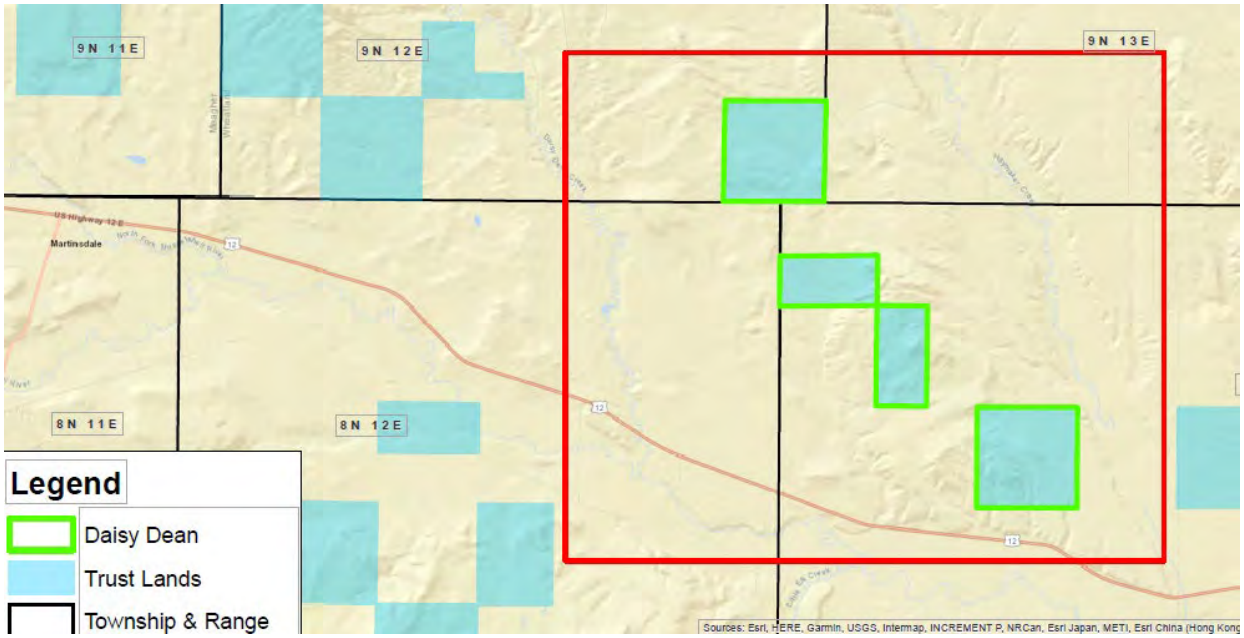
# REQUEST FOR PROPOSALS FOR COMMERCIAL LEASE OF STATE TRUST LAND

## DAISY DEAN RFP

Trust Land near Martinsdale, Montana




**Montana Department of Natural Resources and Conservation**
**February 14, 2020**

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**EXHIBIT A - Maps**

**EXHIBIT B – Lease Document**

**EXHIBIT C – Option to Lease Agreement**

# 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 May 14, 2020 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., May 14, 2020."

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 disclosure per section 4.14, if applicable.**
- ☐ **Detailed Response to Chapters 6, 7, 8, and 9**
- ☐ **$50 Application Fee;** nonrefundable.
- ☐ **10% Bid Deposit** of the proposed annual lease fee, paid via cashier's check drawn on any Montana bank.
- ☐ **Correct proposal quantity and format:** three hardcopies AND one digital copy.

## 2. 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 his/her proposal.

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

____ 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 – Map

____ Exhibit B – Commercial Ground Lease

____ Exhibit C – Option to Lease Agreement

# CHAPTER 2 – SCHEDULE OF EVENTS

| | |
|---|---|
| Release of Request for Proposals | February 14, 2020 |
| Optional Site Visit (call to arrange) | Call to Arrange |
| Deadline for Questions | March 16, 2020 |
| Distributions of RFP Amendments if applicable | March 27, 2020 |
| Deadline to Submit Proposal | May 14, 2020 |

# 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 Common Schools. 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 1,910+/- acres of school trust land in Wheatland County, Montana. Because of the span of the acreage involved in this RFP, a successful lease should facilitate and maintain public recreational use as much as possible, and all proposals should include an explanation of the impacts and/or mitigation for recreational use as a result of development on the subject property. Proponents may bid on the entire acreage or any identified parcel(s) thereof.

## 3.2 Description of Land for Lease

The legal description of the land available for lease through this RFP is:
The property is in eastern Montana, near the town of Martinsdale. The parcels included in this RFP are all currently leased for grazing uses. There are also existing easement encumbrances; contact the Project Manager(s) for details on known encumbrances on each parcel, if desired. Exhibit A is a map of the included parcels:

| S | Twn | | Range | | County | Acres |
|---|---|---|---|---|---|---|
| 8 | 8 | N | 13 | E | Wheatland | 320 |
| 16 | 8 | N | 13 | E | Wheatland | 640 |
| 6 | 8 | N | 13 | E | Wheatland | 310 |
| 36 | 9 | N | 12 | E | Wheatland | 640 |
| | | | | | Total Acreage: | 1,910 |

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:

Clive Rooney, Area Manager
DNRC, North Eastern Land Office
613 Northeast Main Street
Lewistown, MT 59457
Phone: 406-538-7789
E-mail: clrooney@mt.gov

### 3.4 Optional Site Visit

An on-site inspection of the property is recommended. 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. In accordance with Mont. Const. art. II, § 9, and Montana's public records laws, as such laws may be amended, the State must disclose to the public upon request any records it receives from a proponent. DNRC shall not disclose any information it receives from a proponent that the proponent has previously identified as confidential and that the DNRC determines in its sole discretion is protected from mandatory public disclosure under a specific exemption to the Montana public records laws. All confidential information must be listed on a dedicated confidential exhibit to their proposal and referenced within their proposal. It shall be the proposer's responsibility to see that all confidential information is on the confidential exhibit to the proposal. All information in the proposal, other than the confidential exhibit, shall immediately become public information upon bid opening. The DNRC will mark and hold information identified as confidential, and allow the proponent opportunity to seek judicial relief in the event DNRC is asked to disclose the information

### 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 terms of the Commercial Ground Lease provided as Exhibit B 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 Commercial Ground Lease.

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 drawn on any Montana bank. 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 contracted work will be 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 improvements constructed on the parcel during the term of this lease, at the expense of the Lessee.

l. 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 – PROPOSED DEVELOPMENT

## 6.1 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.

## 6.2 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 proposal shall include:

1. Conceptual plans for the proposed development including 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
   - Open space and landscaping features

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, including any phasing plan. Any request for a Lease Option Agreement should be indicated in this section.

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 7 - QUALIFICATIONS

## 7.1 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 proposal 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.

### 7.2 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 or entity seeking the commercial lease (proposer) and the legal authority of the proponent to conduct business in the state. **The proposal must include:**

1. General estimated costs to develop the site as proposed with discussion of economic assumptions upon which estimates are based.

2. Sufficient information to confidently establish the financial ability of the proposer which may include:

    - Pro forma forecasting costs and earnings for the first five years of the project
    - Balance sheet
    - Profit and loss statement dated within 90 days of RFP release date
    - Funding source or finance mechanism for proposal
    - Disclosure of any past bankruptcy or loan defaults
    - Operating agreement (when applicable)

The proposer is encouraged to include any other relevant information that will allow DNRC to fully evaluate the proposer's financial ability to construct, operate, and maintain its proposed project.

**Any information that a proposer wishes not to be disclosed must be clearly identified as confidential on a dedicated exhibit, as described in section 4.4 of this Request for Proposals. The entire proposal may not be marked confidential.**

# CHAPTER 8 – CONTRACT TERMS

Requested modifications to the Sample Lease Agreement or Sample Option to Lease Agreement will be scored against the proposal. Full points for this section will be awarded for proposals that are fully compatible with the contract terms and request no changes.

### 8.1 Lease Terms

The proposal shall include an acknowledgement that the proponent has read and accepts the lease terms in the Sample Lease Agreement provided as an Exhibit to this RFP, or they shall specify any changes to the lease terms and include an explanation for the purpose of the change.
DNRC 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.

## 8.2 Option to Lease

If the proposal includes a Lease Option Agreement in Section 6.2, the proposal shall include an acknowledgement that the proponent has read and accepts the Option terms in the Sample Option to Lease Agreement provided as an Exhibit to this RFP, or they shall specify any changes to the Option terms and include an explanation for the purpose of the change.
An annual fee of not less than 1.5% of the land value will apply during the Option period.

# CHAPTER 9 – LEASE FEE

## 9.1 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 9.1.1. 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. If the proposed use is for an energy generating facility, additional Operating Fees must also be factored into the lease fee schedule. See the attached lease document in Exhibit B.

9.1.1 **Standard Rental Fee**; 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 **4%**
   - A proposal at the minimum Lease Rate Percentage would result in Base Rent for the first full lease year of 4% x the land value. The current land value **and resulting Base Rent at the minimum Lease Rate Percentage of 4% is as follows:**

| | | | | | Acres | Land Value | Minimum Base Fee (4%) | Standard Option Fee (1.5%) |
|---|---|---|---|---|---|---|---|---|
| | | | | | **1,910** | **$1.910,000** | **$76,400** | **$28,650** |
| **S** | **Twn** | | **Range** | | **Acres** | **Land Value** | **Minimum Base Fee (4%)** | **Standard Option Fee (1.5%)** |
| 8 | 8 | N | 13 | E | 320 | $320,000 | $12,800 | $4,800 |
| 16 | 8 | N | 13 | E | 640 | $640,000 | $25,600 | $9,600 |
| 6 | 8 | N | 13 | E | 310 | $310,000 | $12,400 | $4,650 |
| 36 | 9 | N | 12 | E | 640 | $640,000 | $25,600 | $9,600 |

3. A minimum 2% annual rental escalator to account for changing land valuations and inflationary factors.
4. The minimum initial lease term of 30 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.

9.1.2. **Option Fee**

This is applicable only to proposals requesting an option to initiate a land lease by executing an Option to

Lease Agreement, attached hereto as Exhibit C. If the proposal includes a request for an Option to Lease, the proposer should detail the planned compensation to DNRC for Option to Lease the site based on a standard annual Option Fee of 1.5% of the land value.

