



**HILARY S. FRANZ**  
COMMISSIONER OF PUBLIC LANDS

## **IRRIGATED LEASE**

Lease No. 12-A88961

### **Section 1 Parties, Premises, Term, Use, and Payments**

Lessor: Department of Natural Resources ("State").

Southeast Region  
713 Bowers Road  
Ellensburg, WA 98926

509-925-8510  
southeast.region@dnr.wa.gov

Lessee: SUCCESSFUL BIDDER ("Lessee").

"[Enter Lessee Address]"

"[Lessee Phone #]"

"[Continue Lessee Address]"

"[Lessee Email Address]"

**1.01 Property Description.** State hereby leases to Lessee, the following described property (“Premises”), subject to the encumbrances and reservations, if any, as shown: That portion of the SE 1/4 depicted in hatch pattern on the Map of Premises in Exhibit 1, lying within Section 36, Township 7 North, Range 25 East, W. M., Benton County, Washington, containing 127.1 acres, more or less, according to government survey thereof.

**1.02 Term.** This lease shall commence on January 1, 2022 (“Commencement Date”), and shall expire on December 31, 2043 (“Termination Date”).

**1.03 Permitted Use, Rent, Taxes, and Assessments.** The Lessee shall use the Premises for the Permitted Use(s) identified below and no other. Lessee shall pay rent, subject to adjustment under Subsection 1.04, for the period on the due date and semi-annually thereafter. Lessee shall pay all taxes, assessments, and utilities as required under Subsection 3.33.

<b>Period:</b> January 1, 2022 through December 31, 2022			
<b>Payment Due Date:</b> January 1			
<b>Permitted Uses/Payments</b>	<b>Acres</b>	<b>Description of Authorization</b>	<b>Amount</b>
Irrigated Agriculture	Minimum of 125.5 acres up to 127.1 acres	Authorized Crops: Alfalfa, Cereal Grains, Corn, Onions, Peas, Potatoes, Timothy. One crop of either potatoes, onions, or other root/tuber crop in the same field within a three (3) year period.	Annual rent will be based on a rental rate of \$450.00 per acre, for acres proposed for irrigated ag, subject to Rent Adjustment as described in the portion of Subsection 1.04 below.
Non-Production		Remaining undeveloped acreage	
<b>Payment Summary</b>			<b>Amount</b>
Rent			\$ _____
Rent Subject to Leasehold Excise Tax			\$ _____
Leasehold Excise Tax (12.84%)			\$ _____
Conservation Assessment - Benton County			\$12.01
Weed Assessment - Benton County			\$8.20
Assessment Total			\$ _____
<b>Payment Required on Due Date</b>			<b>\$ _____</b>

Subject to assessments imposed by Benton County Noxious Weed Board, Benton County Conservation District or any entity properly authorized to assess property.

In addition, Lessee shall pay to State a one-time bonus bid of \$ \_\_\_\_\_ (amount proposed by successful bidder) due at time of public auction on December 10, 2021.

**1.04 Rent Adjustment.** Rent shall be adjusted annually beginning January 1, 2023 based on an adjustment rate derived from Producer Price Index for Farm Products, Series Id: WPU01 (“PPI-FS”), not seasonally adjusted, data published by the U.S. Bureau of Labor Statistics (BLS), according to the method set forth in Exhibit 3. If the PPI-FS index ceases to be published, State may substitute a comparable index as may then be published by the same or a comparable government agency. The adjusted rent shall be effective as of the first day of the current escalation month as defined in Exhibit 3.

**1.05 Change in Permitted Use.** Any change in Permitted Use, including but not limited to changes in acreage, crops, or crop rotations, requires prior written approval by State and will require an update to the Plan of Development & Operation under Subsection 2.02. Change in Permitted Use will be accompanied by a rental evaluation and may result in a change of rent and other amounts due under Subsection 1.03.

**1.06 No Counterclaim, Setoff, or Abatement of Rent.** Rent and all other amounts payable by Lessee shall be paid without the requirement of prior notice or demand by State, and shall not be subject to any counterclaim, setoff, deduction, or defense and without abatement. Rent shall not be reduced based on Lessee’s failure to fully develop the Premises according to the approved Plan of Development & Operation as required under Subsection 2.02. The obligations and liabilities of Lessee hereunder shall in no way be released, discharged, or otherwise affected unless authorized in writing by the State.

## **Section 2 Land Management**

**2.01 Management.** Lessee shall care for the Premises in a manner that meets or exceeds industry standards, including but not limited to following all state and federal laws pertaining to seeds planted, proper use of chemical inputs, and preventing introduction of, and controlling, pests, weeds, and disease. With respect to Lessee’s use of the Premises, Lessee shall, at its sole cost and expense, keep and maintain the Premises and all improvements (regardless of ownership) in good order, repair, and safe condition for the safe conduct of any activities or enterprises conducted on the Premises under this lease, and keep and maintain the Premises and all improvements in a clean, sanitary, and attractive condition.

**2.02 Plan of Development & Operation.** Lessee shall develop and operate on the Premises according to the Plan of Development & Operation (Plan) set forth in Exhibit 1. Proposed changes to the Plan by Lessee require State’s prior written approval.

**2.03 Irrigation System Development.** Lessee accepts the irrigation system “as is, where is.” Lessee shall furnish and install, at its sole expense, any irrigation system or upgrade to existing systems necessary to irrigate the Premises for the Permitted Use. Any permanent installation of irrigation system infrastructure shall require prior written approval from State. Lessee’s installation of new systems and upgrades to existing systems shall comply with the approved Plan.

**2.04 Water Supply.** State makes no representation to Lessee of water availability, quantity, or quality, pump failures, well damage or failures, or disruption of water supply due to action of any governmental authority or third party. Lessee hereby releases and forever discharges State, its agencies, officials, agents, and employees from any and all claims arising from use of water on the Premises.

The Premises is irrigated under State’s Surface Water Right No. S4-25639(A)P, as modified under change application CS4-25639(A)@2 (“State’s Water Right”), summarized in Exhibit 1, shall be used by Lessee to irrigate the Premises.

Lessee shall take all necessary action to comply with the terms and conditions of the State’s Water Supply authorized for use on the Premises and put all authorized water to its full beneficial use. Lessee shall not take any action to degrade the water quality or source or modify the State’s Water Supply or that could cause relinquishment, loss, or impairment of any portion of State’s Water Supply.

State owns the water rights identified in this subsection as State’s Water Supply. Nothing in this lease is intended to transfer or otherwise limit any of State’s ownership of State’s Water Supply. Any surplus water resulting from conservation or other management practices belongs to State and may be transferred or used for other purposes at State’s option. State may require Lessee to install one or more State approved flow meters and report water use measurements at any time during the term of this lease.

**2.05 Reporting.** A crop water duty report shall be submitted to State substantially in the format provided in Exhibit 1 not later than November 30<sup>th</sup> of each year.

