

REQUEST FOR PROPOSALS FOR COMMERCIAL LEASE OF STATE TRUST LAND

INSERT PROJECT NAME

Trust Land, **City**, Montana



Montana Department of Natural Resources and Conservation

DATE



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EXHIBIT A - INSERT IF PLAT, SURVEY, OR MAP

EXHIBIT B – INSERT IF LEASE DOCUMENT OR OTHER

CHAPTER 1 – INSTRUCTIONS AND CHECKLIST

1.1 Instructions

It is the responsibility of each proposer to:

Follow the format required in the RFP when preparing your response. Provide responses in a clear and concise manner.

Provide complete answers and descriptions. Read and answer all questions and requirements. Proposals are evaluated based solely on the information and materials provided in your written response.

Submit your response on time. Note all the dates and times listed in the Schedule of Events. Late proposals are never accepted.

1.1.1 Submitting the Proposal

Lease proposals must be mailed or delivered so that they are physically received by the DNRC by 4:00 p.m., Mountain Time, on **INSERT BID CLOSING DATE** to be eligible for consideration.

Three paper copies and one digital copy of the proposal should be mailed or delivered in a sealed envelope. A label must be attached to the outside top left corner beneath the bidder's return address, stating that the contents are: "Response to RFP — Do Not Open until 4:00 p.m., **INSERT BID CLOSING DATE.**"

DNRC assumes no liability for incorrect addresses or failed delivery of Lease Proposal packages by public or private carriers.

1.1.2 Proposal Requirements

The following items must be included in the proposal. Failure to include any of these items may result in a nonresponsive determination, and the proposal will not be scored.

- Initialed Checklist** found on page 5 of this RFP.
- Transmittal Letter** which lists the complete name and address of the Proposer, and contact information for an authorized representative who can be contacted by DNRC concerning the proposal. It shall also include the notarized signature of the individual authorized to bind the Proposer. This letter shall serve as the application for lease.
- Proof of authorization to sign** on behalf of another or corporation must be provided if applicable.
- Conflict of Interest statement per section 4.14**
- Compatibility with Lease Terms acknowledgement per section 4.7**
- Detailed Response to Sections 7.1, 7.2, 8.1, 8.2, 9.1.**
- \$50 Application Fee;** nonrefundable.
- 10% Bid Deposit** of the proposed annual lease fee, paid via cashier's check.
- Correct proposal quantity and format:** three hardcopies AND one digital copy.

1.1.3 Checklist

Proposer must acknowledge that he or she has read, understands, and will comply with each section/subsection listed below by initialing the line to the left of each. If proposer cannot meet a particular requirement, provide a detailed explanation in their proposal.

This initialed checklist must be submitted as part of any proposal.

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| _____ | Chapter 1 – Instructions and Checklist |
| _____ | Chapter 2 – Schedule of Events |
| _____ | Chapter 3 – Overview |
| _____ | Chapter 4 – RFP Standard Information |
| _____ | Chapter 5 – Limitations |
| _____ | Chapter 10 – Proposal Evaluation |
| _____ | Exhibit A – Plat, Survey, or Map |
| _____ | Exhibit B – Commercial Ground Lease |

CHAPTER 2 – SCHEDULE OF EVENTS

| | |
|---|---|
| Release of Request for Proposals | Insert Date: Release Date |
| Optional Site Visit | Insert Date: 2 wks after Release Date |
| Deadline for Questions | Insert Date: 3 wks after Release Date |
| Distributions of RFP Amendments if applicable | Insert Date: 4 wks after Release Date |
| Deadline to Submit Proposal | Insert Date: 90 days after Release Date |

CHAPTER 3 - OVERVIEW

3.1 Objective

The Montana Department of Natural Resources and Conservation (DNRC) is the land management agency for trust lands in Montana, and is responsible for managing the trust land to generate revenue for trust beneficiaries. The designated beneficiary of the subject property is **INSERT TRUST NAME**. They will receive revenue from the lease fees paid for the use of this land.

The purpose of this RFP is to solicit proposals to lease approximately **INSERT # OF ACRES** acres of school trust land in **INSERT NAME OF CITY**, Montana.

3.2 Description of Land for Lease

The legal description of the land available for lease through this RFP is: **INSERT LEGAL DESCRIPTION** as generally depicted on **Exhibit A**.

