasonable manner to avoid degradation of the environment and further agrees to the following:

- a) Division reserves the right to cancel this lease on or before January 31 of each year by written notice, given at least sixty (60) calendar days prior to January 31 for non-performance of the contract.
- b) Tenant shall enter into a Conservation Plan (the "**Conservation Plan**") for the leased land with the Natural Resources Conservation Service. The Plan shall contain instructions for management of soil fertility, nutrients, erosion control, agricultural chemicals, integrated pest management, and wildlife concerns. The Conservation Plan shall follow all appropriate state regulations. A copy of the Conservation Plan shall be submitted to the Division prior to the end of the first year of the lease term.

Award Notice

Contract No. NAT16004_AGLEASE

- c) Tenant shall enter into a Nutrient Management Plan (the “**Nutrient Management Plan**”) for the leased land with the Delaware Department of Agriculture. A copy of the Nutrient Management plan shall be submitted to the Division prior to the end of the first year of the lease term.
- d) Tenant shall use all reasonable precautions to avoid the establishment of any noxious weeds, including Johnson grass, Canada thistle, bur cucumber, giant ragweed, Texas panicum, Palmer amaranth, and any additional noxious weeds as specified under Delaware State Law. If Tenant fails to control said vegetation, then Division may terminate this Lease and may contract with an independent vendor to apply appropriate control measures to eradicate said noxious weeds and the cost of such measures shall be the responsibility of the Tenant.
- e) Tenant shall submit to Division, upon request, a list of all agricultural pesticides, herbicides and other chemical sprays to be used on the leased land. All such products shall meet Federal and State standards and, if required, be applied by certified applicators in the appropriate manner and rate as per label instructions. Violation of Federal, State pesticide, herbicide or other chemical spray laws, rules and regulations shall be a condition to cancel the Lease. Division reserves the right to prohibit the use of certain agricultural chemicals, including, but not limited to, fertilizers, herbicides, and pesticides on the leased land. Tenant shall be required to notify the Park Superintendent specifically responsible for the leased land within forty-eight (48) hours prior to any spraying on leased land. The use of carbofuran (Furadan) in liquid or granular form is prohibited on Division lands.
- f) Any Division leased lands designated as hay fields shall not be cut prior to July 1st for each growing season.
- g) Dumping, depositing, abandoning, discharging, releasing, or storing of any gaseous, liquid or solid hazardous wastes, substances, materials, or debris of whatever nature on, in, over, or under the ground or into surface or ground water is prohibited, except as permitted by law.
- h) Excavation, digging, removing, or selling of loam, peat, gravel, soil, rock, sand, or any similar material by the Tenant is prohibited. Cover crops are required on Division leased lands. Refer to the cover crop requirements included herein.
- i) Tenant shall submit to Division an annual harvest report indicating type and amount of agricultural commodity harvested from the leased land. Harvest report shall be furnished to the Division prior to January 1st annually.
- j) Tenant may be permitted to participate in Farm Service Agency (“**FSA**”) or similar agricultural assistance programs. Participation in these programs is subject to the written approval of Division.
- k) Tenant shall not construct or install any structures on the leased land without prior written approval of Division.
- l) Tenant may place a well on leased land with prior written approval of Division. Such well would be a fixture to the land and becomes property of Division upon termination of the lease. Tenant waives and releases all claims and rights against Division with respect to the costs of installing and/or operating such well, the soundness of new or existing wells, and water quantity and quality associated with such wells.
- m) Tenant may install an irrigation system on leased land with prior written approval of Division. All aboveground pipes, pumps, power units, wheeled irrigation units and any other related equipment

Award Notice

Contract No. NAT16004_AGLEASE

is property of Tenant. Upon termination of the Lease, Tenant shall remove such property, subject to a removal plan approved by Division, or convey such property to the succeeding Tenant. Tenant waives and releases all claims and rights against Division with respect to the costs of installing and/or operating such irrigation system.

- n) Division is not responsible for wildlife damages to agricultural commodities on the leased land.
- o) All hunting and trapping rights and privileges and all land use except agricultural leased rights are reserved by Division.
- p) Tenant shall use products and/or services that are provided by Agricultural Businesses which are certified for Best Management Practices (BMP), Good Food Handling Practices (GHP) and Good Agricultural Practices (GAP) through the Delaware Department of Agriculture or surrounding State's equivalent program.