### 9.1.3 Energy Generation Facility Rental Fee

An energy generation facility must provide one-time installation fees and will pay an annual rent of the greater of these three amounts: Base Rent, as described in section 9.1.1, Percentage Rent, or Capacity Rent. The proposal should detail the planned compensation to DNRC that includes the following one-time installation fees and annual rent:

**One-time Installation Fees**

1. Nameplate Capacity
   - A onetime fee not to be less than $1,500 per MW of nameplate capacity.
2. Substations and Operation and Maintenance (O&M) Building.
3. Associated infrastructure fees:
   - Roads, transmission lines, unground cabling.
   - Placement of meteorological towers.
   - Temporary laydown yards.
   - Turning Radius.

**Annual Rent**

Annual rent is meant to be the greater of the three amounts listed below in any given year. Proposals should identify what amount they are proposing for each of these three rent factors, while recognizing the established minimums. Proposals can also identify other rent proposed to be paid, such as annual rent for an O&M building, to make the rent paid to the State comparable to that paid to private landowners in the same project.

1. Minimum Base Rent: as described in Section 9.1.1; AND
2. Percentage Rent: Annual Rental fee based on a percent of Gross Annual Revenues of renewable energy facilities located on Trust land, e.g., 3% of gross annual revenue; AND
3. Capacity Rent: Annual Rental fee based on a set dollar amount per megawatt installed capacity from energy generation facilities located on Trust land, e.g., $3,000/MW installed.

### 9.1.4 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 9.1.1.

## 9.2 Example Standard Rental Fee Schedule Table

The following example demonstrates the minimum Standard Rental Fee from section 9.1.1. This table is based on a lease start date of September 1, 2020, and the lease of all identified acreage.

| Lease Year | Calendar Period | | *Adjustment Period Escalator* | Adjusted Base Rent |
|---|---|---|---|---|
| 1 | September 1, 2020 – August 31, 2021 | | 0 | $76,400.00 |
| Supplemental Billing period | September 1, 2021 – February 28, 2022 (181 days) | | 0 | $37,886.03 |
| | March 1 | End of February | | |
| 2 | 2022 | 2023 | *2%* | $77,928.00 |
| 3 | 2023 | 2024 | *2%* | $79,486.56 |
| 4 | 2024 | 2025 | 2% | $81,076.29 |
| 5 | 2025 | 2026 | *2%* | $82,697.82 |
| 6 | 2026 | 2027 | *2%* | $84,351.77 |
| 7 | 2027 | 2028 | *2%* | $86,038.81 |
| 8 | 2028 | 2029 | *2%* | $87,759.59 |
| 9 | 2029 | 2030 | *2%* | $89,514.78 |
| 10 | 2030 | 2031 | *2%* | $91,305.07 |
| 11 | 2031 | 2032 | *2%* | $93,131.17 |
| 12 | 2032 | 2033 | *2%* | $94,993.80 |
| 13 | 2033 | 2034 | *2%* | $96,893.67 |
| 14 | 2021 | 2022 | *2%* | $98,831.55 |
| 15 | 2022 | 2023 | *2%* | $100,808.18 |

# CHAPTER 10 – PROPOSAL EVALUATION

## 10.1 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.

## 10.2 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.

## 10.3 Scoring Guide

In awarding points, 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.

## 10.4 Evaluation Criteria

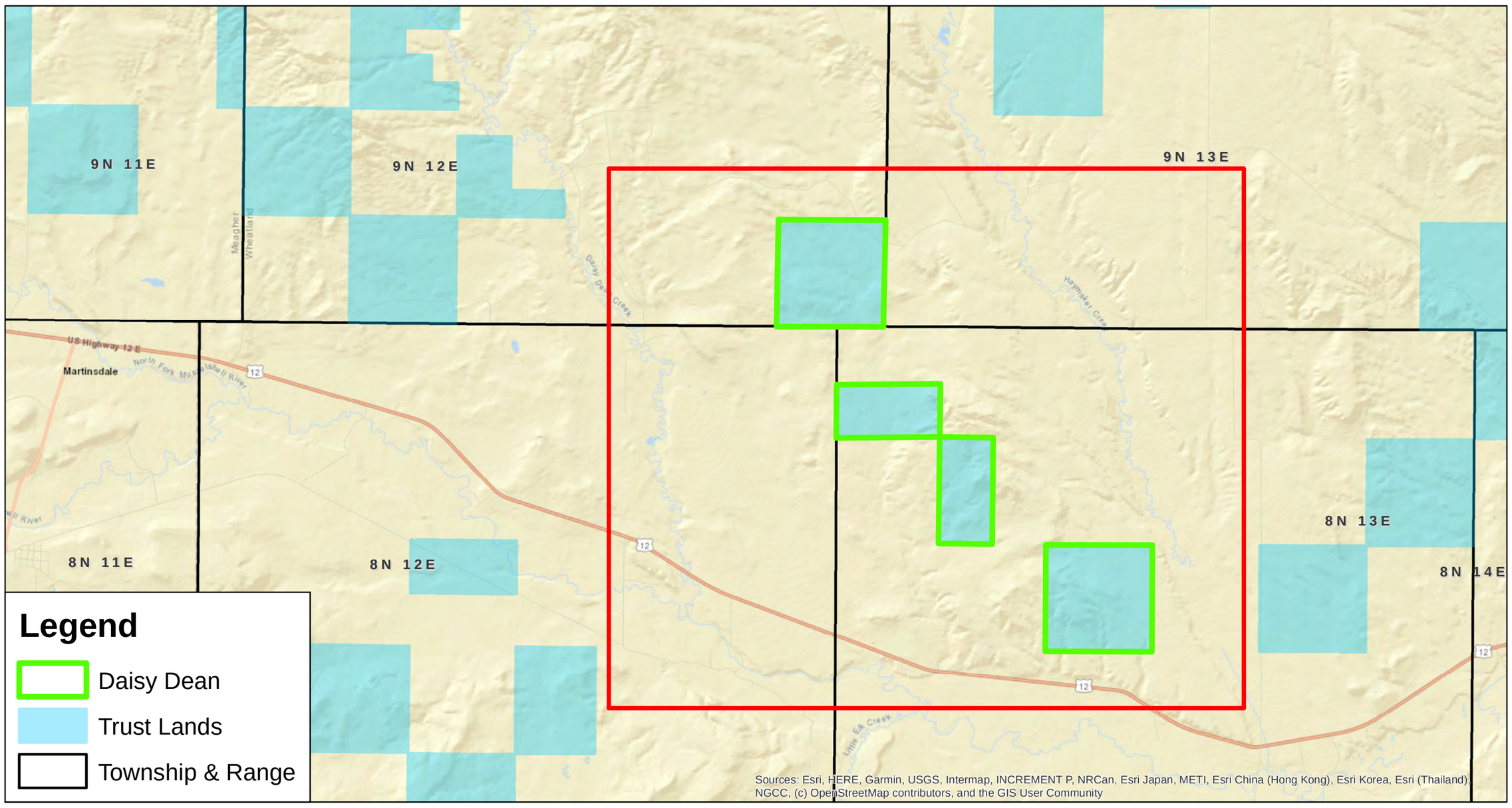
**Required Items; Scored as Responsive or Unresponsive**

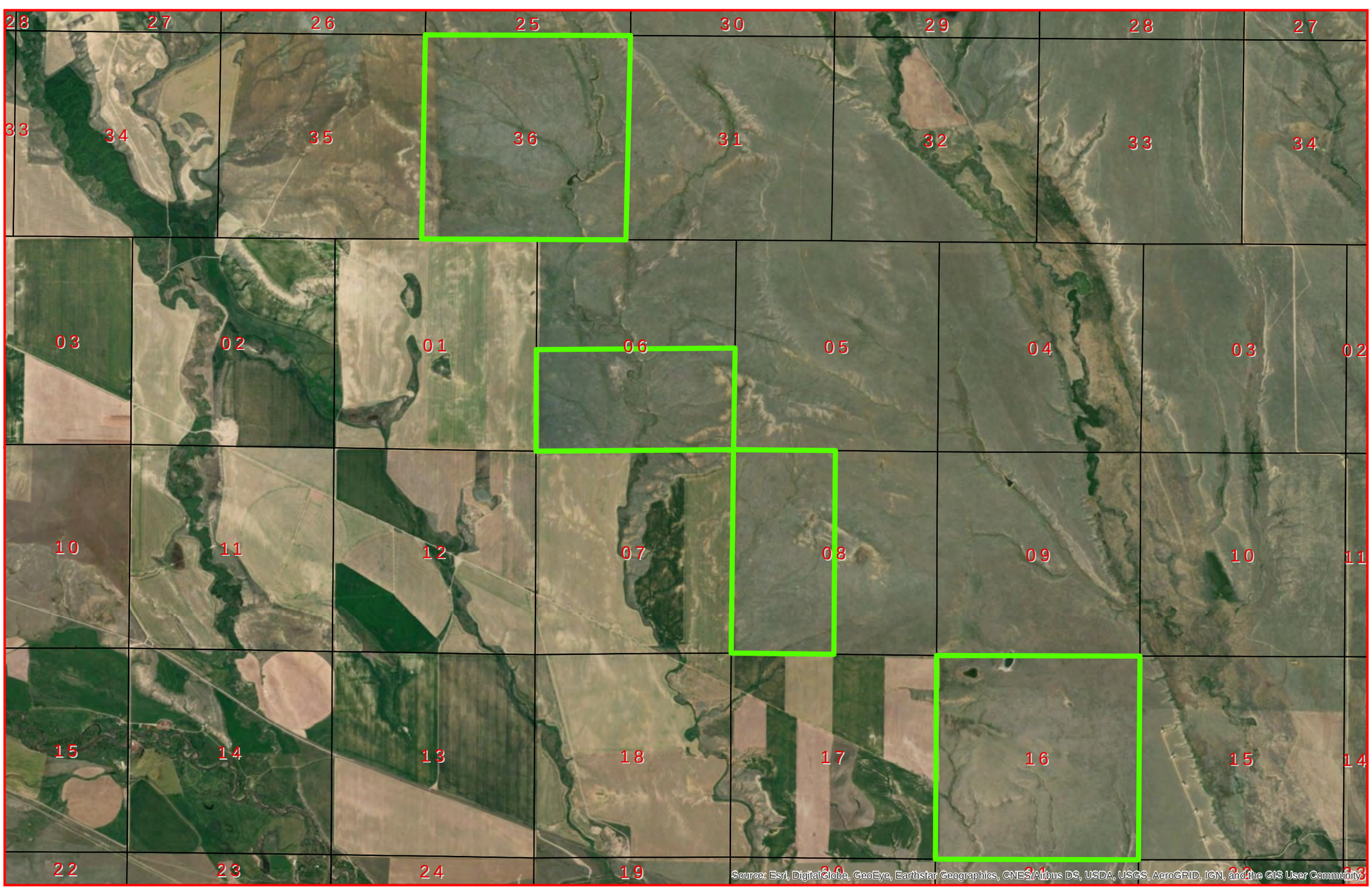
Checklist
Transmittal Letter
Proof of Authorization to sign
Conflict of Interest Disclosure, if applicable
Detailed Response to Chapters 6, 7, 8, & 9 (see point system below)
$50 Application Fee
10% Bid Deposit, cashier's check
Correct proposal quantity and format