**2.06 Notice of Surplus or Under Usage.** Lessee shall provide written notice to State of surplus water under State’s Water Supply, or of Lessee’s inability or failure to use the State’s Water Supply to the full extent authorized under this lease, at the time such surplus water or under usage is apparent.

**2.07 Harvest Reports.** Lessee shall, as soon as possible, furnish harvest reports to State at the Division Office in Olympia, but no later than thirty (30) days after final date of harvest of all crops. Harvest reports shall include the planted acreage and variety of crops harvested, quantity, the grades if known, the field number, circle number, block number, or location of each crop grown and the place of storage, processing or other disposition of the crops.

## **Section 3 General Provisions**

**3.01 Condition of Premises and State Owned Improvements.** Lessee accepts the Premises and improvements “as is, where is.” Lessee has inspected the Premises and improvements on the Premises and acknowledges that they are in good and tenantable condition and suitable for the Permitted Use. The State has no obligation to make any repairs, additions, or improvements to the Premises or improvements and expressly disclaims any warranty that they are suitable for such Permitted Use.

**3.02 Limitations on Use.** In connection with Lessee’s use of the Premises, Lessee shall:

1. Conform to all applicable laws, rules and regulations of any public authority affecting the Premises, including crops grown on the Premises. The Lessee shall provide to State, within ten (10) days of receipt of same, a copy of any notice received from any public authority which indicates that Lessee is not in compliance with applicable laws, rules and regulations. In addition, Lessee shall bear, at Lessee’s sole expense, any costs associated with bringing the Premises and crops into compliance, including any attorneys' fees, costs, fines or penalties;
2. Remove no valuable material or timber, without prior written approval of State;
3. Take all reasonable precautions to protect the Premises from fire, and make every effort to report and suppress such fires as may occur;
4. Lessee shall be solely responsible for securing and maintaining any licenses, permits or approvals necessary for Lessee’s activities on the Premises;
5. Use only electric fences approved by Underwriters Laboratories;
6. Not live, reside, or permit others to live or reside on the Premises without prior written approval from State.

**3.03 Interest Penalty for Past-Due Rent and Other Sums Owed.** Lessee shall pay interest at the rate of one percent (1%) per month (or at such higher rate as may be authorized by statute after the Commencement Date), until paid, on rent or other sums owing under the terms of this lease, commencing the date such rent or other sum is due and payable. In the event State pays any sum or incurs any expense which Lessee is obligated to satisfy or pay under this lease, or which is made on behalf of Lessee, State shall be entitled to receive reimbursement thereof from Lessee upon demand, together with interest thereon from the date of expenditure at the rate stated above.

**3.04 Right to Inspect.** State may at any time enter and inspect the Premises and improvements constructed thereon. In addition, Lessee shall allow State’s employees access to buildings and facilities during regular business hours of Lessee’s operations or at other times as may be requested by State.

**3.05 Access/Easements.** Lessee is granted a non-exclusive easement to use existing roads on the Premises for permitted operations under this lease. Easement locations and terms are set forth in Exhibit 1. Lessee shall comply with all terms of State's easements used by Lessee to access the Premises. State may build roads and grant easements to others to use new and existing roads.

**3.06 Uses.** State reserves the right to lease or otherwise encumber the Premises for other uses that will not interfere with Lessee's Permitted Use. State further reserves the right to sell, lease, or otherwise dispose of valuable materials in a manner consistent with Lessee's right to use the Premises for its Permitted Use.

**3.07 Public Hunting, Fishing and Nonconsumptive Wildlife Activities.** The Premises shall be open and available to the public for purposes of hunting, fishing, and nonconsumptive wildlife and other activities, unless closed to public entry because of fire hazard or a closure is authorized in writing by State, as provided in RCW 79.10.125. When closure is authorized by State, Lessee shall post the Premises with approved signs to inform the public of such closure. Lessee is not required to post signs when the closure is for fire hazard.

**3.08 Early Termination.** State may terminate this lease on one hundred eighty (180) days written notice if State includes the Premises in a plan for higher and better use, land exchange, or sale. State will provide written documentation along with the notice, demonstrating that the department has included the leased land in a plan for higher use, land exchange, or sale. If State terminates the lease, Lessee shall be allowed to use the Premises for the remainder of the farming season to harvest permitted crops. State may, at its sole discretion, terminate this lease upon Lessee's written request if Lessee has satisfied all outstanding rents, duties, and obligations. Improvements will be disposed of under the terms of Subsection 3.15.

**3.09 Indemnity.** To the fullest extent permitted by law, Lessee shall indemnify, defend, and hold harmless State, agencies of State, and all officials, agents, and employees of State, from and against any and all claims, including claims by Lessee's employees, agents, and contractors, arising out of or resulting from any act or omission of Lessee, or its agents, employees, and contractors, while operating under this lease or at the Premises. "Claims" as used in this subsection means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom. Lessee's obligation to indemnify, defend, and hold harmless State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees, and officials. Lessee waives its immunity under Title 51 to the extent it is required to indemnify, defend, and hold harmless State and its agencies, officials, agents, or employees.

### 3.10 Insurance.

a. Lessee shall at all times during the term of the lease, at its expense, buy and maintain insurance of the types and amounts listed below. Failure to buy and maintain the required insurance is a breach of this lease. All insurance and surety bonds should be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. If an insurer is not so admitted, all insurance policies and procedures for issuing the insurance policies must comply with RCW 48.15 and WAC 284-15.

Before starting work under this lease, Lessee shall, at State's request, furnish State at its Region Office with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements under this lease.

State shall be provided written notice before cancellation or non-renewal of any insurance referred to in the certificate(s), in accordance with the following specifications:

1. Insurers subject to RCW 48.18 (Admitted and Regulated by the Insurance Commissioner): The insurer shall give forty-five (45) days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, State shall be given ten (10) days advance notice of cancellation.
2. Insurers subject to RCW 48.15 (Surplus lines): The State shall be given twenty (20) days advance notice of cancellation. If cancellation is due to non-payment of premium, State shall be given ten (10) days advance notice of cancellation.

Sublessee(s) must comply fully with all insurance requirements stated herein. Lessee shall include all sublessee(s) as insureds under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each sublessee. Failure of sublessee(s) to comply with insurance requirements does not limit Lessee's liability or responsibility. State, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies. All insurance provided in compliance with this lease shall be primary as to any other insurance or self-insurance programs afforded to or maintained by State. Lessee waives all rights against State for recovery of damages to the extent those damages are covered by general liability or umbrella insurance maintained pursuant to this lease. If Lessee is self-insured, evidence of its self-insured status shall be provided to State, and upon receipt by State, shall be automatically incorporated into this lease. If requested by State, Lessee shall describe its financial condition and the self-insured funding mechanism. By requiring insurance herein, State does not represent that coverage and limits will be adequate to protect Lessee. Such coverage and limits shall not limit Lessee's liability under the indemnities and reimbursements granted to State in this lease.