7. RESERVED RIGHTS:

Division reserves the following rights related to the leased land:

- a) Reserves the right to grant easements and rights of way across or upon the leased land. Annual rental fee shall be reduced to reflect any leased land acreage taken out of production.
- b) Reserves the right to create pathways, buffer strips, and hedgerows or to divert land for other DIVISION uses. Annual rental fee shall be reduced to reflect any leased land acreage taken out of production.
- c) Reserves the right of ingress and egress onto and over the leased land for inspection purposes, for enforcement of all laws, rules and regulations of DIVISION and for any other lawful purpose.

8. HOLD HARMLESS

Tenant agrees to exercise the rights herein granted at its own risk fees, arising from or in any way connected with injury to or death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the leased land, regardless of cause, unless due to the gross negligence or willful misconduct of any of the Indemnified Parties.

9. DAMAGES TO PROPERTY:

Tenant agrees to be solely responsible for any and all injury, loss or damage to Tenant's person, crops, equipment, and property or to equipment and property of others which may be placed on the leased land at Tenant's request, and Tenant waives and releases any and all claims or rights against Division with respect thereto.

10. INSURANCE:

Tenant shall be insured against liability resulting from any agricultural practice or presence upon the leased land.

11. ASSIGNMENT, INSOLVENCY OR BANKRUPTCY:

Either (a) the appointment of a receiver to take possession of all or substantially all of the assets of Tenant or (b) a general assignment by Tenant for the benefit of creditors or (c) any action taken or suffered by

Award Notice

Contract No. NAT16004_AGLEASE

Tenant under any insolvency or bankruptcy act shall constitute a breach of this Lease by Tenant and cause this Lease to terminate immediately.

12. TERMINATION FOR CAUSE:

Tenant agrees that if it fails to observe or perform any of the conditions or covenants on its part to be observed or performed, or if Tenant knowingly permits any unlawful acts to be carried out upon the leased land, then Division shall have the right to terminate the Lease and to re-enter and repossess the leased land in the manner provided for by the laws of the State of Delaware. If Division terminates this Lease while Tenant has crops growing in the fields, Division agrees not to take possession of the leased land until after Tenant has harvested the crop during the normal harvest period or, at Division's option, Division will reimburse Tenant at the fair market value for crops destroyed. Tenant may terminate this Lease by giving Division ninety (90) calendar days' notice in writing. Tenant shall yield peaceable possession of the leased land at the termination of the Lease.

13. TERMINATION FOR CONVENIENCE:

Leases shall remain in effect for the time period and quantity specified unless the Lease is terminated by the Division. The Division may terminate the Lease at any time by giving written notice of such termination and specifying the effective date thereof, at least sixty (60) calendar days before the effective date of termination.

14. NOTICES:

Any notice, demand, request, consent, approval, or communication that either Party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid and addressed as per the Lease. Upon written notice from a Party, or a successor in interest, to the other Party hereto, any such notice, demand or other written communication shall be given to that Party or successor at the address indicated in such notice.

15. WAIVER OF BREACH:

The waiver or acceptance by Division of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any continuing or subsequent breach of the same or any other term, covenant or condition herein contained. All waivers or acceptances must be in writing. The subsequent acceptance of rent hereunder by Division shall not be deemed to be a waiver or acceptance of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rental fee so accepted, regardless of Division's knowledge of such preceding breach at the time of acceptance of such rental fee.

16. LEGAL COSTS AND EXPENSES:

Tenant shall pay and discharge all costs, attorneys' fees and expenses arising from enforcing any covenant or forfeiture hereof.

17. RULES AND REGULATIONS:

The rules and regulations contained in this Lease, as well as such reasonable rules and regulations as may be hereafter adopted by Division for the safety, care and protection of its leased lands and the preservation of good order thereon, are hereby expressly made a part hereof, and Tenant agrees to adhere to all such rules and regulations, after notice of same.

18. REMEDIES:

It is understood and agreed that the remedies herein given to Division shall be cumulative, and the exercise of any one remedy by Division shall not be to the exclusion of any other remedy.