**Proposal - Possible 2000 Points**

| Category | Section of RFP | Point Value |
|---|---|---|
| Summary of Proposal | 6.1 | 350 |
| Site Plan, Construction, Operation | 6.2 | 300 |
| Statement of Qualifications, Training, Experience, and Education | 7.1 | 250 |
| Financial Ability and Cash Flow Analysis | 7.2 | 300 |
| Contract Terms | 8 | 300 |
| Lease Fee | 9.1 | 500 |

# DAISY DEAN RFP - EXHIBIT A




**Legend**

Daisy Dean

Sections

**Location: Meagher County, MT**
**Date: 01-15-2020**
**Prepared By: REMB Staff Member**
**Projection: NAD83 Montana State Plane**

Inset Area from top map shown in bottom map

N

**EXHIBIT B**

# LESSEE NAME

# PROJECT NAME

# LOCATION, MONTANA

# LEASE NO. XXXXX

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**THIS COMMERCIAL LEASE AGREEMENT** (this "Lease") is entered into as of the _____ day of _____, _____, (the "Commencement Date"), by and between the **State of Montana by and through its Board of Land Commissioners**, whose address is P.O. BOX 201601 Helena, MT 59620-1601 (hereinafter referred to as "Lessor"), and **_____,** whose address is_____ (hereinafter referred to as the "Lessee").

## 1. LEASE TERM AND PROPERTY DESCRIPTION

| Lease Number | Commencement Date | Term of Lease | Expiration Date |
|---|---|---|---|
| | | | |

Land Located in Meagher and Wheatland Counties.

| County | Description | Sec. | Twp. | Rge. | Acres |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

## 2. RENT SCHEDULE

The rental fee prior to the Operations Date will be the Base Rent. The rental fee for any year after the Operations Date shall be the greater of: Base Rent; Percentage Rent; or Capacity Rent. The following schedule shows a summary of Rent payments and is not a comprehensive representation of the Rent conditions. All Rent will be paid according to Section 8 of this Lease.

| **Annual Rent**<br>***Paid in advance until operations date*** | | | | |
|---|---|---|---|---|
| **Minimum Rent** | | **Operating Fees**<br>***After Operations Date*** | | |
| **Lease Year** | **Base Rent** | **Production Year** | **Capacity Rent**<br>Per MW Insalled | **Percentage Rent**<br>Applied to Gross Revenues |
| 1 | Land Value x X% | 1 | | |
| 2 | Year 1 x 1.02 | 2 | | |
| 3 | Year 2 x 1.02 | 3 | | |
| 4 | Year 3 x 1.02 | 4 | | |
| 5 | Year 4 x 1.02 | 5 | | |
| 6 | Year 5 x 1.02 | 6 | | |
| 7 | Year 6 x 1.02 | 7 | | |
| 8 | Year 7 x 1.02 | 8 | | |
| 9 | Year 8 x 1.02 | 9 | | |
| 10 | Year 9 x 1.02 | 10 | | |
| 11 | Year 10 x 1.02 | 11 | | |
| 12 | Year 11 x 1.02 | 12 | | |
| 13 | Year 12 x 1.02 | 13 | | |

| | | | | |
|---|---|---|---|---|
| 14 | Year 13 x 1.02 | 14 | | |
| 15 | Year 14 x 1.02 | 15 | | |
| 16 | Year 15 x 1.02 | 16 | | |
| 17 | Year 16 x 1.02 | 17 | | |
| 18 | Year 17 x 1.02 | 18 | | |
| 19 | Year 18 x 1.02 | 19 | | |
| 20 | Year 19 x 1.02 | 20 | | |
| 21 | Year 20 x 1.02 | 21 | | |
| 22 | Year 21 x 1.02 | 22 | | |
| 23 | Year 22 x 1.02 | 23 | | |
| 24 | Year 23 x 1.02 | 24 | | |
| 25 | Year 24 x 1.02 | 25 | | |
| 26 | Year 25 x 1.02 | 26 | | |
| 27 | Year 26 x 1.02 | 27 | | |
| 28 | Year 27 x 1.02 | 28 | | |
| 29 | Year 28 x 1.02 | 29 | | |
| 30 | Year 29 x 1.02 | 30 | | |

**3. PURPOSE.**

The purpose of this Lease is for the use of state trust land described in Section 1 of this Lease for the Operations of a wind farm and associated Wind Power Facilities.

**4. DEFINITIONS.**

In this Lease, the following defined terms have the meanings set forth below:

"Base Rent" means the amount obtained by multiplying the Land Value by the applicable Lease Rate Percentage in accordance with § 77-1-905, MCA, or subsequent Laws governing rental rates for wind power developments on State Trust Land. The Base Rent is increased annually by two percent (2%).

"Capacity Rent" means the amount obtained by applying the Capacity Rent Rate per megawatt Installed Capacity on the Land.

"Capacity Rent Rate" means $3,000 for the first Production Year and is increased annually by one and one-half percent (1.5%) each year thereafter.

"Commencement Date" means the date this Lease goes into effect, legally binding the Lessor and Lessee to the terms of the Lease.

"Commercial Purpose" is, as defined by § 77-1-902(3)(a), MCA, an industrial enterprise, retail sales outlet, business and professional office building, warehouse, motel, hotel, hospitality enterprise, commercial or concentrated recreational use, multifamily residential development, and other similar business. Lessor acknowledges and deems that the use of the Land by Lessee for the purposes permitted and contemplated under this Lease constitutes a Commercial Purpose hereunder and under said statute.

"Default Rate" means one percent compounded monthly.

"Department" means the Montana Department of Natural Resources and Conservation.

"Environmental Claims" means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of non-compliance or violation, investigations or proceedings relating in any way to any Environmental Laws (hereafter, "Claims"), or any permit issued under any such Environmental Laws, including without limitation: (a) any and all Claims by governmental or regulatory authorities (acting within their authority with respect to the enforcement of Environmental Laws) for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Laws; and (b) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Substances or arising from alleged injury or threat of injury to health, safety, or the environment.

"Environmental Laws" means any applicable existing and future Laws relating to, or imposing liability or standards of conduct concerning: the protection of human health, the environment or natural resources, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, handling, Releases or threatened Releases of Hazardous Substances, including without limitation: (a) the Comprehensive Environmental Cleanup and Responsibility Act, 75-10-701, *et seq*., MCA; (b) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*; (c) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 5101, *et seq.*; (d) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, *et seq.*; (e) the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, *et seq.*; (f) the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*; (g) the Clean Air Act, 42 U.S.C. § 7401, *et seq.*; (h) the Safe Drinking Water Act, 42 U.S.C. § 300f, *et seq*.; and (i) the Major Facility Siting Act (MFSA), Mont. Code Ann. §§ 75-20-101 *et seq*.

"Expiration Date" means the last day of the Term of the Lease.

"Foreclosure Transferee" means any foreclosure purchaser or other transferee of Lessee's interest under this Lease who acquires such interest at the sale conducted by virtue of, or otherwise in connection with, a foreclosure of any Leasehold Mortgage, or any conveyance in lieu of such foreclosure.

"Force Majeure" means fire, earthquake, flood, fire, high winds, ice, or other casualty or accident; war, civil strife, strikes, lockouts or labor disputes or other violence; any law, order, proclamation, regulation, ordinance, action, demand or requirement of any governmental agency or utility; or any other act or condition beyond the reasonable control of a party hereto.

"Gross Revenues" for the purposes of calculating Percentage Rent, as described in Section 8 below, means the aggregate total revenue actually received by Lessee during the applicable Production Year, from the sale of electrical energy (other than Test Electricity) generated from Wind Power Facilities located on the Land or owned or operated by Lessee and metered at the point of interconnection collectively with (and including) the Turbines located on the Land, as applicable, net of all sales and use taxes and wheeling, integration, transmission and/or congestion charges (if any) imposed thereon or attributable thereto. Gross Revenues also include payments received by Lessee from: (a) the sale of renewable energy credits or pollution credits or greenhouse gas reduction credits that directly result from generation of electrical energy from such Operational Turbines; (b) any power purchaser, if such payments are made specifically in lieu of revenues from the normal operation of such Operational Turbines; and (c) amounts received by Lessee in hedging transactions which shall be reduced by amounts paid by Lessee in hedging transactions entered into by Lessee, it being understood that the Lessee and Department share proportionately in the risks and benefits of such hedging transactions, provided any hedging transaction entered into with an affiliate or subsidiary shall be entered into in good faith and on an arm's length basis. Gross Revenues do not include: (i) production tax credits, other tax benefits and

credits, or any reimbursement thereof, or a payment elected instead of production tax credits pursuant to Section 1603 of the American Recovery and Reinvestment Act of 2009 (or any extension or renewal thereof, or any successor program); (ii) payments from the sale, lease, sublease, assignment, transfer or other disposition directly or indirectly of Wind Power Facilities (except that Lessee may not sell or otherwise transfer any part of the fee interest in the Land) or any other of Lessee's improvements, trade fixtures or chattel or the transfer or sale whether directly or indirectly of all or part of the membership interests in Lessee or any of their affiliates or subsidiaries; (iii) payments from the sale, modification or termination of any obligation under a power purchase contract; (iv) payments from the sales of electrical energy for which payment is not received; (v) revenues received not in lieu of revenues from the normal operation of the Turbine; and (vi) any rental or other payment received by Lessee in exchange for Lessee's assigning, subleasing, mortgaging or otherwise transferring all or any interests of Lessee in this Lease. If Lessee sells the production, energy, electricity or capacity from the Wind Power Facilities to a person or entity affiliated with, or in any way related to, Lessee, then "Gross Revenues" means all consideration paid for said production, energy, electricity or capacity, regardless of time or place of receipt, under the first contract which is an arms' length bona fide transaction, (provided that such dollar amount shall be increased annually after the Commencement Date on each anniversary thereof by two percent per year). Gross Revenues shall be calculated on a cash basis as opposed to an accrual basis, meaning that Gross Revenues shall not include revenues that are not actually received during the billing period.