The limits of insurance, which may be increased by State, as deemed necessary, shall not be less than as follows:

Commercial General Liability Insurance

<b>Description</b>	<b>Commercial General Liability (CGL) Insurance</b>
General Aggregate Limit	\$2,000,000
Each Occurrence Limit	\$1,000,000

Lessee shall maintain commercial general liability (CGL) insurance and, if necessary, commercial umbrella insurance, with a limit of not less than the amounts listed above per each occurrence. If such CGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the “each occurrence” limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the “each occurrence” limit. CGL insurance shall be written on Insurance Service Office (ISO) occurrence form CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability arising out of Premises, operations, fire liability, independent contractors, sublessees, products-completed operations, personal injury, and advertising injury and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and contain separation of insureds (cross liability) condition.

Employer’s Liability Insurance and Workers’ Compensation Insurance. Lessee shall buy employer’s liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease. Lessee shall comply with all State of Washington workers’ compensation statutes and regulations. Workers’ compensation coverage shall be provided for all employees of Lessee and employees of any sublessees. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this lease. Except as prohibited by law, Lessee waives all rights of subrogation against State for recovery of damages to the extent they are covered by workers’ compensation, employer’s liability, commercial general liability or commercial umbrella liability insurance. If Lessee or sublessee fails to comply with all State of Washington workers’ compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Lessee shall indemnify State. Indemnity shall include all fines, payment of benefits to Lessee, sublessees, and employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such.



Business Auto Policy. Lessee shall maintain business auto liability insurance and, if necessary, commercial umbrella liability insurance, with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of "Any Auto". Business auto coverage shall be written on ISO form CA 00 01 or substitute liability form providing equivalent coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage and cover a "covered pollution cost or expense" as provided in the 1990 or later editions of CA 00 01. Lessee waives all rights against State for the recovery of damages to the extent they are covered by business auto liability insurance or commercial umbrella liability insurance.

Insurance for State-Owned Equipment and Structures. Lessee shall buy and maintain property insurance covering all real property, fixtures, equipment, and Lessee's improvements and betterments, associated with Lessee's use of Premises. Such insurance shall be written on an all risks basis and, at a minimum, cover the perils insured under ISO special causes of loss form CP 10 30, and cover the full replacement cost of the property insured. Such insurance may have commercially reasonable deductions. Any coinsurance requirement in the policy shall be waived. State shall be included as an additional insured and loss payee under the property insurance policy.

Lessee shall buy and maintain boiler and machinery insurance required by contract documents or by law, covering real property, fixtures, equipment, and Lessee's improvements or betterments from loss or damage caused by the explosion of steam boilers or pipes.

b. In the event of any loss, damage or casualty which is covered by one or more of the types of insurance described herein, the parties to this lease shall proceed cooperatively to settle the loss and collect the proceeds of such insurance, which shall be held in trust by State, including interest earned by State on such proceeds, for use according to the terms of this lease. The parties agree that such insurance proceeds shall be used to repair and restore damaged improvements to their former condition and usefulness or replacement of the same with equivalent or more suitable improvements.

When sufficient funds are available, using insurance proceeds described above, the parties shall continue with reasonable diligence to prepare plans and specifications for, and thereafter carry out, all necessary work to:

1. Repair and restore damaged building(s) and/or improvements to their former condition, or
2. Replace said building(s) and/or improvements with a new building(s) and/or improvements on Premises of a quality and usefulness at least equivalent to, or more suitable than, damaged building(s) and/or improvements.

**3.11 Waste.** Lessee shall not cause or permit any filling activity to occur in or on the Premises, except as approved by State. Lessee shall not deposit refuse, garbage, or other waste matter, or use, store, generate, process, transport, handle, release, or dispose of any hazardous substance or other pollutants, in or on the Premises except in accordance with all applicable laws.

The term hazardous substance means any substance or material as those terms are now or are hereafter defined or regulated under any federal, state, or local law, including but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 *et seq.*, as administered by the U.S. Environmental Protection Agency or the Washington Model Toxics Control Act (MTCA), RCW 70.105D, as administered by the State Department of Ecology.

Lessee shall immediately assume responsibility for a hazardous substance release (spill) caused by Lessee or its employees, sublessees, agents, assigns, authorized users, contractors, subcontractors, licensees, or invitees (“Permittees”) on or adjoining the Premises.

As responsible party, Lessee shall:

- a. Immediately notify all necessary emergency response agencies, as required under federal, state, and local laws, regulations, or policies.
- b. Following emergency response agency notifications, notify State (Department of Natural Resources) of all spill releases and Lessee actions completed for spill reporting and actions planned or completed toward spill cleanup. State notification requirements are “same business day” notification for normal state work days and “next available business day” notification for weekends and holidays.
- c. At Lessee’s sole expense, conduct all actions necessary to mitigate the spill release. Mitigation response actions may include, but are not necessarily limited to, initial release containment, follow-up site cleanup and monitoring actions, and continued contact and coordination with regulators and State, as defined under the aforementioned laws, regulations, and policies, and this lease.
- d. Other than performing initial emergency response cleanup/containment actions, obtain approvals in advance of all site cleanup actions (e.g. site characterization investigations, feasibility studies, site cleanup and confirmation sampling, and groundwater monitoring) conducted on State lands, in coordination with regulatory agencies and State.
- e. Obtain and understand all necessary hazardous substance spill release notification and response mitigation requirements, in advance of conducting Lessee operations on State land.

Lessee shall be fully and completely liable to State, and, to the extent permitted by law, shall indemnify, defend (with counsel acceptable to State), and save harmless State and its employees, officers, and agents with respect to any and all damages, costs, fees (including attorney's fees and costs), penalties (civil and criminal), and cleanup costs assessed against or imposed as a result of Lessee's use, disposal, transportation, generation, and/or sale of hazardous substances or that of Lessee's Permittees and for any breach of this subsection.

**3.12 Condition of Premises at End of Lease.** Prior to vacating the Premises, Lessee shall leave the Premises and improvements described in Exhibit 2 to which State has elected to claim title in the state of repair and cleanliness required to be maintained by Lessee during the term of this lease.

**3.13 Sublease and Assignment.** Lessee shall not sublease the Premises in whole or in part without prior written approval of State. Lessee shall obtain sublessee agreement to be bound by the terms and conditions of this lease and any amended terms. Lessee shall remain fully liable for its obligations under this lease, including but not limited to payment of rent and other sums due in accordance with the terms of this lease.

