



Contract Review Sheet

PW-2433-18 (1)

Lease Agreement #: PW-2433-18 Amendment #: 1

Contact: Natalie Tomaszewski Department: Public Works Department

Phone #: 503.365.3100 Date Sent: Friday, October 27, 2023

Title: McKay Farms: Farm lease of 42 acres adjacent to the NMCDF

Contractor's Name: McKay Farms, Inc.

Term - Date From: January 1, 2019 Expires: December 31, 2028

Original Contract Amount: \$ 65,520.00 Previous Amendments Amount: \$ -

Current Amendment: \$ 65,520.00 New Contract Total: \$ 131,040.00 Amd% 100%

Incoming Funds Federal Funds Reinstatement Retroactive Amendment greater than 25%

Source Selection Method: 50-0600 Leasing Real Property

Description of Services or Grant Award

Amendment #1 renews the agreement for an additional 5 years, now expiring 12/31/2028 (12/31/2023). An additional \$65,520 for another five years will be added.

Desired BOC Session Date: 1/17/2024 Files submitted in CMS for Approval: 12/27/2023

Agenda Planning Date: 1/4/2024 Printed packets due in Finance: 1/2/2024

Management Update: 1/2/2024 BOC upload / Board Session email: 1/3/2024

BOC Session Presenter(s) Andrew Johnson

FOR FINANCE USE

Date Finance Received: _____ Date Legal Received: _____

Comments: Y

REQUIRED APPROVALS

Finance - Contracts _____ Date _____

Contract Specialist _____ Date _____

Legal Counsel _____ Date _____

Chief Administrative Officer _____ Date _____



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

January 17, 2024

Meeting date:

Public Works

Department:

Title

Amendment #1 with McKay Farms for a farm lease of 42 acres adjacent to the North Marion County Disposal Facility, for an additional 5 years and an additional \$65,520 for those five years.

Agenda Planning Date: 1/4/2024 Management Update/Work Session Date: 1/2/2024 Audio/Visual aids

Time Required 10 minutes Contact: Andrew Johnson Phone: 503-566-4184

Requested Action:

Marion County Environmental Services staff requests that Amendment #1, with McKay Farms for a farm lease of 42 acres adjacent to the North Marion County Disposal Facility, for an additional 5 years and an additional \$65,520 for those five years, be approved.

Issue, Description & Background:

McKay Farms, Inc. has been leasing 42 acres from Marion County and wishes to renew their lease, which expires on December 31, 2023. The amendment (1) would extend the contract until December 31, 2028, along with adding \$65,520 to the contract.

Rates shall be \$13,104 per year plus taxes.

Financial Impacts:

Marion County will be charging McKay Farms, Inc. \$13,104 per year plus taxes.

Impacts to Department & External Agencies:

There will not be any impacts to Department or external agencies.

List of attachments:

PW-2433-18 Amendment (1), 25% memo

Presenter:

Andrew Johnson - 503-566-4184

Department Head Signature:

DocuSigned by:

Brian Nicholas

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**REQUEST FOR AUTHORIZATION OF CONTRACT
PW-2433-18**

Date: 12/28/2023
To: Chief Administrative Officer
Cc: Contract File
From: Natalie Tomaszewski

I. Subject: Reinstatement

The Marion County Public Works Department is requesting approval to reinstate a contract as described in Section 10-0570 of the Marion County Public Contracting Rules. The contract is with McKay Farms, Inc. for McKay Farms: Farm lease of 42 acres adjacent to the NMCDF with a value of \$131,040.00 and upon approval will be reinstated and in full force and effect, as if it had not expired with a new expiration date of 12/31/2028.

A. BACKGROUND

Marion County Public Works has a long-standing land lease agreement with McKay Farms, Inc. and both parties wish to continue with this agreement by extending it for another five years.

B. As required by MCPCR, a concise written statement must be submitted meeting the requirements of 10-0570(1).

Marion County Public Works had to delay the approval of this contract extension due to insurance issues and payment of the prior calendar year. We have now implemented a new process to help with tracking payments for land leases that will help us prevent this issue in the future.