"Hazardous Substances" means any and all substances, materials or wastes that are declared to be, or defined or regulated as, hazardous or toxic in the Comprehensive Environmental Cleanup and Responsibility Act, §75-10-701, *et seq*., MCA, or under any Environmental Laws.

"Improvements" means any structures or Wind Power Facilities installed or constructed by Lessee upon the Land.

"Installed Capacity" means the installed nameplate capacity of the energy generating equipment as determined by the manufacturer.

"Land" means the real property described in Section 1 of this Lease.

"Land Value" means the full market value of the Land as determined by the applicable appraisal and in accordance with any Market Adjustment. The Land Value for Base Rent calculations through the first Market Adjustment is $1,000.00 per acre.

"Laws" means any and all present or future federal, state, or local laws (including common law), statutes, ordinances, rules, regulations, orders, decrees, or requirements of any and all governmental or quasi-governmental authorities having jurisdiction over the Land described in this Lease.

"Lease Rate Percentage" means a percentage that is applied to the Land Value to determine Base Rent for a given year. The Lease Rate Percentage means three percent (3%) of the Land Value unless adjusted at a scheduled Market Adjustment in accordance with § 77-1-905, MCA, as applicable.

"Lease Year" means the 12-month period starting on the Commencement Date and each anniversary of this date thereafter.

"Lender" means: (i) any financing institution or other person or entity that from time to time provides secured financing for some or all of Lessee's Wind Power Facilities or Operations, collectively with any security or collateral agent, indenture trustee, loan trustee or participating or syndicating lender involved in whole or in part in such financing, their successor and assigns; or (ii) any power purchase agreement

off-taker who takes a Lender's Lien as security for the performance of the obligations under the power purchase agreement.

"Lender's Lien" means any lien, assignment of rents, assignment of leases, security agreement or other hypothecating instrument (including any sale-leaseback arrangement entered into for financing purposes) encumbering Lessee's interest under this Lease or the leasehold estate in the Wind Power Facilities hereby created (but shall not include any portion of the fee interest in the Land) , or any interest hereunder, Lessee's rents and other sums due from any Sublessees, Lessee's rights under Subleases and any other agreements executed in connection with Lessee's use or operation of the Premises, or Lessee's interest in any fixtures, machinery, equipment, buildings, Improvements or other property constituting a part of the Wind Power Facilities with the exception of any portion of the Land comprising part of the Wind Power Facilities.

"Lender's Lien Holder" means the holder(s) of any promissory note or the obligee(s) of any other obligation secured by a Lender's Lien.

"Market Adjustment" means a review of current Base Rent factors, conducted at scheduled intervals during the term of the Lease, which will be used to determine the Base Rent Schedule for the next period. It includes consideration of the minimum Lease Rate Percentage at the time, as well as an appraisal process to update the Lease area Land Value. The Market Adjustment Schedule and Provisions are found in **Exhibit C**.

"Operations Date" means the date a power purchasing utility or other entity first receives power (other than Test Electricity) produced from any of the Turbines located on the Land or included within each Project that includes Turbines located on the Land. Lessee shall provide written notice to Lessor of the Operations Date, within 30 days of said date.

"Operations" means (a) determining the feasibility of wind energy conversion for any such Projects, including studies of wind speed, wind direction and other meteorological data; (b) converting wind energy into electrical energy, and collecting and transmitting the electrical energy so converted; (c) developing, constructing, reconstructing, erecting, installing, improving, replacing, relocating and removing from time to time, and using, maintaining, repairing, operating and monitoring Wind Power Facilities; (d) vehicular and pedestrian ingress, egress and access to and from Wind Power Facilities, including by cranes and other construction equipment, over and across the Land by means of roads and lanes thereon if existing, or otherwise by such roads and ways, including but not limited to Turning Radiuses from public roads, if necessary, as Lessee or anyone else may construct from time to time; and (e) conducting surveys, tests and studies, including but not limited to biological, cultural, geotechnical and environmental testing, drilling, and sampling and studies.

"Operational Turbine" means a Turbine that (a) has been installed and is producing electric energy (other than Test Electricity) pursuant to this Lease, and (b) which has not been removed by Lessee.

"Percentage Rent" means a share of Gross Revenues as described in Section 8.1(b).

"Premises" means the Land and all Improvements.

"Production Year" means the 12 calendar month period during the Term beginning with the Operations Date and ending on December 31 of each year. The first Production Year may be less than a 12-month period.

"Project" means one or more Turbines and associated Wind Power Facilities that are constructed,

installed and/or operated on the Land and/or on other real property in the vicinity of the Land, by or on behalf of Lessee, as an integrated energy generating and delivery system.

"Qualified Lender " means any Lender who notifies Lessor in writing of its name, its address for notices, and the fact that it is a Lender.

"Release" means disposing, discharging, injecting, spilling, leaking, leaching, dumping, emitting, escaping, emptying, seeping, placing or the like, into or upon any land, surface water, groundwater or air, or otherwise entering into the environment.

"Rent" means Base Rent, Capacity Rent, or Percentage Rent and/or all other amounts, including installation fees, required to be paid by Lessee under this Lease.

"Sublease" means a sublease, license, concession, or other agreement (whether written or oral) according to which Lessee grants any party the right to use or possess all or any portion of the Premises, subject and subordinate to Lessee's retained interest in this Lease.

"Sublessee" means any party to whom Lessee grants the right to possess all or any portion of the Premises according to a Sublease.

"Substantial Damage" means harm to the Premises that renders the Premises inoperable for its intended use for more than 180 days.

"Substantial Taking" means a Taking of at least 15 percent of the Land or Improvements which, in Lessee's and Lessor's reasonable judgment, will materially and adversely interfere with any development or use of the Premises that Lessee is then conducting or intends in good faith to conduct in the future.

"Taking" means the taking of all or any portion of the Premises as a result of the exercise of the power of eminent domain or condemnation for public or quasi-public use, or the sale or conveyance of all or part of the Premises under the threat of condemnation.

"Taking Date" means, with respect to any Taking, the date on which physical possession of the portion of the Premises that is the subject of such Taking is transferred to the condemning authority.

"Term" means the duration of this Lease, beginning on the Commencement Date, as set forth in Section 1 of this Lease as the same may be extended or earlier terminated as herein provided.

"Test Electricity" means electricity delivered to the point of interconnection for which no payment is received.

"Turbine(s)" means wind turbine generator(s).

"Turning Radius" means a temporary construction road entrance to accommodate the turning of large or long vehicles and equipment.

"Wind Power Facilities" means (a) Turbines, wind energy conversion systems and wind power generating facilities (including associated towers, foundations and other structures and equipment and other power generation facilities) to be operated in conjunction with wind turbine installations, in each case of any type or technology; (b) transmission facilities, including overhead and underground transmission, distribution and collector lines, wires and cables, splice and junction boxes, switch panels, conduits, footings, foundations, towers, poles, crossarms, guy lines and anchors; (c) substations, interconnection

and/or switching facilities, circuit breakers and transformers; (d) operation and maintenance buildings; (e) overhead and underground control, communications and radio relay systems and telecommunications equipment, including microwave towers, dishes, and control, fiber, wires, cables, conduit and poles; (f) meteorological towers, guy wires, braces and wind measurement equipment; (g) roads and erosion control facilities; (h) temporary laydown yards; (i) signs; (j) fences and other safety and protection facilities; and (k) other improvements, facilities, appliances, machinery and equipment associated with any of the foregoing.

## 5. EXHIBITS.

The Exhibits listed below are attached to and incorporated into this Lease. In the event of any inconsistency between such Exhibits and the terms and provisions of this Lease, the terms and provisions of the Lease will control. The Exhibits to this Lease are:

**Exhibit A – Memorandum of Lease**

**Exhibit B – Vicinity Map**

**Exhibit C – Market Adjustment Schedule and Provisions**

**Exhibit D – Reclamation Plan**

**Exhibit E – Environmental Monitoring**

**Exhibit F – Existing Rights**

**Exhibit G – Site Plan**

## 6. LEASE TERM, RENEWAL, TERMINATION, AND RELEASE.

### 6.1 Term.

Subject to the terms, covenants, conditions and provisions of this Lease, Lessor leases to Lessee and Lessee leases from Lessor the Land for the Term of thirty (30) years starting on the Commencement Date.

### 6.2 Renewal Option.

Unless at the time of renewal a default by Lessee (as defined below) shall be continuing following the expiration of any notice and cure period hereunder, Lessee may renew the Lease, extending the Term, for one period of ten (10) years and, thereafter, Lessee may renew this Lease, extending the Term, for a second period of ten (10) years. Lessee must provide Lessor written notice of Lessee's intention to renew the Lease delivered at least 6 months prior to the expiration of the original or extended term.

### 6.3 Lessee Right to Terminate; Release.

Lessee shall have the right, in accordance with the terms of this Lease, at any time and from time to time during the Term, to surrender or terminate all or any portion of its right, title and interest in this Lease, provided that no partial surrender or termination of this Lease shall be for less than tracts of approximately forty (40) acres or a governmental lot corresponding to a quarter-quarter section, by giving Lessor not less than sixty (60) days written notice thereof and by executing and causing to be acknowledged and recorded a release describing with particularity the portion of such right, title or interest so released and the part of the Land to which it applies. Upon any such release by Lessee, the parties' respective rights and obligations hereunder (including as to the rental payments) shall cease as to the portion of the Land or the right, title or interest herein as to which such release applies including a prorated reduction in the Base Rent, but in no case shall surrender or termination be effective until Lessee shall have made complete restoration, reclamation and protection of the surface rights of the Land as may be determined by Lessor in accordance with the terms of this Lease. This Lease and the parties' respective rights and obligations hereunder shall remain in full force and effect as to any right, title, and interest of Lessee not so released.