State may assign the lease at State's option. Lessee shall not assign, hypothecate, mortgage, encumber, transfer, or otherwise alienate this lease or any interest therein, or engage in any other transaction which has the effect of transferring or affecting the rights of enjoyment of the Premises without prior written approval of State. Each permitted assignee or transferee of Lessee shall assume all obligations under the lease occurring after the date of assignment, including any amended terms. Lessee shall remain liable for any obligations occurring prior to the date of assignment. Lessee shall be jointly and severally liable with the assignee or transferee for all obligations under the lease occurring after the date of assignment with respect to those obligations that exist as of the date of assignment unless released in writing by State. State at its option may release Lessee from all but those terms and conditions of the lease that survive termination of the lease. Unless released in writing, Lessee's obligations shall continue in full force and effect until the Termination Date. State may require reimbursement for any additional administrative costs resulting from the assignment.

State's approval of a sublease or an assignment shall not constitute a waiver of State's right to approve or disapprove subsequent subleases or assignments. State's acceptance of payment or performance shall not constitute consent to any sublease or assignment and State's approval shall be evidenced only by writing.

**3.14 Name Change.** If during the term of this lease Lessee changes its name, Lessee shall provide State with documentation legally supporting the change within sixty (60) days of the effective date of the change.

**3.15 Disposition of Authorized Improvements.** Upon the expiration or earlier non-default termination of this Lease, all improvements shall belong to State as provided in RCW 79.13.050 without compensation to Lessee, except for those authorized improvements set forth in Exhibit 2 and all subsequent Letters of Authorization, which are identified within those exhibits as remaining in Lessee's ownership after expiration of the lease; provided however, all improvements set forth on Exhibit 2 and all subsequent Letters of Authorization and all crops shall be forfeited and become the property of State upon cancellation of this Lease for default.

If Lessee has been authorized by this Lease to retain ownership of improvements beyond the expiration of this Lease and Lessee is not issued a new lease at expiration, State, at its sole discretion, will elect one of the following options: 1) State shall purchase such improvements; 2) State shall offer the premises and all improvements for lease or sale at public auction; or, 3) Lessee shall remove such improvements within, and in no case later than, sixty (60) days after expiration of the lease, provided that any improvements remaining thereafter shall belong to State.

If the value of improvements to remain the property of Lessee is not set forth in Exhibit 2 and agreement cannot be reached between State and Lessee on the value of such improvements in order for State to exercise option 1 or 2 in the preceding paragraph, a review board of appraisers consisting of three (3) individuals will be formed to determine the fair market value of the improvement as defined in RCW 79.13.160. These individuals must have expertise in the fields of agriculture germane to the permitted use of the Premises to serve on this review board. Per RCW 79.13.160, said review board shall be made up of one (1) member appointed by State, whose expenses shall be borne by State, one (1) member appointed by Lessee, whose expenses shall be borne by Lessee, and one (1) member to be appointed by the two aforementioned members, whose expenses shall be shared equally by Lessee and State. The majority decision of the review board shall determine the value of such improvements; and, the review board shall report its findings to State and Lessee.

The review board of appraisers shall determine the value of the improvements, by owner, and the value of the land; and, state the distinct values which, when added together, constitute the traditional fair market value of the assets.

Under option 2 above, State shall, upon determination of the value of the improvements, offer the Premises for lease or sale at public auction, with improvements. The value of such improvements shall be collected at the time of public auction and the money so collected shall be remitted to Lessee, less any damages or waste to the property or State-owned improvements committed by Lessee. Lessee shall execute a bill of sale or other instrument requested by State showing transfer of title to the improvements immediately upon State's request following the determination of value and prior to transfer of funds due Lessee for the improvements as set forth herein.

If the lease prepared as a result of the review board's determination is not bid at the public auction, then Lessee shall have one hundred eighty (180) days to remove the authorized improvements, after which time all improvements remaining on the Premises shall belong to State.

**3.15A Removal of Improvements during Lease.** During the term of this Lease, authorized improvements owned by Lessee may be removed by Lessee upon the prior written approval of State. The Lessee shall be liable for any and all rents and any and all damage to the Premises or any improvement belonging to State resulting from such removal.

**3.16 Nonwaiver.** Waiver by State of strict performance of any provision of this lease shall not be a waiver of, nor prejudice State's right to, require strict performance of the same or any other provision in the future. State's acceptance of performance, rent, or any other sum owing, following a breach by Lessee of any provision of this lease shall not constitute a waiver of any right of State with respect to such breach. State may be deemed to have waived any right hereunder only if State has expressly done so in writing.

**3.17 Attorneys' Fees.** If either party brings suit to enforce any term or provision of this lease, then the substantially prevailing party shall be entitled, in addition to all other awards made in connection with the action, its reasonable fees, costs, and expenses, including attorneys' fees and costs, actually incurred.

**3.18 Liens.** State may file and maintain during the term of this lease landlord or crop liens in order to secure any payment or obligation under this lease. Lessee shall not suffer or permit any lien to be filed against State's interest in the Premises, or improvements or crops growing thereon, by reason of work, labor, or services, performed by or through, or materials supplied to, Lessee. If any such lien is filed, Lessee shall immediately cause the lien to be discharged of record, but in no case later than thirty (30) days after the date of filing or creation of such lien unless other arrangements are approved in writing by State in advance.

**3.19 Liquidated Damages.**

a. Disease/Pesticide or Herbicide Damage. Upon failure by Lessee to care for the Premises in a manner that meets or exceeds industry standards as required in Subsection 2.01 which results in introducing quarantined disease or damage from pesticide or herbicide residue that diminishes the productivity of, or limits cropping options on, the Premises, Lessee shall pay to State, as liquidated damages and not as a penalty, a sum equal to the cash rent rate in effect at the time breach is discovered by State, multiplied by three (3) years and applied to the number of acres affected.

The liquidated damages amount represents a reasonable pre-estimate of damages that would result to the State by the Lessee's breach from decreased productivity or inability to cultivate the affected portion of the Premises for a reasonably foreseeable period of three years after the breach occurs, regardless of when discovered.

b. Water. If Lessee fails to use the State's Water Supply as authorized and required under this lease, State could lose valuable water rights. Lessee shall pay to State, as liquidated damages and not as penalty, an amount determined under this subsection in the following circumstances:

1. For water permits, if Lessee fails to preserve the full use of State's water permit(s) for future use by failing to comply with the terms of the permit, including the development schedule as required in this lease, or failing to consistently use the water to the full extent authorized and as required under this lease, as determined by State;
2. For water certificates, if Lessee fails to use the State's Water Supply to the full extent authorized and as required under this lease for five successive years without sufficient cause, as determined by State; and/or
3. For irrigation district water, if Lessee fails to preserve the State's irrigation district water for full beneficial use in the future, as determined by State.

Lessee shall not be subject to liquidated damages if Lessee has provided timely notice of surplus or under usage of water as required under Subsection 2.06. In the case of a water permit under a development schedule, such notice does not excuse Lessee from liquidated damages unless an extension of the development schedule is approved by the Department of Ecology and subsequently met by Lessee.