DESCRIBE THE PROPERTY in one to two paragraphs. Description may include neighborhood information, history, structures, etc.

INSERT any zoning specifications. Describe any applicable neighborhood plan or growth policy, and any other known limiting factors or requirements for development.

It is ultimately the proposer's responsibility to ensure that the proposed use complies with current local regulations by contacting the applicable Planning Department.

3.3 Project Manager

Proposals must be delivered to the Project Manager listed below. For information concerning the Request for Proposals (RFP) process, required format and the schedule of events, please direct your questions to the Project Manager:

Name and Title
DNRC, Office Name
Address
City, MT Zip
Phone: Phone
E-mail: E-mail

3.4 Optional Site Visit

An on-site inspection of the property is recommended. The site visit date is prescheduled and listed in the Schedule of Events. Contact the Project Manager for details.

CHAPTER 4 – RFP STANDARD INFORMATION

4.1 Authority

This RFP is issued under 77-1-904, Montana Code Annotated.

4.2 Costs of Preparing Lease Proposal

It is the responsibility of the successful Proposer to finance, or obtain private financing for all costs associated with the design, construction and operation of the proposal. The Proposer assumes the risk of loss in the submission of any proposal or its operation. DNRC is not liable for any costs or consequential

damages incurred by Proposers in proposal preparation, negotiations, or any other costs that may result from activities in connection with this Lease Proposal.

4.3 Modification or Clarification of the Lease Proposal

All recipients of this RFP should review its contents for defects and questionable matter. A recipient may make a **written** request for clarification of the RFP. Requests should be submitted in an envelope marked “**Questions Related to the RFP**” and to the attention of the Project Manager no later than the date specified in the Schedule of Events. At its option, DNRC will issue addenda to modify or clarify the RFP in response to submitted questions. When applicable, DNRC will distribute addenda in writing to all parties who have requested the same of the Project Manager. Protests based upon omissions, error, or the contents of the RFP will be disallowed if the procedures outlined in this paragraph are not followed. No interpretation made to any proposer as to the meaning of the RFP shall be binding on DNRC unless repeated in writing and distributed as an attachment by DNRC.

4.4 Confidentiality of Proposals

All proposals and material submitted become the property of DNRC, but may be returned to the proposer upon request at the discretion of DNRC. Materials identified as trade secret information in the proposals shall remain confidential upon request from the Proposer. Such request for confidentiality must be in writing and specify the trade secret information to be withheld and the reason for the request. Trade secret requests will be reviewed for applicability and approval by DNRC’s legal counsel. All information deemed not to be trade secrets and other information contained in proposals become public information at bid opening.

4.5 Lease Format & Term

A copy of the base DNRC lease agreement is included as an Exhibit to this RFP. DNRC may issue a lease to the successful Proposer for a term of up to 99 years; however, it is typical that the lease be an initial term followed by renewal terms, not to exceed 99 years in total. A lease for less than ten years is not desirable. The lease will contain the entire agreement between the parties, and the lease proposal shall not be deemed to be a part of the agreement between the parties unless so designated in the lease.

4.6 Statutory Minimum Lease Fee

The *minimum* lease fee will be calculated per Section 77-1-905(2), MCA, which provides, in part, that: The annual Base Rent may not be less than the product of the appraised value of the land multiplied by a rate that is 2 percentage points a year less than the rate of return of the unified investment program administered by the board of investments pursuant to 17-6-201.

4.7 Compatibility with Lease Terms

Proposer shall acknowledge that they have read and accept the lease terms in the Sample Lease Agreement provided as an Exhibit to this RFP, or they shall specify any required or desired changes to the lease terms and include an explanation for the purpose of the change. DNRC reserves the right to request additional information and data from the proposer to ascertain the proposal’s compatibility with the terms of the Sample Lease Agreement.

DNRC also reserves the right to modify or impose specific lease terms based on the proposed use in the highest scoring proposal, after the release of this RFP and prior to offering a lease contract.

4.8 Bid Deposit

A bid deposit of 10 percent of the proposed annual lease must be submitted by cashier’s check. The deposit will be applied to the first year’s lease rent for the successful proposer. The bid deposit will be refunded to unselected proposers. If the successful proposer fails to enter into a lease with DNRC then the Proposer will forfeit the bid deposit.