## 7. RIGHTS; COVENANTS; CONDITION OF PREMISES; RESERVATIONS.

### 7.1 Lessee's Rights.

The Land leased by this Lease shall be used and occupied for the Operations of Wind Power Facilities, as those terms are defined above. In addition:

**a)** Lessee shall have the exclusive right to develop and use the Land for wind energy purposes and to convert all of the wind resources of the Land; provided, however, that nothing expressly or impliedly contained in this Lease or represented to Lessee shall be construed as requiring Lessee to: (i) construct and continue operation of any Wind Power Facilities from time to time located on the Land or elsewhere or (ii) generate or sell any minimum or maximum amount of electrical energy from the Land; and the decision when and to what extent to construct, install or operate Wind Power Facilities, or to generate or sell electrical energy, shall be solely in Lessee's discretion, subject to Section 8.1(c) of this Lease.

**b)** Lessee shall have an exclusive right to use, convert, maintain, and capture the free and unobstructed flow of wind over and across the Land.

**c)** Lessee shall have a non-exclusive right for audio, visual, view, reflective light, shadow flicker, noise, shadow and any other effects attributable to the Operations on the Land.

**d)** Lessee shall have an exclusive right to permit the rotors of Turbines located on property adjacent to the Land to overhang the Land and encroach into any applicable setback.

### 7.2 Lessor and Lessee Covenants.

Lessor covenants that Lessee will have quiet and peaceful possession of the Land subject only to the terms, conditions, and reservations of this Lease, including prior existing rights described in Exhibit F, "Existing Rights". Lessor covenants to observe and perform all of the terms, covenants, and conditions applicable to Lessor in this Lease. Lessor covenants and agrees that neither Lessor's activities nor those activities authorized by Lessor upon the Land will interfere with, impair or materially increase the cost of (i) the construction, installation, maintenance or operation of any Improvements or any Project, (ii) vehicular or pedestrian access to, or the transmission of energy from, the Land, any Improvements or any Project, (iii) any Operations of Lessee on the Land or with respect to any Project or (iv) the undertaking of any other activities or the free enjoyment and exercise of any other rights or benefits given to or permitted Lessee hereunder, or (v) in any other way, unreasonably interfere with the free and unobstructed flow of wind over and across the Land.

Lessee covenants to pay the Rent when due, to make a good faith effort to report to Lessor any unauthorized or unpermitted use of the Premises, except that failure to report such unauthorized or unpermitted use shall not be considered a Default, and covenants to observe and perform all of the terms, covenants, and conditions applicable to Lessee in this Lease.

### 7.3 Condition of Land.

Except as expressly set forth in this Lease, Lessee accepts possession of the Land on the Commencement Date in the then-current condition on an "AS IS, WHERE IS, AND WITH ALL FAULTS" basis. Lessor makes, and Lessee affirms that Lessor has made, no representations or warranties of any kind whatsoever with regard to the condition of the land or its fitness or suitability for any particular purpose. Lessee acknowledges that it is solely responsible for performing its own due diligence and for becoming fully familiar with the condition of the Land and any applicable rights, reservations, restrictions, uses, or other conditions that might affect its development or use for a particular purpose. Lessor represents and warrants: (i) that Lessor has no knowledge of any litigation pending and no knowledge of any actions, claims or other legal or administrative proceedings pending, threatened or anticipated with respect to or which could affect the Land; (ii) that Lessor has no knowledge of any commitments or agreements with any governmental agency or public or private utility affecting the Land or any portion thereof that have not been disclosed in writing by Lessor to Lessee; and (iii) that Lessor has not received any notice or other communication from any governmental authority alleging that the Land is in violation of any applicable Environmental Law.

**7.4 Lessor Reservation of Mineral Interests**

No transfer of mineral ownership, mineral rights, or pore space rights, including sand, gravel, scoria, or stone, is intended or granted to Lessee by or through this Lease. Rather, Lessor expressly excepts and reserves from this Lease all rights to all oil, gas, and other minerals in, on or under the Land and that might be produced or mined from the Land. Lessor reserves the right to develop the minerals on the Land owned by Lessor as long as such development (including any drilling or mining) is outside the 650 foot diameter circle around each Turbine and does not interfere with Lessee's use of the Land with the exception of the prior rights of existing leases. Lessor has had and will have a full opportunity to investigate the status of all existing leases, and the past, present and any future (or potential) mining activities under the existing leases. Lessee enters into and accepts this Lease subject to the prior rights of existing leases. Lessor shall include as a term and condition to any conveyance on or after the Commencement Date of any interest in the mineral estate in the Land, including any lease thereof, that any owner or lessee, as applicable, of any mineral interest in the Land (a) shall use the surface of the Land only in a manner that does not interfere with Lessee's surface use of the Land as described herein and with due regard for the rights of Lessee with respect to the surface use, (b) shall limit any activity to occur only on those areas of the surface of the Land that are not closer to any Turbine or proposed Turbine of Lessee than three hundred twenty-five (325) feet from the center point of any Turbine; provided, however, that temporary or permanent equipment for oil and gas exploration or production, such as drilling and workover rigs, may be installed on the Land so long as it is installed at least three hundred twenty-five (325) feet from the base of any Turbine or proposed Turbine of Lessee. No minerals of any kind, including but not limited to sand, gravel, or stone, found on the Land, shall be sold by the Lessee unless purchased from Lessor.

**7.5 Lessor Reservation of Other Rights.**

Lessor reserves the following rights, subject to the terms and conditions of this Lease:

**a)** All rights and privileges of every kind and nature, except as are herein specifically granted;

**b)** The right to lease all or any portion of the Land to other persons for the purposes of exploring for and removing timber, and all other naturally occurring resources, together with reasonable and adequate rights of entry and surface rights necessary and convenient to exercise such reserved rights. The foregoing does not apply to the extraction of subsurface resources, which are addressed in Section 7.4. Such new grants shall be compatible with the rights and privileges granted to Lessee herein and shall be subordinate to the rights of Lessee. Any new grant as described in this part (b) shall include provisions requiring that such third-party grantee indemnify Lessee for any and all damages caused to any structures or Wind Power Facilities placed upon the surface of the Land by Lessee subsequent to the Commencement Date;

**c)** The right at all times during the life of this Lease to go upon the Land and every part thereof for the purpose of inspecting the same to ascertain if said Lessee and those holding thereunder by and from it are carrying out the terms, covenants, and agreements of this Lease, subject to compliance with the safety rules and procedures of Lessee;

**d)** The right at any time to grant an easement or right-of-way upon, over, under, though, or across all or any part of the Land for any ditch, reservoir, communication system, electric power line, pipeline, or other lawful purpose. Such new grants shall not interfere with the rights and privileges granted to Lessee herein, and shall be subordinate to the rights of Lessee. Any new grant of easement or right-of-way upon, over, or across the Land shall include provisions requiring that such third-party grantee reimburse Lessee for any and all damages caused to any structures or Wind Power Facilities placed upon the surface of the Land by Lessee subsequent to the Commencement Date; and

**e)** The right to use the Land, and grant permits or licenses to use the land, for other surface uses including agriculture, livestock grazing, ranching, and other purposes, provided, however, that within the setback area of the Turbines consisting of approximately a 650-foot diameter circle around each Turbine which shall be exclusive to Lessee, Lessor shall have no right to use the Land for any purposes except for the growing of crops, grazing of livestock, and pedestrian activities.

**7.6 Reservation of Right to Evaluate Recreational Use.**

As of the Commencement Date, the Land will be closed to general recreational use due to categorical exclusion for recreational use of state lands under an active commercial lease pursuant to ARM 36.25.150(1). However, the Department reserves the right to evaluate any petition to exclude a specific leased tract from such categorical exclusion pursuant to ARM 36.25.150(2). Lessor will notify the Lessee of a petition to re-open the Land and may restrict the recreational use that is permitted on the Land, including appropriate limitations on the discharge of firearms or other restrictions necessary to ensure human safety and Lessee's ability to operate the Project without interference. Lessee shall post all such categorically closed Land at all customary access points with signs provided by the Department or duplicated from signs provided by the Department pursuant to ARM 36.25.150(3). In no event shall any recreational use occur within three hundred twenty-five (325) feet from the base of any Turbine or interfere with the rights granted to Lessee under this Lease.

*The ARM for recreational use and categorical exclusions is currently under review and is may be changed in the near future. This lease is subject to all laws and rules as they may be changed over time. If the referenced ARM language is modified prior to lease execution, this section may be modified accordingly.*

**8. <u>RENT; INSTALLATION FEES; OTHER PAYMENT TERMS; AUDIT RIGHTS.</u>**

**8.1 Base Rent and Operating Rent.**

All Rent due to Lessor will be paid in lawful money of the United States of America, at Lessor's Address, post-marked or recieved via electronic funds transfer on or before the due date, without notice or demand and without right of deduction, abatement, or setoff. Lessee shall provide written notice to Lessor of the Operations Date, and shall pay to Lessor basic and operating rent, as follows:

**a) Pre-Operations Date Rent.** Lease fees due prior to the Operations Date shall be paid annually, in advance, on the Commencement Date, and on each anniversary of the Commencement Date thereafter. The Lease fee for the first Lease Year must be paid through a cashier's check drawn on a Montana bank, by Automated Clearing House Transfer, or through a wire transfer. The lease fee shall be the Base Rent provided in the Rent Schedule in Section 2 of this Lease until the Operations Date. Should the Operations Date occur in the middle of a payment cycle under this subsection, a credit would be prorated and applied to the next invoice accordingly.