Liquidated damages shall be determined as follows:

$\text{CPI Current (date breach discovered)} / \text{CPI Past (Commencement date)} = \text{IF}$

$\text{IF} \times \text{WV} = \text{WVB}$

$\text{WVB} \times \text{AF} = \text{Liquidated Damages}$

*Where:*

$\text{IF} =$  Inflation Factor

The Inflation Factor is the change in the monthly Core Inflation Consumer Price Index Value from the Commencement Date to the date that breach is discovered by State. The data source for the inflation factor is CPI-U, All Urban Consumers 1982-84=100, Series Id. CUUROOOOSAOL1E.

$\text{WV} =$  Water value per acre-foot of the surface water right at Commencement Date = \$3,500.00.

The Water Value represents the market value for surface water right in the geographic area of the Premises as of the Commencement Date as determined by State.

$\text{WVB} =$  Water value at time breach discovered

AF = Acre-feet or portions of acre-feet not put to full beneficial use for five successive years as determined by State

The liquidated damages amount represents a reasonable pre-estimate of damages that would result to the State by the Lessee's breach from loss or potential loss of all or a portion of State's Water Supply or State's Irrigation Water Supply.

Lessee's liability under this Subsection 3.19 shall survive the termination or expiration of this lease.

State retains the option to pursue alternative remedies, including actual damages, for the breaches specified in this Subsection 3.19.

**3.20 Default.** If Lessee breaches any requirement of this lease, whether material or not, State may terminate this lease after Lessee has been given thirty (30) days' notice of the breach and such breach has not been corrected within that time. If Lessee has more than one breach during the term of this lease, whether of the same or different lease requirements and whether the breach is material or not, State may terminate this lease without regard to whether Lessee cured or cures the breaches within the thirty-day cure period. With or without terminating the lease, State may seek damages for any and all defaults and reenter Premises and take whatever action may be necessary or advisable to relet, protect, or preserve Premises. State may store any property it removes from Premises in a public warehouse or other suitable place or otherwise dispose of the property, at State's discretion, at the expense and for the account of Lessee. State shall not be responsible for any damages or losses suffered by Lessee as a result of such reentry, removal, storage, or other disposition, and none of this action shall be construed as an election to terminate this lease unless a written notice of termination is given to Lessee. The remedies provided for in this lease shall not be exclusive but are in addition to all other remedies available by law.

**3.21 Survival.** All obligations of Lessee to be performed prior to expiration or earlier termination of this lease shall not cease upon the termination or expiration of this lease, and shall continue as obligations until fully performed. All clauses of this lease that require performance beyond the termination or expiration date, including but not limited to Subsections 3.09, 3.10, 3.11, and 3.19, shall survive the termination or expiration date of this lease. However, upon expiration or termination of this lease, the rights of Lessee and of all persons, firms, corporations, and entities claiming under Lessee in and to the Premises and all improvements thereon, unless specified otherwise in this lease, shall cease.

**3.22 Force Majeure.** Lessee's failure to comply with or delayed compliance with any obligations under this lease shall be excused only if due to causes entirely beyond Lessee's control and without the fault or negligence of Lessee, including riots, insurrections, martial law, civil commotion, war, fire, flood, earthquake, or other casualty or acts of God. Obligations shall be excused only for the period of delay.

**3.23 No Partnership.** The State is not a partner or joint venturer with Lessee in relation to this lease or otherwise and shall not be obligated on Lessee's debts or liabilities.

**3.24 Condemnation.** If any public authority under the power of eminent domain takes all of the Premises, this lease will terminate as of the date the public authority, pursuant to the condemnation, takes possession. If any part of the Premises is so taken and, in the opinion of either State or Lessee, it is not economically feasible to continue this Lease in effect, either party may terminate this lease. Such termination by either party shall be made by notice to the other given not later than thirty (30) days after possession is so taken, the termination to be effective as of the latter of thirty (30) days after said notice or the date possession is so taken. If part of the Premises is so taken, and neither State nor Lessee elects to terminate this lease, or until termination is effective, as the case may be, the rent will be abated in the same proportion as the portion of the Premises so taken bears to the whole of the Premises. All damages awarded for the taking or damaging of all or any part of the Premises, or State-owned improvements thereon, shall belong to and be the property of State, whether made as compensation for diminution in value of the leasehold, for the taking of the fee, or for severance damages, and Lessee hereby assigns to State any and all claims to the award, but nothing herein contained shall be construed as precluding Lessee from asserting any claim Lessee may have against the public authority for disruption or relocation of Lessee's business on the Premises or for Lessee's authorized improvements.

**3.25 Numbering.** Section and subsection numbers, headings, or titles are for convenience only and are not to be construed to limit or to extend the meaning of any part of this lease.

**3.26 Time of Essence.** Time is expressly declared to be of the essence of this lease and each and every covenant of Lessee hereunder.

**3.27 Amendments and Alterations.** Amendments and alterations to this lease shall be in writing and shall be signed by both State and Lessee. Neither State nor Lessee shall be bound by verbal or implied agreements.

**3.28 Entire Agreement.** This written lease or its successor or replacement contains the entire agreement of the parties hereto with respect to the matters covered hereby, and no other agreement, statement or promise made by any party hereto, or to any employee, officer or agent of any party hereto, which is not contained herein, shall be binding or valid.

**3.29 Discrimination.** Lessee shall not conduct or suffer any business upon the Premises which unlawfully discriminates against any person on the basis of race, color, creed, religion, sex, age, or mental or physical disability or which otherwise violates applicable civil rights and anti-discrimination requirements, including but not limited to RCW 49.60.

**3.30 Proprietary Information/Public Disclosure.** All materials or information provided to State by Lessee shall become public records within the meaning of the Public Records Act, RCW 42.56, and are subject to disclosure to the public unless an exemption applies.

**3.31 Exhibits.** Exhibits referenced herein, including those which may be added during the term of this lease, are incorporated herein by reference and are to be considered terms of this lease.



**3.32 Notices, Payments, and Submittals.** Any notice, payment, or submittal given under this lease shall be deemed as received: upon delivery by hand; five (5) days after deposit in the United States mail with first-class postage affixed and sent to the addresses listed below; or, when sent by email, on the next business day. Changes of address shall immediately be given in accordance with this subsection. All payments required under this lease shall be submitted to State at its Division office. Any notice or submittal given under this lease shall be sent to State at its Region Office.

Send payment to Division Office:  
Department of Natural Resources  
Financial Management Division  
PO Box 47041  
Olympia, WA 98504-7041

Send notice and/or submittals to Region Office:  
Department of Natural Resources  
Southeast Region Office  
713 Bowers Road  
Ellensburg, WA 98926

To Lessee:

At the address affixed with Lessee's signature or Lessee's last known address.