II. Subject: Amendment Exceeds 25%

DIPS CODE: 510-40-43-431-4303-342200
Budget Authority: Yes No
CIP: N/A

The Marion County Public Works Department is requesting approval to amend a contract as described in Section 20-0265, 20-0270, 30-0320, 40-0160, and 40-0910 of the Marion County Public Contracting Rules. The contract is with McKay Farms, Inc. for McKay Farms: Farm lease of 42 acres adjacent to the NMCDF with a value of \$65,520.00 and an additional \$65,520.00 will be added to the contract for a new contract total of \$131,040.00 upon approval.

A. BACKGROUND

Marion County has been leasing this property to McKay Farms since December 2018 via Source Selection Method 50-0600 Leasing Real Property. Both parties wish to extend the property lease for an additional term. The initial contract value was \$65,520.00 and there were no previous amendments.

B. CURRENT AMENDMENT PURPOSE

Amendment 1 renews the lease agreement for an additional 5-year term and increases compensation accordingly. The monthly cost will be unchanged, increasing total compensation by 100% for the second term.

C. JUSTIFICATION

The additional 5-year term was included as an option in the original agreement and both parties are interested in renewing.

D. BUDGET IMPACTS

1. Are the expected expenditures for the current fiscal year under the contract, including any additional funds being requested with this action, already included in the current year adopted budget? Yes No
2. If yes, amount \$36,000 Program / Account: 510 (Environmental Services – Property Leases)

Submitted by:

Reviewed by:

Natalie Tomaszewski
Public Works Department

Contracts & Procurement

Acknowledged by:

Acknowledged by:

Department Head

Jan Fritz, CAO



**AMENDMENT 1 to PW-2433-18
the LEASE AGREEMENT
between
MARION COUNTY and MCKAY FARMS, INC.
FOR
FARMING ON MARION COUNTY PROPERTY**

This Amendment No. 1 to the Lease Agreement (as amended from time to time, the “Agreement”), dated January 01, 2019 between Marion County, a political subdivision of the State of Oregon, hereafter called Lessee, and McKay Farms, Inc., hereafter called Lessor.

The Agreement is hereby amended as follows (new language is indicated by underlining and deleted language is indicated by ~~striketrough~~):

1. Lessor is the owner of the tract of land located at 18206 Butteville Rd NE, Aurora, Oregon, 97002, which consists of 2 parcels of land totaling approximately 42 acres; Tax Lots #512404 ~~#R12404~~ and #512407 ~~R#12407~~, Map Tax Lots 041W310000900 ~~041W310900~~ and 041W310001000 ~~041W311000~~, hereinafter called “designated area”.
2. Lease Term: The term of this Agreement shall be for a period of five (5) years and shall commence January 1, 2019 and continue through December 31, 2028. ~~December 31, 2023, with an option to renew the lease for an additional five (5) years.~~

Except as expressly amended above, all other terms and conditions of the original contract are still in full force and effect. Contractor certifies that the representations, warranties and certifications contained in the original Contract are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

LEASE AGREEMENT PW-2433-18
BETWEEN
MCKAY FARMS, INC.
AND
MARION COUNTY
FOR
FARMING ON MARION COUNTY PROPERTY

THIS LEASE AGREEMENT is made and entered into by and between Marion County (a political subdivision of the State of Oregon) hereinafter called "Lessor", and McKay Farms, Inc., hereinafter called "Lessee" for the right to farm a portion of Marion County property.