**b) Post-Operations Date Rent**. Following the Operations Date, the annual lease fee for each Production Year will be payable in arrears, due on or before March 1 annually. The annual amount due shall be the greater of the Base Rent, Capacity Rent, or Percentage Rent. Along with each payment of Rent under this subsection, Lessee shall deliver to Lessor a report detailing calculation data for Capacity Rent and Percentage Rent values for each year. Such report shall include, but not be limited to, specific information on installed capacity and Operational Turbines upon the Land by date, and Gross Revenue calculations, for the applicable Production Year upon the Land.

i. **Base Rent.** Base Rent is the amount obtained by multiplying the Land Value by the applicable Lease Rate Percentage, increased annually by two percent (2%).

ii. **Capacity Rent.** Capacity Rent is calculated annually based on Operational Turbines located on the Land during the applicable Production Year. It is calculated as the product of the Capacity Rent Rate as multiplied by the number of megawatts of Installed Capacity of all Operational Turbines located on the Land during the applicable Production Year. The Capacity Rent Rate is $3,000 for the first Production Year and is increased by one and one-half percent (1.5%) annually each year thereafter.

iii. **Percentage Rent.** Percentage Rent is calculated annually based on Gross Revenues received from production by the Wind Power Facilities located on the Land, or in the event power is commingled with power produced from Wind Power Facilities from property other than the Land, from the Wind Power Facilities within the Project. In the event power is commingled with power produced from Wind Power Facilities from property other than the Land, then

Lessee shall calculate the Percentage Rent as set forth below for the indicated Production Year multiplied by the Gross Revenues actually received over the course of a Production Year multiplied by a fraction, the numerator of which is the megawatts of Installed Capacity of the Operational Turbines then installed on the Land and the denominator of which is the total megawatts of Installed Capacity of all Operational Turbines then installed in the Project. The percentage applied to the Gross Revenues to calculate the Percentage Rent is 3 percent for Production Years one (1) through ten (10); 3.25 percent for Production Years eleven (11) through fifteen (15); 3.5 percent for Production Years sixteen (16) through twenty (20); 3.75% for Production Years twenty-one (21) through twenty-five (25); and 4% for Production Year twenty-six (26) through the end of the Term. It is the intent of the Lessor and the Lessee that Gross Revenues shall not include any revenues other than those set forth in the definition of Gross Revenues in this Lease.

**c)** Notwithstanding anything to the contrary herein, in the event that construction of the Wind Power Facilities has not occurred on or before the tenth (10) anniversary of the Commencement Date, Lessee shall pay to Lessor rent, until the earlier of the Operations Date or the termination of the Lease, in an amount equal to the greater of: (i) the Base Rent or (ii) the Capacity Rent for the planned number of Operational Turbines as shown on the Preliminary Site Plan.

Lessor and Lessee agree to amend the Rent Schedule in this Lease as necessary to reflect the actual Operational Turbines and actual acreage leased upon the Operations Date or at any time thereafter if the number of Operational Turbines on the Land or actual acreage leased changes.

**8.2 Installation Fees.**

Unless specified otherwise, all installation fees are due within forty-five (45) days after the Operations Date.

**a) Turbine Capacity.**

Lessee shall pay to Lessor a one-time installation fee equal to $1,500 per megawatt of Installed Capacity for Turbines installed on the Land. Should the Project not be fully installed by the Operations Date, payment must be made for the remaining Installed Capacity within sixty (60) days of operation as to the applicable Turbine. Additional installation fees will be due for replacement of any existing Turbines only if the installed capacity is increased, in which case Lessee shall pay for an installation fee for the difference between the originally Installed Capacity and the new Installed Capacity. This provision will apply when a Turbine is replaced due to damage or Lessee elects to repower the Project.

**b) Roads, Transmission Lines, and Underground Cabling**.

Lessee shall pay to Lessor the following one-time installation fee payments:

**i) New Roads:** $.50 per lineal foot of new roads constructed by or for Lessee on the Land;

**ii) Transmission Lines:** $2.00 per lineal foot of overhead transmission lines installed by or for Lessee on the Land.

Overhead or underground lines, cabling and wires (which shall be deemed to include any electrical lines, communications lines, fiber optic cables and grounding wires) that are bundled or co-located with, adjacent or parallel to, or stacked along with other overhead or underground lines, cabling and wires on an integrated set of poles or in a single trench shall be considered a single line, cable or wire for purposes of determining the total distance that such line, cable or wire traverses the Land and calculating the amount due hereunder. No additional installation fee payment shall be due upon any replacement of an existing road, transmission line, or underground cable upon the Land during the term of this Lease. In instances of co-located, parallel or adjacent roads, lines, or cables, the installation will be treated as a single installation and the highest applicable per lineal foot installation fee described within this subsection shall apply.

**c) Meteorological Tower**.

If a meteorological tower is installed by Lessee on the Land, Lessee shall pay to Lessor a one-time installation fee equal to $500.00 per meteorological tower installed, payable within forty-five (45) days of

the date the meteorological tower is installed. No additional installation fee payment shall be due upon any replacement of an existing meteorological tower during the term of this Lease.

**d) Temporary Laydown Yard**.

If a portion of the Land is used by Lessee as temporary laydown yard for temporary storage of Lessee's equipment and materials in connection with the construction of the Improvements, then Lessee shall pay to Lessor a one-time use fee equal to $48.00 per acre occupied by such temporary laydown yard. No additional installation fee payment shall be due upon any replacement of such temporary laydown yard during the term of this Lease, except to the extent of any increase in occupied acreage resulting therefrom. Any temporary laydown yard shall be reclaimed to its original condition in accordance with Section 9.6.

**e) Turning Radius**.

If a portion of the Land is used by Lessee as a Turning Radius area for Lessee's equipment in connection with the construction of the Improvements, then Lessee shall pay to Lessor a one-time use fee equal to $24.00 per acre occupied by such turning radius. No additional installation fee payment shall be due upon any replacement of such turning radius during the term of this Lease, except to the extent of any increase in occupied acreage resulting therefrom.

**f) Substations and Operation and Maintenance Building.**

Any substations, interconnection and/or switching facilities, or similar high voltage transmission facility or any operation and maintenance buildings installed on the Land shall require an installation fee of $5,000.

**8.3 Additional Payment to State Agricultural and Grazing Lessees.**

Lessee shall be liable and agrees to pay Lessor's surface lessee(s) for damage to improvements of such surface lessee(s), potentially including the breaking of land crops or other agricultural products on the Land. Lessee agrees to work closely with the Department to meet this requirement. This obligation shall not be interpreted to create third-party beneficiary rights in favor of such surface lessee. Any payment for crop damage or damage to any other agricultural product shall be based upon prevailing rates in the county in which the Land is located for such crop or agricultural products and shall be prorated for any partial acres.

**8.4 Late Charge.**

Lessee hereby acknowledges that late payment by Lessee to Lessor of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Accordingly, if Lessor does not receive the full amount of any Rent postmarked or received via electronic funds transfer on or before the due date, Lessee shall pay a late charge to Lessor. The late charge will be an amount equal to ten percent (10%) of any overdue Rent for Lessor's cost of collecting and handling such late payment due as additional Rent. If payment of the Rent and late charge are not made in full within thirty (30) days of the due date, the outstanding balance of the unpaid Rent and the late fee shall accrue interest at the Default Rate. Interest on all delinquent amounts shall be calculated from the original due date to the date of payment. Lessor retains sole discretion to apply payments received to past due Rent, including any late charge(s) and interest, before applying a payment to current Rent. The parties hereby agree that such late charge represents a fair and reasonable estimate of the cost that Lessor will incur due to the late payment by Lessee.

**8.5 Additional Rent.**

Lessor will not be required to pay any costs or expenses or provide any services in connection with Lessee's use of the Land. Accordingly, Lessee covenants and agrees to separately pay, in addition to the Rent, all utilities and services attributable to Lessee's use of the Land and all taxes and special assessments levied against Lessee's Improvements, whether assessed separately or not, as provided in Sections 11 and 12 below.

**8.6 Most Favored Nations.**

When constructed by Lessee, the Lessee Improvements will be a part of a single, integrated wind power Project. Lessor and Lessee agree that if Lessee has entered into, or hereafter enters into one or more wind energy agreements or similar instruments with other landowners in the Project area under which Lessee agrees to pay such other landowner: (a) a dollar amount per megawatt of installed capacity used to calculate fees similar to Capacity Rent, (b) a percentage amount used to calculate royalties similar to the Percentage Rent, or (c) a dollar amount per acre used to calculate a minimum annual fee similar to Base Rent, which is more favorable than equivalent rates set forth in this agreement, then Lessee shall notify Lessor and prepare and deliver to Lessor for execution an amendment, which Lessor reserves the right to sign at its discretion, to this Lease modifying the payment terms hereunder to match the more-favorable corresponding terms. The more favorable terms shall be effective as to Lessor on the date such terms became effective for the other landowner or the Commencement Date, whichever is later. If necessary, Lessee shall submit payment, along with an accounting, to Lessor for the difference between the amount actually paid to date and the amount that would have been paid had the amended terms been in effect since the date they became effective for the other property(ies).

**8.7 Lessor Audit Rights.**

Lessee shall provide all reasonable documentation necessary for Lessor to conduct a meaningful audit. Lessee agrees that Lessor, or any representative of Lessor, legislative auditors, or the legislative fiscal analyst shall have the right at all reasonable times, but not more than once every eighteen (18) months, and upon provision of reasonable notice, to inspect all reasonable documentation necessary for Lessor to conduct a meaningful audit pertaining to the calculation of amounts due under this Lease at Lessee's principal office within the United States.

If the audit determines that Rent has been underpaid, then Lessee shall pay Lessor the amount of the deficiency. Lessee shall pay Lessor any deficiency within thirty (30) days of final determination of the amount of the deficiency. If the audit determines that Rent has been overpaid, then the overpayment shall be credited against Lessee's next payment(s) due, or, if this Lease has expired, the overpayment shall be refunded to Lessee in accordance with Lessor's refund policy and procedures in place at the time the refund is due.

## 9. SITE PLAN; IMPROVEMENTS; RESTORATION.

**9.1 Preliminary Site Plan**

No later than one (1) year after the Commencement Date, Lessee shall deliver to Lessor a preliminary site plan showing proposed locations of the Wind Power Facilities which shall be used solely for the purposes of Section 8.1(c) to determine Capacity Rent if construction has not commenced.

**9.2 Site Plan.**

Within thirty (30) days after the appropriate governmental agency has approved plans for any construction or grading activities on the Land, the Lessee shall provide the Lessor with a copy of the approved site plan. The site plan shall identify the applicable parcel(s) and include a drawing of the pertinent parcel(s) of the Land locating the Wind Power Facilities, utilities and grading, and a drawing of the elevation of the energy generating equipment and transmission facilities. The site plan shall also identify any and all planned improvements, including improvements necessary to calculate installation fees under this Lease.