**3.33 Taxes, Assessments, and Utilities.** Lessee shall:

- a. Pay all federal, state, and local taxes, penalties and interest owing due to Lessee's failure to pay such taxes, penalties, and interest, including, but not limited to, personal property tax and leasehold excise tax in accordance with RCW 82.29A, as it may be amended from time to time, that may be charged against the lease and improvements located on the Premises. Leasehold excise tax will be billed at the time rent is due;
- b. Pay all assessments that may be charged against the Premises unless otherwise approved in writing by State due to a shared use of the Premises authorized by State pursuant to Subsection 3.06. Lessee's responsibility to pay an assessment shall never be reduced below Lessee's share of the use and control of the Premises. Assessments will be billed at the time rent is due, and may include collection of payments for more than one billing cycle, or on another schedule determined by State to avoid administrative costs associated with billing. Lessee's obligations under this subsection are not limited to assessments relating to the encumbrances, if any, listed in the legal description and set forth in Exhibit 1, but extend to all assessments that may be charged against the Premises, including, but not limited to, weed assessments, watershed protection district assessments, conservation district assessments, storm water runoff assessments, and local improvement district assessments; and

c. Be liable for all electrical power and other utility charges or expenses associated with Lessee's use of the Premises, including, but not limited to, power minimums and disconnect charges incurred prior to termination or expiration of this lease.

**3.34 Federal Farm Program.** Participation in any federal farm program for the Premises must have prior written approval from State.

**3.35 Audit.** At its option, State or its agents may conduct, at any reasonable time upon forty-eight (48) hours' notice, an audit including but not limited to Lessee's business records. If an audit discloses additional liability to State, Lessee shall immediately pay all amounts due plus interest from the date such payment was originally due and payable, but in no case later than thirty (30) days after notice of the additional liability. The acceptance by State of any payment under Section 1 herein shall be without prejudice to State's right to examine Lessee's books, records, and files of all kinds.

**3.36 Cultural Resource Management.** Lessee shall cease all work in the area and immediately notify State if ground disturbing activities associated with the operation or development of the Premises expose cultural resources.

**\*\*\* SELECT ONE OF THE FOLLOWING TWO "LESSEE" SIGNATURE BLOCKS \*\*\***

**\*\*USE THIS BUSINESS SIGNATURE BLOCK WHEN SIGNOR(S) WILL BE SIGNING AS REPRESENTATIVES OF A BUSINESS\*\***

**SUCCESSFUL BIDDER BUSINESS NAME**

Dated: \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
SIGNATORY IN CAPS, title if needed

Address:

Phone:

**\*\*USE THIS INDIVIDUAL SIGNATURE LINE BLOCK WHEN SIGNOR(S) WILL BE SIGNING IN THEIR INDIVIDUAL CAPACITY\*\***

**SUCCESSFUL BIDDER LESSEE'S NAME**

Dated: \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Address:

Phone:

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES



Dated: \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
ANGUS BRODIE  
Deputy Supervisor for State Uplands

Approved as to form this  
31 day of January, 2018.  
Adrienne Smith  
Assistant Attorney General

"[Select one Notary; delete one not used]"

**NOTARIAL CERTIFICATE  
ACKNOWLEDGMENT IN AN INDIVIDUAL CAPACITY**

STATE OF \_\_\_\_\_ )  
 )ss  
COUNTY OF \_\_\_\_\_ )

On this day personally appeared before me \_\_\_\_\_, to me known to be the individual(s) described in and who executed the within and foregoing instrument, and acknowledged that \_\_\_\_\_ signed the same as \_\_\_\_\_ free and voluntary act and deed, for the uses and purposes therein mentioned.

DATED: \_\_\_\_\_  
(Seal or Stamp)

\_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of \_\_\_\_\_

My appointment expires \_\_\_\_\_

**NOTARIAL CERTIFICATE  
ACKNOWLEDGMENT IN A REPRESENTATIVE CAPACITY**

STATE OF \_\_\_\_\_ )  
 )ss  
COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ **[name(s)]** **[is/are]** the person(s) who appeared before me, and said person(s) acknowledged that **[he/she/they]** signed this instrument, and on oath stated that **[he/she/they]** **[was/were]** authorized to execute this instrument, and acknowledged that **[he/she/they]** **[was/were]** the \_\_\_\_\_ **[office or title(s)]** of \_\_\_\_\_ **[business name of Lessee]** to be the free and voluntary act of such **[party/parties]** for the uses and purposes mentioned in this instrument.

DATED: \_\_\_\_\_  
(Seal or Stamp)

\_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of \_\_\_\_\_

My appointment expires \_\_\_\_\_

**NOTARIAL CERTIFICATE  
ACKNOWLEDGMENT IN A REPRESENTATIVE CAPACITY**

STATE OF WASHINGTON            )  
  )ss  
COUNTY OF THURSTON    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me Angus Brodie to me known to be the Deputy Supervisor for State Uplands of the Department of Natural Resources, State of Washington, who executed the within and foregoing instrument on behalf of the State of Washington, and acknowledged said instrument to be the free and voluntary act and deed of the State of Washington for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the official seal of the Commissioner of Public Lands for the State of Washington.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

(Seal or Stamp)

\_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of Washington  
My appointment expires \_\_\_\_\_

**EXHIBIT 1  
PLAN OF DEVELOPMENT & OPERATION  
Lease No. 12-A88961**

**Bidders: The initial Plan of Development and Operation will be based on the approved Plan of Development submitted by Successful Bidder incorporating elements described in Section 2. E. of the Notice of Intent.**

The lease will be managed for the production of irrigated agriculture row crops described in Subsection 1.03. Irrigation water is provided from Surface Water Right No State’s Water Right Permit S4-25639(A)P as modified under change application CS4-25639(A)@2.

Unless bidder can provide evidence of ability to deliver water to premises by March 31, 2022, through another irrigation water delivery system, the water will be delivered to the Premises under an agreement between the State and the Columbia Water and Power District (CWPD/DNR Agreement). The water is delivered from the CWPD pump station and related facilities, through the Paterson Project Irrigation System, which traverses Lease No. 12-095036. A portion of Lease 12-095036 surrounds proposed lease 12-A88961.

Premises may be accessed via Horrigan Road. Successful bidder will be required to purchase or provide all above ground improvements.

Lessee will follow a one in three rotation with Year 1: \_\_\_\_, Year 2: \_\_\_\_ Year 3 \_\_\_\_ (describe as proposed by successful bidder).

Required development, activities or actions:

The following activities, improvements, or actions are required as a condition of this lease and shall be implemented by the scheduled completion dates included in the table below and based on the proposed plan of development submitted.