The parties hereto, in consideration of the rents, covenants and agreements, hereinafter reserved and contained on the part of the Lessee to be observed and performed, Lessor demises and leases to Lessee and Lessee rents from Lessor those certain premises hereinafter described:

1. Lessor is the owner of the tract of land located at 18206 Butteville Rd NE, Aurora, Oregon, 97002, which consists of 2 parcels of land totaling approximately 42 acres; Tax Lots #R12404 and #R12407, Map Tax Lots 041W31 0900 and 041W31 1000, hereinafter called "designated area". Lessor shall allow Lessee to grow and harvest crops, such as grass seed, hay, and vegetables on the portion of Lessor's property described above and shown on the attached map, hereto attached as Exhibit A.
2. Lease Term: The term of this Agreement shall be for a period of five (5) years and shall commence January 1, 2019 and continue through December 31, 2023, with an option to renew the lease for an additional five (5) years.
3. Rent: Lessee shall pay the Lessor the amount of \$13,104 per year, with lease payments due to the Lessor, at C/O Marion County Public Works, P.O. Box 14500, Salem OR 97309-5036, on or before the first day of January of each year. Failure to pay the annual lease payment within 30 days shall result in the immediate termination of the agreement.
4. Use: Lessee shall use the Designated Area only for the purpose of growing crops. No other use is allowed under this Agreement. Lessee shall not sublease the designated area or any portion of it, to any sub Lessee or sub renter. Lessee shall not allow anyone not a party to this Agreement to use the Designated Area for any purpose. Lessee will at all times keep and maintain the Designated Area in a good state of order and condition, and shall not make unlawful, improper or offensive use of the Designated Area.
5. Maintenance/Misc. Requirements: Lessee shall be responsible for the following:
 - a. Implement competent farming practices, including but not limited to, erosion and odor control, prevention of contamination of land and groundwater, and weed and insect control.
 - b. Sole costs of all materials, time and labor needed to meet the conditions of this Agreement.
 - c. Access the Designated Area only from Butteville Road using the north or south access driveways.
 - d. Maintain a perimeter access road along south, east and north sides of the designated area.
 - e. Maintain access to all survey monuments, agricultural wells and monitoring wells.
 - f. Comply with the conditions of the water right.
 - g. Comply with all federal, state, and local laws, regulations, codes and permits-including all permits and approvals required to perform the farming.
 - h. Pay for all expenses related to and electrical power for the irrigation well and pump system.
 - i. Shall not alter the contour of the land or reshape drainage ditches without written prior approval of the Lessor.
 - j. Shall use no alcohol or illegal drugs on Designated Area.

- k. Shall only use industry accepted practices for rodent control and livestock protection.
6. Retained Rights: Lessor shall retain the following:
- a. Retain full rights of ingress/egress over the Designated Area and shall not be required to give Lessee any notice of its intent to exercise these rights.
 - b. Reserve the right to inspect and approve all proposed operations and activities presented and/or performed by the Lessee.
 - c. Reserves the right to alter or require changes to the drainage of the Designated Area.
 - d. Reserves the right to terminate any activity that could prove to be an environmental hazard or adversely affect the operation of county government services or disturb the neighboring property owners and their operations.
7. Indemnification: The Lessee shall agree to defend, indemnify and hold harmless the Lessor, its officers, agents, and employees from damages arising out of the tortious acts of the Lessee, its officers, agents, and employees acting within the scope of their employment and duties in performance of this agreement.

The Lessor, pursuant to applicable provisions of ORS 30.260 to 30.300, maintains a self-insurance program which provides property damage and personal injury coverage for Lessor activities.

The Lessee and the Lessor agree that there is no relationship under this Agreement except as specified herein. The Lessor exercises no control over, is not responsible for the act of, assumes no specific responsibilities to or for officers, employees or agents of the Lessee, or the public in general, except as specified in this Lease.

8. Insurance:
- a. Required Insurance. Lessee shall obtain at Lessee's expense the insurance specified in this section prior to performing under this agreement and shall maintain it in full force and at its own expense throughout the duration of this agreement. Lessee shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in Oregon and that are acceptable to Lessor:
 - i) Workers Compensation. All employers, including Lessee, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Lessee shall require and ensure that each of its subcontractors complies with these requirements.
 - ii) Commercial General Liability. Covering bodily injury, death and property damage in a form and with coverages that are satisfactory to the Lessor. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence basis. Lessee shall provide proof of insurance of not less than the following amounts as determined by the Lessor:

Required by Lessor Not required by Lessor

Bodily Injury/Death:

- \$1,000,000 Per occurrence limit for any single claimant; and
- \$2,000,000 Per occurrence limit for multiple claimants
- Exclusion Approved by Risk Manager
- \$500,000 Per occurrence limit for any single claimant
- \$1,000,000 Per occurrence limit for multiple claimant

iii) Automobile Liability Insurance. Covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Lessee shall provide proof of insurance of not less than the following amounts as determined by the Lessor:

Required by Lessor Not required by Lessor

Bodily Injury/Death:

- Oregon Financial Responsibility Law, ORS 806.060 (*\$25,000 property damage/\$50,000 bodily injury \$5,000 personal injury*).
- \$500,000 Per occurrence limit for any single claimant; and
- \$1,000,000 Per occurrence limit for multiple claimants
- Exclusion Approved by Risk Manager

B. Additional Insured. The Commercial General Liability insurance required under this Agreement shall include Marion County, its officers, employees and agents as Additional Insureds but only with respect to Lessee's activities to be performed under this Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

C. Notice Of Cancellation Or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without 30 days written notice from the Lessee or its insurer(s) to Lessor. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Agreement by Lessor.

D. Certificate(s) Of Insurance. Lessee shall provide to Lessor Certificate(s) of Insurance for all required insurance before engaging in any activities under this Agreement. The Certificate(s) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees). Lessee shall pay for all deductibles, self-insured retention and self-insurance, if any.

9. Property Taxes: Lessee and Lessor understand the property is subject to property taxes. The Lessee will be responsible for paying the property taxes. Lessee shall pay all property taxes in full on or before November 15 every year. Lessor will notify Lessee within seven work days of receipt of the tax statement as to the amount of taxes that are due to be paid by Lessee. Failure of the Lessee to pay property taxes within 60 days shall result in the immediate termination of the lease agreement.

10. Damages: Lessee shall repair any damage to the Designated Area and any structures caused by or as part of their farming activities. This damage may include, but not be limited to the following: tire ruts, holes, erosion, fencing, monitoring wells, agricultural wells, survey monuments, irrigation system mainline and risers and roads. The Designated Area or structure shall be restored to its original condition within thirty (30) days of written notice of the need for repairs, unless Lessor grants a longer period in writing. (If the perimeter fencing is damaged by Lessee's horses or cattle, Lessee shall be immediately repair or replace the

damaged portion of the fence.) Lessee shall be solely responsible for all costs of repairs. Lessee shall not be responsible for damage to the Designated Area caused solely by natural disasters or "acts of God". Lessor shall have complete discretion to determine whether to repair damage resulting from natural disasters or "acts of God".

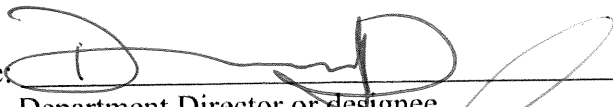
11. Default: In the event Lessee shall violate or fail to keep or perform any covenant, agreement, term, or condition of this lease agreement, and if such default or violation shall continue or shall not be remedied within thirty (30) days after notice in writing is given by Lessor to Lessee, specifying the matter claimed to be in default, Lessor may immediately declare this lease terminated, and may resume possession of the Designated Area, and remove all persons and property from the Designated Area without being deemed guilty of trespass and without prejudice to any remedy which otherwise might be used for arrears of rent or proceeding breach of covenant.
12. Notices: All notices given by one party to the other under this Lease Agreement shall be in writing, mailed or delivered to each as follows:

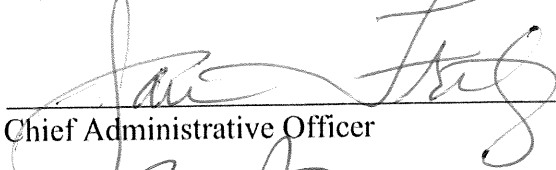
LESSOR: Marion County
Director of Public Works
5155 Silverton Road
Salem, Oregon 97305