4.9 Proposer Oral Presentation

Proposers selected for final evaluation may be required to make an oral presentation of their proposal. Such presentations provide an opportunity for the proposer to clarify their proposal to ensure mutual understanding.

4.10 Evaluation

All proposals will be deemed either responsive or non-responsive based on their completeness and adherence to mandatory requirements laid out in this RFP. The evaluation process is further explained in the Proposal Evaluation chapter.

4.11 Land Board

Lease proposals may require approval by the Board of Land Commissioners (Land Board) at their monthly meeting. This requirement may delay or halt lease execution. If the proposed lease is not approved by the Land Board, the bid deposit will be refunded to the proposer.

4.12 Contract Execution

A commercial lease will be offered to the highest scoring proposer if it is in the best interest of the state, and if it is not rejected by the Land Board per section 4.11. The highest scoring proposer will be expected to accept and agree to the lease by signing the lease agreement within 60 days of the lease offer. If the highest scoring proposer does not accept the lease document, or sign within 60 days, the DNRC may move to the next highest scoring proposer, or cancel the RFP. More time may be allowed for due diligence at the discretion of the DNRC. Work under the lease contract may begin when the lease contract is signed by all parties.

4.13 Montana Environmental Policy Act (MEPA)

The level of MEPA analysis required for the lease will vary based on the proposed activity and the proposed location. Some locations may have had MEPA already conducted for commercial development, in which case, further MEPA may not be necessary. If it is necessary to contract for MEPA work for the proposed lease, the Project Manager will contract with a consultant, at the proponent's expense. DNRC will be the primary contact for the MEPA contractor and will have final authority over the management of the consultant and the MEPA document.

4.14 Conflict of Interest

Pursuant to Section 77-1-113, MCA, it is unlawful for members of the State Board of Land Commissioners and officers and employees of the Montana Department of Natural Resources and Conservation to purchase or lease, directly or indirectly, any lands of the State. Proposers shall disclose whether such a member, officer or employee:

1. Has assisted the proposer as counsel, consultant, representative, or agent at any time; or
2. Has a financial interest in the Lease Proposal; or,
3. Has solicited or accepted employment with the Proposer; or,
4. Has engaged in any financial transaction for private purposes with the Proposer.

Failure to disclose any of the above-described facts where they have occurred shall result in cancellation of the lease if awarded to the proposer.

4.15 State's Rights Reserved

DNRC reserves the right to reject any and all bids if the proposal is not in the best interest of the State and Trust beneficiaries, and the right to reoffer the tract for lease if the bids received are not acceptable to the DNRC and the Land Board.

CHAPTER 5 - LIMITATIONS

5.1 Lease Proposal Limitations

All Lease Proposals must comply with the following limitations and requirements:

- a. Per MCA 77-1-903, the Land Board shall determine how the development of state trust land for commercial purposes is to proceed before any state trust land is offered for lease. Per MCA 77-1-904(2) the Land Board may enter into contracts with lessees of state trust land for commercial purposes upon terms and conditions that the board may reasonably determine to be in the best interests of the beneficiary.
- b. The use of the property must not reduce the value of the tract.
- c. Storage or disposal of any toxic, hazardous or deleterious substances must comply with applicable local, state, and federal laws and regulations.
- d. The use of the property must comply with state, federal, and local laws and regulations. It is the sole responsibility of the proposer to ensure that the proposed use meets the requirements of this section.
- e. The Lessee will be solely responsible for all costs to be incurred in the design, development, construction, operation and maintenance of all improvements upon the tract consistent with MCA 77-1-906(1). The State will not be held liable for any costs incurred by the Lessee or any proposer in the preparation of any proposal, negotiation for lease, or procurement of financing for any portion of the Lease Proposal or lease.
- f. The Lessee will be solely responsible for all design, installation, and construction of infrastructure and improvements, such as public roads, parks, sanitary sewer, storm sewer, or utilities, if they were required by a local government as a condition of development. A credit may be allowed against the annual rental due for payments made by the lessee on behalf of the state of Montana for construction of improvements required under this section in accordance with 77-1-905(2).
- g. If site development results in excess native materials (topsoil, fill dirt, boulders, etc...) DNRC may within the terms of the lease agreement: 1) reserve those materials and require transport of materials to a designated stockpile area on nearby Trust lands; 2) establish a market price and sell the material to the developer/contractor for use elsewhere, or: 3) require developer to remove the material for off-site disposal.
- h. The lessee will be responsible for the payment of all taxes, assessments, levies, fees, or other charges assessed upon any property owned by the lessee, in addition to any beneficial use taxes levied under MCA 15-24-1203. The lessee is also responsible for payment of any and all Special Improvement District (SID) or Rural Improvement District (RID) fees that may be assessed.
- i. Any proposal not meeting these limitations or other criteria set out in this offering will be rejected at the discretion of DNRC and the Land Board per MCA 77-1-904(2) and (3).
- j. DNRC reserves the right to waive technical defects in this RFP.
- k. Upon expiration or cancellation of the lease, consistent with MCA 77-1-906(2), the title to all permanent improvements and fixtures located on the leased property and used in the operation and maintenance of the enterprise vests in the state. The lease must describe in detail the manner