ACRES PLANTED	CROP	DATE
Minimum of 125.5	Irrigated Agriculture Crops	As proposed by successful bidder, but no later than March 31, 2022
Interconnect on-farm irrigation systems to existing surface water delivery system		As proposed by successful bidder, but no later than March 31, 2022

**Include if subleases for portion or rotation are proposed by successful bidder**

Sublease Information:

In years when a sublease is proposed for a given rotation or portion of the lease, please submit request to sublease to State, along with below information:

- Sublessee Name
- Phone number, email and mailing address

Location or crop rotation being subleased

**Encumbrances**

Subject to road use permit for right of way for road heretofore granted under Application No. 50-097796, expiring December 31, 2043.

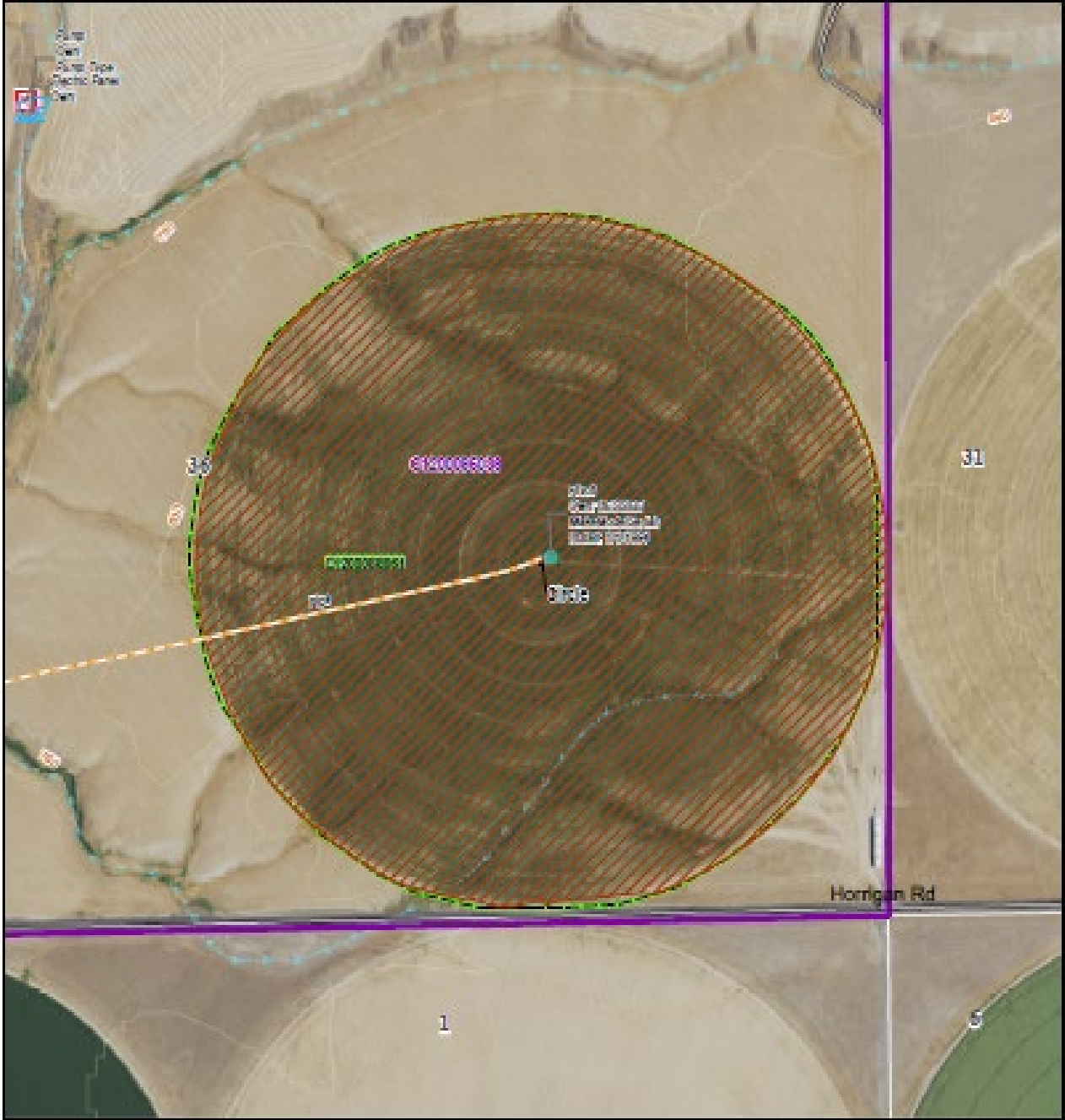
Subject to easement for right of way for county road heretofore granted under Application No. 50-CR3181 for indefinite term.

Subject to the rights of the holder of Department of Natural Resources Water Rights File Nos. 78-000185 and 78-000628.

Subject to assessments imposed by any entity properly authorized to assess property.

# Map of Premises

T7-0N R25-0E S36, Benton County





## Irrigation Water Use Authorization

State's Water Right, Surface Water Permit No. S4-25639(A)P authorizes a total of 56.99 cubic feet per second (cfs) and 13,713.95 acre-feet/year (afy) for irrigation of 3,453.5 acres and is currently under a water right development schedule. The portion of the permit to be used for irrigation on the Premises is up to a maximum of 127.1 irrigated acres, will be based on successful bidder's proposal.

**Bidders: Successful bidder will demonstrate how their proposal will maximize development of State's Water Right by describing proposed acres and crops to be planted in order to most fully use water quantities below. Total irrigated acres cannot exceed 127.1 acres**

Information provided is only a summary of Water Supply and authorized use. Water Supply documents are attached for reference. Further information is available from State. The actual water right takes precedence over the summary below.	
<b>Surface Water Right No:</b> S4-25639(A)P as changed by CS4-25639(A)@2	
Type of Authorization	State water right
Authorized Irrigation Use	Up to 56.99 cfs and 13,713.95 afy for irrigation of up to 3,453.5 acres from February 1 to November 15 each year within water right place of use as described on Permit LESS a 938.6 acre area of undeveloped wildlife habitat.
Surface diversion(s) or turnout	Columbia Water and Power District (CWPD) Diversion located at Columbia River Mile 166, within NW <sup>1</sup> / <sub>4</sub> NW <sup>1</sup> / <sub>4</sub> of Section 18, Township 5 North, Range 26 East W.M. as shown on lease map.

## Resource Management Plan

The resource management section describes the management objectives and practices agreed upon by State and Lessee to manage agricultural and grazing production on Washington's trust lands. If the management requirements cannot be followed due to any climatic variations, unforeseen events, or other land management activities that lead to changes from agreed upon resource management, Lessee must obtain authorization from State regarding any proposed changes prior to implementation.

**Composite Erosion Rate:** The Lessee shall maintain or improve the soil profile by applying farming practices that reduce sheet, rill and wind erosion. The composite erosion rate for the crop rotation shall not exceed the soil loss tolerance "T": the amount of topsoil that can be replaced naturally in a year on the soil mapping unit found on the leased premises.