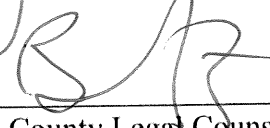
LESSEE: Dean McKay
McKay Farms Inc.
19172 French Prairie Rd. NE
P.O. Box 279
St. Paul, OR 97137


13. Improvements:
 - a. Lessee owns all moveable above-ground irrigation equipment and all farm equipment now on the property.
 - b. Lessee shall not build or remodel structures, nor build any fences or other improvements without prior written approval of the Lessor. Improvements shall be limited to only those required for agricultural use and shall be at Lessee's own expense. Lessor shall not withhold consent unreasonably.
 - c. At termination of the Lease, Lessee shall remove all irrigation and farm equipment, as well as any structural improvements made by the Lessee and return the ground from which such improvements are removed in as good condition as the ground was prior to the erection of the improvements. After ninety (90) days after termination, all improvements remaining on the property shall become the property of the Lessor.
14. Termination:
 - a. This agreement may be terminated without cause by either party upon 30 days written notice to the other. Notice shall be given by registered mail, return receipt requested of the parties as listed in Section 10.
 - b. Failure by Lessee to comply with any requirements of this agreement will result in termination with written notice by Lessor.
 - c. Lessor may terminate this agreement upon thirty day written notice should Lessor be required by a state or federal government agency to perform remedial work on the Designated Area or the adjacent landfill.

IN WITNESS WHEREOF, this lease agreement has been executed the day and year last set forth below.

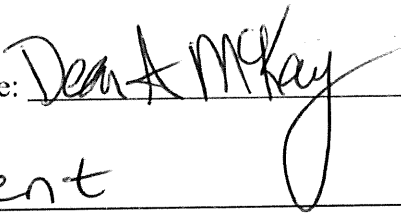
Authorized Signature:  12-14-18
Department Director or designee Date

Authorized Signature:  12/20/18
Chief Administrative Officer Date

Reviewed by Signature:  12/19/18
Marion County Legal Counsel Date

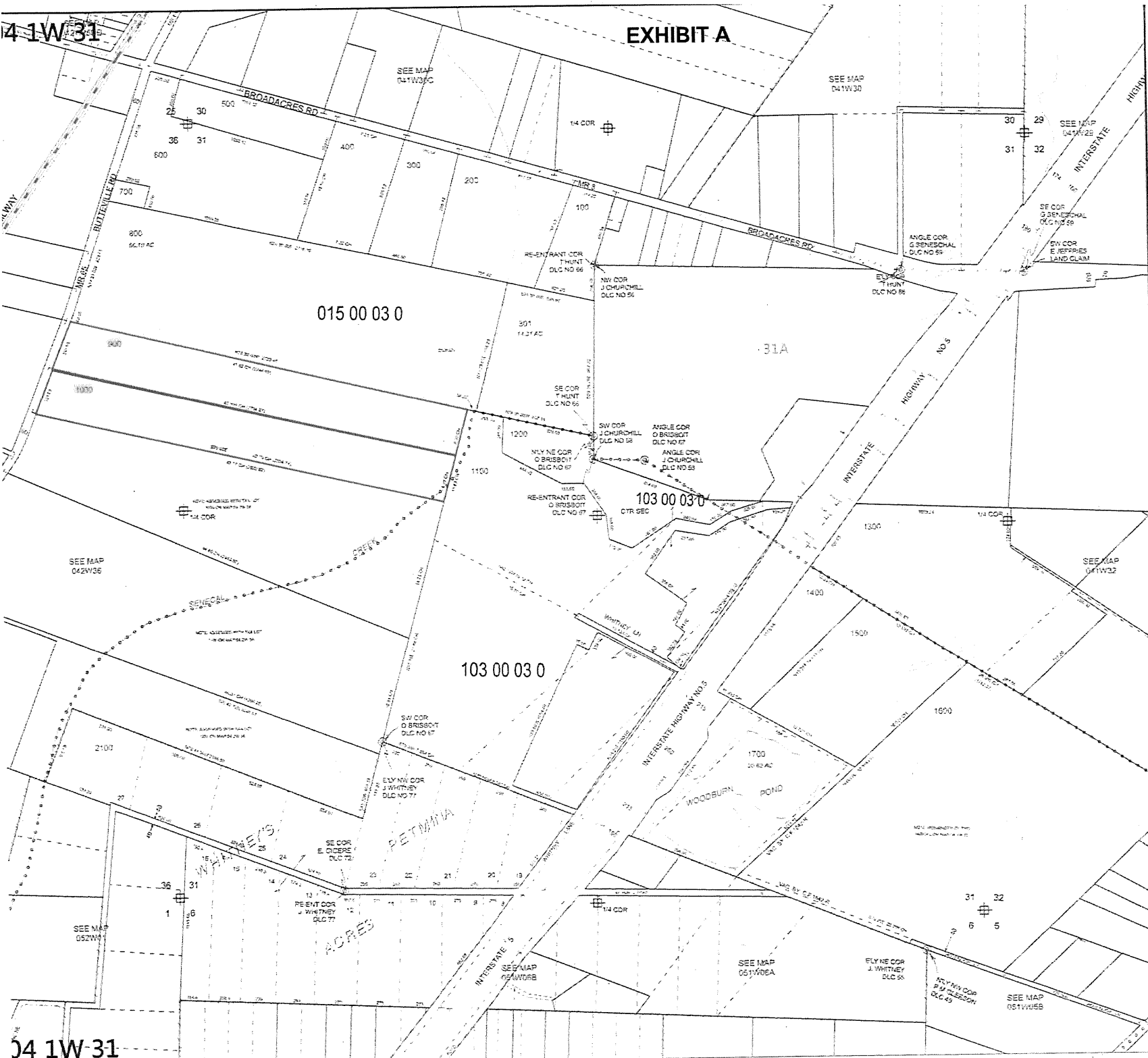
Reviewed by Signature:  12/18/18
Marion County Contracts & Procurement Date