19. BINDING AGREEMENT:

The covenants and conditions herein contained shall apply to and bind the heirs, executors, administrators, successors, and assigns of all of the Parties hereto; and all of the Parties hereto shall be jointly and severally liable hereunder. This Lease shall not be interpreted as a waiver of the sovereign immunity of Division.

20. TIME:

Time is of the essence of this Lease.

21. ENTIRE CONTRACT:

This instrument contains the entire agreement of the Parties and supersedes, cancels, and revokes any and all other agreements between the Parties relating to the subject matter of this Lease. There are no representations or warranties, either oral or written, except those contained in this Lease. This Lease may be modified only by an amendment in writing signed by both Parties.

22. LAW:

This Lease shall be construed and interpreted in accordance with the laws of the State of Delaware.

23. ENTIRE CONTRACT:

This instrument contains the entire agreement of the Parties and supersedes, cancels, and revokes any and all other agreements between the Parties relating to the subject matter of this Lease. There are no representations or warranties, either oral or written, except those contained in this Lease. This Lease may be modified only by an amendment in writing signed by both Parties.

24. SEVERABILITY:

If any portion of this Lease shall be held invalid or unenforceable, the validity of the remaining portion shall be unaffected and this Lease shall remain in full force and effect as if it had been executed with the invalid portion omitted.

25. SPECIAL PROVISIONS/COVER CROP REQUIREMENTS:

- a) The purpose of the cover crop program is to protect and control soil, water and nutrient resources on the leased land. All leased land is required to have a cover crop based on the following conditions.
- b) Eligible species of cover crop are rye, wheat, barley, and spring oats.
- c) Early planting is defined as cover crops planted by October 1st.
- d) Normal planting is defined as cover crops planted by October 15th.

- e) All seed purchased for cover crops should be tested and properly labeled in accordance with Delaware Seed Law and Regulations.
- f) If homegrown seed is used, it should be tested prior to planting for purity, germination, and noxious weeds by either the Maryland or Delaware State Seed Laboratory.
- g) Cover crops shall be established and actively growing before the expected period(s) of nutrient leaching. No fall application of commercial fertilizers (N and P) or manure is allowed prior to planting the cover crop. No winter application of commercial fertilizer or manure is allowed. Spring application of manure can resume after March 1st in Sussex County and March 15th in Kent and New Castle Counties.
- h) Tenant shall maintain a winter cover crop on all tillable acres, unless specifically exempted in writing by Division.
- i) If Tenant plans on harvesting the cover crop for grain, then Tenant can apply fertilizer or manure after March 1st.
- j) If Tenant plans on planting early peas, then Tenant may destroy the cover crop after February 15th and fertilizer and manure can be applied after such date.
- k) Tenant may destroy cover crops by applying an herbicide, by plowing the crop under or by green chopping for on-farm use, only after March 15th.
- l) There will be a minimum of a five-percent (5%) spot check of cover crop acres in the spring after removal of the cover crop.

26. AS-IS EQUIPMENT (TRAP POND ONLY):

Pivot irrigation is included in the Trap Pond land lease in “As-Is” condition. Any requirement for maintenance or replacement of the pivot irrigation shall be the responsibility of the Tenant. In the event that the pivot irrigation is determined to be at the end of its operating life cycle, it shall be the responsibility of the Tenant for removal, disposal and replacement. Any replacement equipment shall be property of the Tenant and shall be removed promptly at the end of the Lease Term as is consistent with Section 8, Item (m) of this Lease.

LEASE TPSP-01-2016



Hitch Pond Road

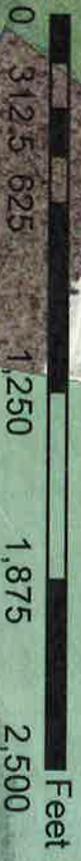
Laurell Road (rt 24)

232-19.00-22.00

232-19.00-17.00

232-19.00-17.00

All leased land will be used for Crop Agriculture for purposes of this Lease. 81.33 Acres



WCCSP-01-2016

EXHIBIT A

FEBRUARY 2016

2012 Aerial Photo