**Chemigation, Fertigation, Fertilizer, and Pesticide Management:** If chemigation, fertigation, fertilizer, and/or pesticide is utilized, Lessee shall meet all applicable Federal, State, and local regulations.

**Weed Control:** Lessee shall control all noxious weeds on all lands under this lease consistent with applicable laws. Lessee shall be responsible for, and shall reimburse State for, any noxious weed control costs incurred as a result of Lessee's failure to control.

The Lessee shall use Integrated Pest Management (IPM) to control weeds. This means using a coordinated decision-making and action process that considers all weed management methods and strategies, and applies them in an environmentally and economically sound manner to meet weed management objectives. The elements of integrated pest management for weeds include:

1. Preventing weed problems;
2. Monitoring for the presence of weed species;
3. Establishing the density of the weed population (which may be zero) that can be tolerated;
4. Treating weed problems to reduce their populations below the tolerable threshold, using strategies that may include biological, cultural, mechanical, and chemical control methods, and that consider human health, ecological impact, feasibility and cost-effectiveness; and
5. Evaluating the effects and efficacy of weed control treatments.

**Conservation Cover:** Lessee shall maintain perennial vegetative cover in any undeveloped fields adjacent to circles.

**Cover Crops:** Within 15 days following the harvest of any low residue crops on the lease premises, the Lessee shall plant and irrigate, at their sole expense, a cover crop of wheat or other cereal grain with a minimum seeding of 50 pounds per acre or the Lessee may fall seed alfalfa. Low residue crops are those that will not have enough residue remaining to meet or exceed the over-winter levels as required in the crop residue section below.

When taking out the cover crop in the spring, the Lessee must delay tillage until 5 days or less before crops are planted during February and March, and 10 days or less before crops are planted during April or later.

**Crop Residue (irrigated):** The Lessee shall maintain the following crop residue levels during the critical erosion period (November - May) to conserve soil moisture, increase soil infiltration, reduce soil loss, and improve soil tilth. Residue will be measured using the line and point method.

Minimum lbs/acre	
1,000	of small grain residue.
1,200	of corn residue.

**Mass Soil Movement and Gully Erosion:** Lessee shall apply farming practices that limit the potential for mass soil movement and gully erosion.

**Pesticide Management:** The Lessee shall utilize Integrated Pest Management (IPM) in conjunction with standard industry methods for controlling pests. Methods of application shall be utilized that will ensure optimum protection of the plants, while insuring that pesticides will not be transported off site or have non-target impacts.

**Cultural Resources Management:** If ground disturbing activities associated with development of the lease parcel expose cultural resources, all work will cease in that location and Lessee shall notify State.

**Supporting Documentation**

Exhibit 1A: Water Rights



**EXHIBIT 1  
WATER SUPPLY**

**See Water Rights Summary**

**EXHIBIT 2**  
**Authorized Improvements**

State-owned improvements include:

Description	Location
Well: Irrigation One (1)	S2SW4SW4 Section 36
Underground Irrigation System	Throughout Section 36
Underground Electrical System	Throughout Section 36

**Below list of lessee-owned improvements will be amended to show improvements purchased or installed by successful bidder.**

The Lessee is hereby authorized to place the following improvements on the Premises:

Description	Location
Center Pivot or other primary irrigation system proposed to be installed by successful bidder	On Premises
Pump & Electrical Panel	On Premises

This authorization will expire on March 31, 2022 if the improvements are not completed and certified by this date.

Provided, however, upon expiration or earlier termination of this lease, State shall acquire ownership of the following authorized improvements without compensation to Lessee:

Description	Location
Electrical Systems, Underground	
Irrigation Mainline, Underground	

### **EXHIBIT 3 Rent Adjustment**

Rent shall be adjusted annually based on the method set forth in this Exhibit.

The following definitions apply:

“Base Rent” is the annual rent in the first year of the lease or, for leases with incremental rent increases due to a defined development period, the first year in which full rent applies. For leases in which a change in Permitted Use is approved under Subsection 1.05, if the change results in a change in rent, Base Rent, for future rent adjustments, is the annual rent established as a result of the change in Permitted Use.

“Base Period Reference Month” is the month and year the lease went into effect or, for leases with incremental increases in rent due to a defined development period, the first month and year in which full rent applies. For leases in which a change in Permitted Use is approved under Subsection 1.05, if the change results in a change to the Base Rent, for future rent adjustments, the Base Period Reference Month will be the first month and year the annual rent established as a result of the change in Permitted Use occurs.

“Escalation Month” is the calendar month immediately following the month the lease went into effect. For example, if the effective date of the lease is January 2014, the Escalation Month is February.

“PPI-FS” is the Producer Price Index for Farm Products, Series Id: WPU01, not seasonally adjusted, published by the U.S. Bureau of Labor Statistics (BLS).

“EMA” is the exponential moving average of the applicable period of PPI-FS data used in the calculation of the Base Period EMA and Escalation Month EMA, defined below. The PPI-FS series used to calculate the EMA shall begin with the index value for January 2000. The exponential moving average formula is as follows:

$$EMA_{current} = \frac{2}{1+p} \times (PPI-FS_{current} - EMA_{previous}) + EMA_{previous}$$

Where  $p$  is the number of months.

“Base Period EMA” is the EMA, rounded to one decimal, of the PPI-FS values for the 60-month period as of, and including, the Base Period Reference Month.

“Escalation Month EMA” is the EMA, rounded to one decimal, of the most recently published PPI-FS values in the 60-month period as of the current Escalation Month, whether or not any of the values are revised or corrected by the BLS after State has calculated the Adjustment Rate.



“Adjustment Rate” is the percentage change, rounded to two decimals, between the Base Period EMA and the Escalation Month EMA.

Adjusted rent is determined as follows:

1. Determine the Adjustment Rate by calculating the percentage change, rounded to two decimals, between the Base Period EMA and the Escalation Month EMA.
2. Multiply the Base Rent by the Adjustment Rate.
3. Add the product to the Base Rent.

$$\text{Adjusted Rent} = \text{Base Rent} + (\text{Base Rent} \times \text{Adjustment Rate})$$

Example

For a lease with a Base Rent of \$500, Base Period Reference Month of January 2015 and an Escalation Month of February.

2016 Adjustment (actual data)

Base Period EMA (60 mo. index data through final published value for January 2015)	183.5
Escalation Month EMA (60 mo. index data through January 2016, first published in February 2016)	179.7
Percentage change	-2.07%
Base annual rent	\$500
Change in rent	-10.35
New annual rent	\$489.65

2018 Adjustment (hypothetical future data)

Base Period EMA (60 mo. index data through final published value for January 2015)	183.5
Escalation Month EMA (60 mo. index data through January 2018, first published in February 2018)	186.0
Percentage change	1.36%
Base annual rent	\$500
Change in rent	6.80
New annual rent	\$506.80