LESSEE SIGNATURE

Authorized Signature:  11/1/18
Date

Title: President

EXHIBIT A



MARION COUNTY, OREGON
 SEC 31 T4S R1W W.M.
 SCALE 1" = 400'

LEGEND

- LINE TYPES
- Taxlot Boundary
 - Road Right-of-Way
 - Railroad Right-of-Way
 - Private Road R/O/W
 - Waterline/Plat Boundary
 - Waterline - Toilet Brandy
 - Horizontal Boundary
 - Easement
 - Railroad Curvature
 - Boundary Line
 - Map Boundary
 - Waterline - Non Brandy

- CORNER TYPES
- L/14 Section Cor
 - D/LC Corner
 - 1/4 Section Cor
 - 16, 15 Section Corner
 - 21, 22

NUMBERS
 Tax Cost Number
000 00 00 0

ADP0300 126 AC All areas listed are Not Acres including any wetlands of the water within platted R/O/W

NOTES
 Tick Marks: A tick mark on the road indicates that the labeled dimension extends to the public R/O/W

CANCELLED NUMBERS

110041
1400
1500
2000

DISCLAIMER: THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY



FOR ADDITIONAL MAPS VISIT OUR WEBSITE AT www.co.marion.or.us

PLOT DATE: 1/23/2018

**SIGNATURE PAGE FOR
MCKAY FARMS: FARM LEASE OF 42 ACRES ADJACENT TO THE NMCDF - PW-
2433-18
between
MARION COUNTY and MCKAY FARMS, INC.**

**MARION COUNTY SIGNATURES
BOARD OF COMMISSIONERS:**

Chair Date

Commissioner Date

Commissioner Date

Authorized Signature: _____
Department Director or designee Date

Authorized Signature: _____
Chief Administrative Officer Date

Reviewed by Signature: _____
Marion County Legal Counsel Date

Reviewed by Signature: _____
Marion County Contracts & Procurement Date

MCKAY FARMS, INC. SIGNATURE

Authorized Signature: _____
Date

Title: _____