and subject matter of the transfer to the state. The DNRC also reserves the right to require the Lessee to remove and or reclaim all authorized improvements constructed on the parcel during the term of this lease, at the expense of the Lessee.

1. Per MCA 77-1-907 (1) prior to executing a commercial lease, the Land Board may require the posting of bonds, sureties, guarantees, or a letter of credit sufficient to ensure that the commercial purposes will be conducted as proposed with no harm to the financial interests of the beneficiaries. All commercial leases of which the commercial purpose includes the use of a hazardous substance as defined in MCA 75-10-602 must be bonded to ensure a degree of cleanup of the hazardous substance that ensures protection of public health, safety, and welfare and of the environment in a manner that protects the long-term financial interest of the beneficiaries.
- m. DNRC reserves the right to request additional information and data from the proposer to ascertain proposer's capabilities and desire to develop the property. Any request for information by DNRC to the proposer is solely for the purpose of selecting a proposal and understanding its terms. Such a request shall not be considered to constitute a binding agreement or commitment by DNRC in any manner.
- n. DNRC further reserves the right to reject, at any time before a lease is executed, any application, proposal, or bid determined by DNRC to be contrary to the best interests of the State.
- o. Per MCA 77-1-911 (1) The lessee of a commercial lease on state trust land shall furnish to the department:
 - (a) officially certified descriptions of all state trust land included within the boundaries of a city or county improvement district that is the subject of the commercial lease; and
 - (b) a description and listing of the amount of assessments and charges of every character made against the leasehold interest of the lessee and the leasehold interest of the state, as soon as the assessments or charges are levied
 - (2) A promise by the lessee to make timely payment of all assessment charges and an acknowledgment of the assessment must be inserted in any lease for state trust land.
 - (3) If assessments have been levied against any state trust land prior to commercial lease, the board shall require that all unpaid installments on assessments be paid to the improvement district before executing a lease.
 - (4) If an installment on an assessment or charge against the leasehold interest of the lessee of land subject to a commercial lease is not paid when due, the nonpayment constitutes a breach of the lease.

CHAPTER 6 - QUALIFICATIONS

6.1 Statement of Qualifications, Training, Experience, and Education

Each proposer shall list and describe the general partner, managing entity, or principal employees who will directly oversee the development, operation and maintenance of the proposed project. The application shall include a statement of qualifications for each such individual. Each statement of qualifications must discuss the person's training, experience, or education that relates to the proposed project. Proposer may provide names and addresses of references. In any instance where a proposal indicates that separate legal entities will possess combined management, fiscal, or legal responsibilities, the proposer shall describe the legal relationship between the entities.

Where the proposer and their affiliates have experience in a project similar to that proposed, the proposer shall describe the prior project, its current status and profitability. The Proposer may list the names, addresses, and telephone numbers of references that have knowledge of the prior project and the Proposer's involvement therein.

The business, if organized as something other than a sole-proprietorship, must be registered with the Montana Secretary of State Office to be eligible for a Commercial Lease.