**9.3 Construction of Improvements and Alterations; Approval.**

Lessee may construct, operate, and maintain Improvements on the Land as approximately located on the site plan. Except for the Improvements depicted on the site plan, Lessee shall not construct, install, alter, or demolish and remove, any Improvements on the Land without approval as shown through the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed, and shall be

deemed granted unless Lessor shall deliver to Lessee written objection, with reasonable detail as to the basis for Lessor's objection and identifying the Improvements that are objectionable, within thirty (30) days after Lessee's request for approval. In the event that Lessor provides such timely written objection, Lessor and Lessee shall thereafter meet and shall use diligent and good faith efforts to resolve Lessor's reasonable objections as promptly as possible and agree upon revisions to the site plan containing any changes so agreed upon by the parties. Notwithstanding the foregoing, without additional approval, Lessee may make minor deviations and adjustments to the final siting of Improvements as reasonably necessitated by concealed conditions or other construction or engineering considerations or requirements, provided that such minor deviations do not conflict with any findings in the final environmental review document. The movement of any Turbine, access road and transmission lines up to fifty (50) feet and the movement of underground collection and distribution line up to 250 feet shall be deemed minor, provided the same do not conflict with any findings in the final environmental review document. All expenses of constructing, installing, maintaining, repairing, altering, or demolishing any Improvements shall be the sole responsibility of Lessee. Lessee shall at all times comply with all Laws, including any applicable city and state building codes and fire codes. Lessor shall have the right to post notices of non-responsibility or similar notices on the Land in order to protect the Land against any liens resulting from such work.

If Lessee commences construction of Improvements on the Land, Lessee shall diligently endeavor to cause the Operations Date to occur within eighteen (18) months, subject to conditions of Force Majeure. Within 180 days of the completion of the initial Improvements for the Land, Lessee shall deliver to Lessor an electronic ALTA/NSPS "as-built" survey of the Premises in both .shp (or other ArcGIS compatible file) and .pdf format. The Lessee shall thereafter furnish the Lessor with copies of any updated plans showing all changes and modifications thereto. The Lessee shall also furnish to the Lessor copies of certificates of occupancy or other similar documents issued to certify completion of construction in compliance with applicable requirements.

**9.4 Title to Improvements.**

During the Term, Lessee will be deemed to own, and hold title to, all Improvements subject only to the Lessor's reversionary interest in the Improvements upon the expiration of the Lease. Lessee shall have the right to grant liens or other security interests in the Improvements.

Upon the expiration of the Lease, title to all Improvements then held by Lessee that remain upon the Land, except moveable personal property not constituting fixtures, will automatically vest in Lessor without representation or warranty per MCA §77-1-906(2).

**9.5 Removal of Lessee Improvements and Restoration.**

Prior to the expiration, surrender, or termination of this Lease, including early termination (subject to Lender's rights under Section 16.3), whether as to the entire Land or only as to a part thereof, Lessee shall fulfill all obligations provided within the Reclamation Plan attached hereto as **Exhibit D**, as developed between Lessee and Lessor after completion of the appropriate environmental analysis document prior to executing this Lease. In addition to, and in accordance with, the terms of the Reclamation Plan, Lessee shall (a) remove from the Land (or such part thereof, as applicable) any Improvements owned, installed or constructed by Lessee thereon, except for any roads that Lessor allows to remain on the Land and any underground collection and distribution lines and Turbine foundations three (3) feet or more below the surface; (b) leave the surface of the Land (or such part thereof, as applicable) free from debris; and (c) otherwise restore the portion of the Land affected by Lessee to a condition as close as practicable to the condition it was in before Lessee's use. Restoration includes, if applicable, the reseeding of affected areas with grasses and/or natural vegetation in accordance with reasonable and customary land care and maintenance standards in the area relating to weed control and the restoration of disturbed pastureland, as reasonably determined by Lessee upon consultation with county agricultural authorities and in

coordination with Lessor, as to matters including seed types and seeding timing and processes, it being the intent that Lessor be able to utilize the Land in the same manner as before Lessee's use. Lessee shall be required to remove footings and foundations to the greater of (i) thirty-six (36) inches below the surface of the land or (ii) the depth (if any) required by applicable Law. Lessee shall provide Lessor with an ALTA/NSPS survey in .pdf or other electronic format that depicts the exact locations of improvements that the Lessee does not entirely remove and intends to allow to revert to Lessor. The provisions of this paragraph shall survive the termination or cancellation of this Lease.

**9.6 Post-Construction Restoration.**

Upon the completion of the construction of the Lessee Improvements, all Land disturbed by Lessee, its agents, contractors, and/or employees, and not required for continuing operations of the Wind Power Facilities, shall be restored to a condition and forage density reasonably similar to its original condition and forage density, consistent with the continued use of the Land pursuant to this Lease. Reclamation shall include, as reasonably required, leveling, terracing, mulching, and other reasonably necessary steps to prevent soil erosion, to ensure the establishment of suitable grasses and forbs, and to control noxious weeds and pests. After the completion of construction, no refuse, waste, or other litter of any kind shall be left on the Land by Lessee. This post-construction reclamation requirement is separate and apart from the requirements found in Section 9.5 above.

**9.7 Secondary Uses**

After post-construction restoration is complete in accordance with Section 9.6, Lessee's use of the Land for Wind Power Facilities shall not unreasonably disturb grazing, agriculture, or other permitted secondary uses of the Land, granted under one or more leases, licenses, or permits issued prior to the Commencement Date.

## 10. USE AND ENVIRONMENTAL COMPLIANCE.

**10.1 Use and Compliance.**

The Lessee shall comply with all applicable Laws, rules, and regulations in effect upon the Commencement Date of this Lease and those Laws, rules, and regulations that may be enacted or adopted thereafter from time to time and that do not impair or impede the obligations of this Lease and that do not deprive the Lessee of an existing property right recognized by law. Lessee shall keep Lessee's Improvements in good repair, and pay all costs and expenses in connection therewith. Lessee shall not commit waste or permit impairment or deterioration of the Land (construction, installation, and removal of Improvements contemplated by this Lease, ordinary wear and tear, and damage by casualty and condemnation excepted). Excavations and Improvements shall be maintained in a safe condition to prevent injury to persons, livestock, and wildlife.

**a) Noxious Weeds.** The Lessee shall be responsible for controlling noxious weeds introduced or proliferated by Lessee's activity on the Premises or adjacent state-owned land. After the Operations Date, the Lessee shall coordinate with the Lessor's North Eastern Land Office for weed control and the development of a weed management plan for the Premises. The Lessee shall comply with the Montana County Noxious Weed Management Act.

**b) Construction Time Periods.** All construction activities will be conducted so as to minimize rutting and soil compaction after consultation with the Northeastern Land Office of Lessor.

**c) Resource Removal.** Lessee will not cut or otherwise remove any timber or standing trees, or soil or other vegetation upon the Land unless authorized to do so by Lessor. Provided however, Lessee shall be allowed to remove timber, standing trees and vegetation within: (i) a 650 foot diameter circle around each Turbine; (ii) seventy-five feet of any underground collection and distribution line and overhead transmission line; or (iii) fifty (50) feet of any access road, and otherwise as required by the National Electric Safety Code.

**10.2 Compliance with Title 77, MCA.**

Lessor and Lessee specifically acknowledge that the Land is state school trust land managed by the Montana Board of Land Commissioners and agree that this Lease is subject to the provisions of Title 77, Montana Code Annotated (MCA), and all associated Administrative Rules of Montana (ARM).

**10.3 Environmental Monitoring and Montana Environmental Policy Act (MEPA).**

Environmental analysis is required prior to execution of this Lease. Lessee understands additional environmental monitoring is required from the Lessee after construction and/or operations, based on the Project specifications and the environmental analysis conducted prior to lease execution. Additional monitoring requirements are made part of this Lease and attached hereto as **Exhibit E**. Lessee agrees to pay all costs associated with such environmental monitoring and any MEPA document(s) as may be required.

**10.4 Environmental Matters.**

Lessor has made no representations to Lessee concerning the presence of toxic or Hazardous Substances within the definition of the Comprehensive Environmental Cleanup and Responsibility Act on the Land. Lessee agrees as follows: Lessee will (a) comply with all Environmental Laws applicable to the operation or use of the Land by Lessee or the construction, installation, alteration or demolition of any Improvements by Lessee; (b) use reasonable efforts to cause all persons occupying the Land under the terms of this lease to comply with all Environmental Laws; (c) immediately pay or cause to be paid all costs and expenses incurred by Lessee in such compliance; and (d) keep or cause the Land to be kept free and clear of any liens arising from Lessee's use and occupancy of the Land imposed thereon pursuant to any Environmental Laws.

Lessee will not generate, use, treat, store, release or dispose of, or permit the generation, use, treatment, storage, Release or disposal of, any Hazardous Substances on the Land, or transport or permit the transportation of any Hazardous Substances to or from the Land, in each case in any quantity or manner which violates any Environmental Laws.

If Lessor has knowledge of any pending or threatened Environmental Claim against Lessee or the Land or has good reason to believe that Lessee or the Land are in violation of any Environmental Laws, at Lessor's written request (such request shall describe the basis for such request in reasonable detail), at any time and from time to time, Lessee will provide to Lessor an environmental site assessment report concerning the Land, prepared by an environmental consulting firm reasonably approved by Lessor, indicating the presence or absence of Hazardous Substances and the potential cost of any removal or remedial action in connection with any Hazardous Substances on the Land. Any such environmental site assessment report will be conducted at Lessee's sole cost and expense. If Lessee fails to deliver to Lessor any such environmental site assessment report within ninety (90) days after being requested to do so by Lessor pursuant to this Section, Lessor may obtain the same, and the cost of such assessment (together with interest thereon at the Default Rate) will be payable by Lessee on demand.

Lessor may, at its option, at any time and from time to time, obtain at its sole cost and expense an environmental site assessment report for the Land.

At its sole expense, Lessee will conduct any investigation, study, sampling or testing, and undertake any cleanup, removal, remedial or other action necessary to remove and clean up all Hazardous Substances from the Land, which are on the Land as a result of Lessee's activities under the Lease, which must be so removed or cleaned up in accordance with the requirements of any applicable Environmental Laws, to the reasonable satisfaction of a professional environmental consultant selected by Lessor, and in accordance with all such requirements and with orders and directives of all governmental authorities. Lessor shall, at its sole cost and expense take legally authorized remedial action with regard to any

Hazardous Substance contamination caused by Lessor, its lessees, licensees and permittees other than Lessee hereunder.

**10.5 Survival.**

The reimbursement obligations under this Section 10 will survive the expiration or earlier termination of this Lease.

## 11. UTILITIES; REPAIRS; WATER RIGHTS.

**11.1 Installation and Repairs.**

Lessee will install any water, sewer, storm water, electric, communication lines, natural gas lines, roads, sidewalks, and/or any other infrastructure as required for the development of the Land. Lessee will maintain, repair, replace and keep the Premises in reasonably good condition and repair.