6.2 Financial Ability and Cash Flow Analysis

Per MCA 77-1-907(1) before accepting any offer for a commercial lease, the board shall establish, to its satisfaction, the financial capability of the person seeking the commercial lease and the legal authority of the person to conduct business in the state. The proposal shall include sufficient financial information (in the form of a statement of net worth and/or letters of reference or commitments for financing) or other relevant information that will allow DNRC to fully evaluate the proposer's financial ability to construct, operate, and maintain its proposed project. Past bankruptcy or loan defaults must also be disclosed. DNRC reserves the right to perform credit checks of all Proposers and to request further information.

Include a summary of projected income, costs, and earnings for the first five years of the operation of the proposed project, along with a discussion of the economic assumptions upon which the projections are based. **Any information the Proposer wishes not be disclosed must be clearly identified as confidential.**

CHAPTER 7 – PROPOSED DEVELOPMENT

7.1 Summary of Proposal

The proposer shall provide the following information as a summary of the proposal:

1. Description of proposed use;
2. Demand within the community and community benefit for the proposed project;
3. Compatibility of proposed project with surrounding uses;
4. Acknowledge responsibility for payment of all costs associated with developing the property.

7.2 Site Plan, Construction, and Operation

All proposed buildings, infrastructure, landscaping and other improvements to the property must conform with all land use regulations of the appropriate jurisdictional authority. Proposals must also be planned with adequate access, drainage and storm water run-off retention/detention so as to meet any jurisdictional authority's requirements.

The proposer shall include conceptual plans of the following:

1. The activities to be conducted, and a site plan to include the following:
 - Proposed uses, location, and scale;
 - Typical rendering or elevation of buildings including building materials & color;
 - Location of roads and sidewalks;
 - Landscape and lighting plan;
 - Other infrastructure to be installed such as water, sanitary, and storm sewer
 - Phasing plan, if any;
 - Open space and landscaping features
 - Estimated cost of proposed improvements to the site.
2. Proposals shall include detailed information regarding any improvement district or assessments that the property will become subject to as a result of the proposed development.
3. The anticipated schedule and plan for construction of the improvements on the property.

DNRC retains site plan review and approval authority. Proposer should be aware that DNRC may require additional development standards over and above local standards, for example lighting standards, signage standards, landscaping standards, building architecture, parking, and others, depending on design and site planning.

CHAPTER 8 – LEASE FEE

8.1 Proposed Lease Fee

The minimum annual Base Rent is calculated by applying the minimum Lease Rate Percentage to the land value. The proposal shall include an annual rental fee that is greater than or equal to the minimum annual Base Rent as further described in section 8.1.1. A response to this section should include a fee schedule table similar to the example table provided in section 9.2 that is filled out according to the rental fee the proposer wishes to offer.

8.1.1 **Standard Rental Fee**; not for energy generation facility, or communications site.

If the proposed use is not for a renewable energy facility or a communications site, the proposer should detail the planned compensation to DNRC for lease of the site based on:

1. Proposed Base Rent
 - The minimum annual Base Rent is calculated by applying the minimum Lease Rate Percentage to the land value.
2. Proposed Lease Rate Percentage
 - The minimum Lease Rate Percentage for this proposal is **INSERT MIN. LEASE RATE%**
 - The current land value is **INSERT APPRAISED VALUE.**

A proposal at the minimum Lease Rate Percentage would result in Base Rent for the first full lease year of **INSERT MINIMUM LEASE FEE.**

3. A minimum 2% annual rental escalator to account for changing land valuations and inflationary factors.
4. The minimum initial lease term of **INSERT MINIMUM – TBD BY PROJECT MANAGER** years with renewal options up to 99 years.
5. Market value adjustments based on reappraisal to “true up” the lease fee to the market value occurring at 15 year intervals through the initial term, and a maximum of 15 year intervals thereafter.
6. A rental payment period of either annual or semi-annual.

8.1.2 **Energy Generation Facility Rental Fee**

If the proposed use is for a renewable energy facility, the proposer should detail the planned compensation to the DNRC for lease of the site based on:

- a. Annual income from energy generation.
- b. Rental based on income from energy generation shall not be less than the minimum provided in 77-1-905(2) and described in section 8.1.1.

8.1.3 **Communications Site Rental Fee**

If the proposed use is for a communications site, the proposer should detail the planned compensation to the DNRC for lease of the site based on:

1. Annual rent based on number and types of users as calculated using the current BLM fee schedule.
 - Base fee established by use and population served.
 - Additional fee for additional users by use and population served.
2. Consult with Project Manager for an exact calculation by use.
3. Rental based on number and types of users shall not be less than the minimum provided in 77-1-905(2) and described in section 8.1.1.

8.2 Example Standard Rental Fee Schedule Table

The following example demonstrates the minimum Standard Rental Fee from section 8.1.1.

| Lease Year | Calendar Period | Adjustment Period Escalator | Adjusted Base Rent |
|--------------------------------|--|--------------------------------|--------------------|
| 1 | October 1 – September 30 | 0 | \$ xx,xxx |
| Supplemental Billing period | Start month 1 – February 28 (x Months) | 0 | \$ xx,xxx |
| 2 | March 1 – February 28 | 2% | \$ xx,xxx |
| 3 | March 1 – February 28 | 2% | \$ xx,xxx |
| 4 | March 1 – February 28 | 2% | \$ xx,xxx |
| 5 | March 1 – February 28 | 2% | \$ xx,xxx |
| 6 | March 1 – February 28 | 2% | \$ xx,xxx |
| 7 | March 1 – February 28 | 2% | \$ xx,xxx |
| 8 | March 1 – February 28 | 2% | \$ xx,xxx |
| 9 | March 1 – February 28 | 2% | \$ xx,xxx |
| 10 | March 1 – February 28 | 2% | \$ xx,xxx |
| 11 | March 1 – February 28 | 2% | \$ xx,xxx |
| 12 | March 1 – February 28 | 2% | \$ xx,xxx |
| 13 | March 1 – February 28 | 2% | \$ xx,xxx |
| 14 | March 1 – February 28 | 2% | \$ xx,xxx |
| 15 | March 1 – February 28 | 2% | \$ xx,xxx |

CHAPTER 9 – PROPOSAL EVALUATION

9.1 Evaluation of Proposals

An evaluation committee will evaluate and score all responsive proposals based on stated criteria. The committee may come to a final score by consensus. Proposals may be deemed nonresponsive for failing to fully comply with any of the instructions from Chapter 1. A nonresponsive proposal will not be scored.

9.2 Minimum Score

There are 2,000 points available. Any proposal that fails to achieve 70% of the total available points, or 1,400 points will be eliminated from further consideration. A “fail” for any individual evaluation criteria may result in proposal disqualification at the discretion of the DNRC.

9.3 Scoring Guide

In awarding points to the evaluation criteria, the evaluation committee will consider the following guidelines:

Superior Response (95-100%): A superior response in an exceptional reply that completely and comprehensively meets all of the requirements of the RFP. In addition, the response may cover areas not originally addressed within the RFP and/or include additional information and recommendations that would prove both valuable and beneficial to the agency.

Good Response (75-94%): A good response clearly meets all the requirements of the RFP and demonstrates in an unambiguous and concise manner a thorough knowledge and understanding of the project with no deficiencies noted.

Fair Response (60-74%): A fair response minimally meets most requirements set forth in the RFP. The proposer demonstrates some ability to comply with guidelines and requirements of the project, but knowledge of the subject matter is limited.

Failed Response (59% or Less): A failed response does not meet the requirements set forth in the RFP. The proposer has not demonstrated sufficient knowledge of the subject matter.

9.4 Evaluation Criteria

| Required Items | | |
|--|-----------------------|--------------------|
| Scored as Responsive or Unresponsive | | |
| Checklist | | |
| \$50 Application Fee | | |
| 10% Bid Deposit, cashier's check | | |
| Proposal - Possible 2000 Points | | |
| Category | Section of RFP | Point Value |
| Transmittal Letter | 1.1.2 | 100 |
| Conflict of Interest statement | 4.13 | 100 |
| Compatibility with Lease Terms acknowledgement | 4.7 | 300 |
| Statement of Qualifications, Training, Experience, and Education | 7.1 | 250 |
| Financial Ability and Cash Flow Analysis | 7.2 | 250 |
| Summary of Proposal | 8.1 | 200 |
| Site Plan, Construction, Operation | 8.2 | 300 |
| Lease Fee | 9.1 | 500 |