**11.2 Utilities.**

Lessee will pay before delinquent all water, sewer, natural gas, electricity, telephone and any other utility charges related to the Premises, and arising by, through or under Lessee, including, without limitation, those which, if not paid, may be asserted as a lien or charge against the Land or Improvements.

**11.3 Water Rights.**

Any water right appropriated or secured on the Land by any individual or party for use on or off such Land shall be appropriated or secured in the name of the Lessor unless prior written permission to do otherwise is granted by the Lessor. Lessor shall be notified prior to such development or appropriation of water right.

## 12. TAXES.

**12.1 Payment of Taxes.**

Lessee will pay before delinquent, directly to the taxing authority, all taxes that accrue during, or are attributable to, any part of the Term and levied against Lessee's Improvements, including privilege taxes, also known as beneficial use taxes, per §15-24-1203, MCA, if applicable and any other taxes levied by the State including electrical generation taxes listed in § 15-24-3004, *et seq*., MCA.

**12.2 Special Assessments.**

Lessee will pay all special assessments (i.e. SIDs, RIDs, etc.) and other like impositions levied, assessed, or attributable to the Land and Lessee's Improvements during the Term.

## 13. INSURANCE.

**13.1 Types of Required Insurance.**

Lessee shall procure and maintain, or cause one or more of its Sublessees to provide and keep in force and name Lessor as an additional insured, the following:

**a) Commercial General Liability Insurance:** For the duration of this Lease and until the Lessor certifies that reclamation is complete, Lessee shall purchase and maintain commercial general liability insurance, when combined with umbrella liability insurance, in the amount of $1,000,000 per occurrence / $2,000,000 aggregate, covering claims for bodily injury, death, personal injury, and property damage, arising or allegedly arising out of, in connection with, or on account of this Lease, any act or omission of Lessee, or any act or omission of Lessee's officers, agents, employees, or subcontractors, except to the extent due to the negligence or willful misconduct of Lessor, its agents and employees. This provision is intended to require Lessee to purchase and maintain general liability insurance that includes protection for Lessee's own acts or omissions, alleged acts or omissions, negligent conduct, and alleged negligent conduct.

**b) Property Insurance.** For the duration of this Lease and until the Lessor certifies that reclamation is complete, Lessee shall purchase and maintain all-risk fire and extended coverage property insurance

(including standard extended endorsement perils, leakage from fire protective devices and other water damage) covering loss or damage to the Improvements and betterments in a sufficient amount in Lessee's reasonable discretion.

**c) Worker's Compensation and Employer's Liability Insurance.** For the duration of this Lease and until the Lessor certifies that reclamation is complete, Lessee shall either obtain and maintain an independent contractor exemption or shall purchase and maintain worker's compensation and employer's liability insurance covering Lessee and its employees and agents. Lessee shall also require each of its major sub-contractors, for the duration of this Lease and until the Lessor certifies that reclamation is complete, to either obtain and maintain an independent contractor's exemption or to purchase and maintain workers' compensation and employer's liability insurance covering each sub-contractor and its employees and agents.

**d) Environmental Impairment Liability Insurance.** To the extent such liability is not covered by the commercial general liability policy set forth in Section 13.1(a) above, for the duration of this Lease and until the Lessor certifies that reclamation is complete, Lessee shall purchase and maintain environmental impairment liability insurance in the amount of $1,000,000 per occurrence/ $2,000,000 aggregate protecting Lessee and the State, their elected and appointed officials, agents, and employees, against all claims for environmental contamination arising or allegedly arising out of or in connection with this Lease, except to the extent caused by the negligence or willful misconduct of Lessor. This provision is intended to require Lessee to purchase and maintain environmental impairment liability insurance that includes protection for Lessee's own acts or omissions, alleged acts or omissions, negligent conduct, and alleged negligent conduct. If Lessee can obtain environmental impairment liability insurance only on a "claims made" basis, it shall obtain the longest retroactive date and extended reporting periods available.

**e) Automobile Liability Insurance.** For the duration of this Lease and until the Lessor certifies that reclamation is complete, Lessee shall purchase and maintain business automobile liability insurance covering any automobile – including all owned, hired and non-owned automobiles – used in connection with Lessee's business. Business automobile liability insurance shall have a combined single limit of $1,000,000 per accident. Lessee shall require each of its major sub-contractors to purchase and maintain business automobile liability insurance with the same limits.

**13.2 Terms of Insurance.**

**a)** Each insurance policy required by this Lease shall be written for the limits of liability specified in this Lease or required by law, whichever coverage is greater.

**b)** Each insurance policy required by this Lease shall be written on an "occurrence" basis, or a "claims made" basis provided any claims under such policy shall be retroactive to the Commencement Date of this Lease and shall expire two (2) years after the expiration or termination of this Lease, unless otherwise agreed to by subsequent written agreement between Lessee and Lessor.

**c)** Each insurance policy required by this Lease shall be maintained without interruption for the time periods required by this Lease and Lessee shall provide that coverage will not be canceled for any reason without giving Lessor at least thirty (30) days prior written notice of cancelation, except that a (ten) 10 day written notice shall apply for cancellation by insurer due to non-payment of premiums.

**d)** Lessee is responsible for paying all premiums, deductibles, and retentions applicable to each insurance policy required by this Lease.

**e)** All insurance coverage of any kind purchased and maintained by Lessee or any sub-contractor as required by this Lease shall be purchased only from an insurance carrier currently authorized to do business in the State of Montana with an A. M. Best's rating of no less than A- or a Standard & Poor rating of A.

**f)** All insurance coverage of any kind purchased and maintained by Lessee or any sub-contractor as required by this Lease shall be primary coverage but only to the extent of the liabilities assumed hereunder by the parties. Any insurance or self-insurance maintained separately by Lessor, its officers, officials, employees, or volunteers shall be excess of the Lessee's or sub-contractor's insurance and shall not contribute with it but only to the extent of the liabilities assumed hereunder by the parties.

**g)** Lessor shall be included as an additional insured under the policies, to the extent of the liabilities arising under this Lease, on the declaration pages of the general liability, property, environmental impairment liability, business automobile liability, and excess/umbrella policies required by this Lease as named insureds (Lessee being identified as the primary or first named insured) but only to the extent of the liabilities assumed hereunder by the parties.

**h)** Lessee, its sub-contractors, or the insurance carrier issuing all insurance policies required by this Lease must provide a certificate of coverage of such policies to Lessor prior to execution of this Lease and as a necessary condition precedent to the formation, and enforceability of any provision, of this Lease.

**i)** Failure to obtain and maintain all required insurance shall be considered a material breach of this Lease. Lessee shall notify Lessor immediately if any insurance required by this Lease is canceled, expires, changes, is reduced, or restricted in coverage or if any insurer notifies Lessee of its intent to cancel, allow to expire, change, reduce, or restrict the coverage of such insurance.

**j)** The indemnity and insurance provisions of this Lease can be modified only by subsequent written agreement between Lessee and Lessor.

## 14. DAMAGE OR DESTRUCTION.

In the event of any Substantial Damage arising from or relating to Lessee's activities on and use of the Land or any Improvements from any causes whatsoever, Lessee shall promptly give written notice thereof to Lessor. Lessee shall promptly repair or restore the Land or remove any damaged Improvements and restore the affected portion of the Land as nearly as possible to its condition immediately prior to such damage or destruction unless Lessor and Lessee mutually agree in writing that such repair and restoration is not feasible, in which event this Lease shall thereupon terminate upon Lessee's completion of a remediation plan developed by the Department pursuant to this Section. Lessee's duty to repair any damage or destruction of the Land, and to restore or remove any Improvements and to restore the Land, shall not be conditioned upon the availability of insurance proceeds from which the cost thereof may be paid. Unless this Lease is so terminated by mutual agreement as described in this Section 14, there shall be no abatement or reduction in Rent during such period of repair and restoration.

## 15. CONDEMNATION.

### 15.1 Notice.

If either Lessor or Lessee learns that all or any portion of the Premises has been or is proposed to be subjected to a Taking, such party will immediately notify the other of such Taking.

### 15.2 Termination Option on Substantial Taking.

If a Substantial Taking occurs during the Term, Lessee may, at its option, terminate this Lease by giving notice to Lessor on or before sixty (60) days after the Taking Date. In such event, this Lease will terminate thirty (30) days after the date of Lessee's notice of termination, and all Base Rent and other Rent will be apportioned to the date Lessee surrenders possession.

### 15.3 Continuation of Lease.

If a Taking occurs during the Term that is not a Substantial Taking, then this Lease will remain in full force and effect according to its terms, except that effective as of the Taking Date this Lease will terminate automatically as to the portion of the Premises that is the subject of such Taking and Base Rent will be adjusted to reflect the reduced Land remaining after the Taking. If a Substantial Taking occurs but Lessee does not exercise its termination option this Lease will remain in full force and effect according to its terms, except that effective as of the Taking Date this Lease will terminate automatically as to the portion of the Premises that is the subject of such Taking and Base Rent after the Taking Date will be adjusted to reflect the reduced Land remaining after the Taking.

### 15.4 Awards for Permanent Taking.

If there is compensation paid as a result of any Taking of the Land or Lessee's interest therein, then the award or compensation payable therefor, whether pursuant to a judgment, by agreement or otherwise, including any damages and interest (collectively, the "Award"), will be allocated as follows: (a) any portion of the Award attributable to the Taking of or injury to this Lease, or the Improvements shall be paid to Lessee, without reduction on account of any early termination effected due to the Taking; (b) any portion of the Award attributable to any cost or loss that Lessee may sustain in the removal and/or relocation of the Improvements, or Lessee's chattels and trade fixtures, shall be paid to Lessee; (c) any portion of the Award attributable to Lessee's anticipated or lost profits, to damages because of deterrent to Lessee's business or to any special damages of Lessee, shall be paid to Lessee; and (d) any portion of the Award attributable to the Taking of the fee, and all remaining amounts of the Award, shall be paid to Lessor.

**15.5 Award for Temporary Taking.**

If all or any portion of the Premises shall be taken for temporary use or occupancy, the foregoing provisions shall not apply and the Lessee shall continue to pay the full amount of Rent and the Lessee shall perform and observe all of the other terms, covenants, conditions and obligations of this Lease as though the temporary Taking had not occurred, subject to any order of the condemning authority. In the event of a temporary Taking, Lessee shall be entitled to receive the entire amount of the compensation award for such taking, unless the period of temporary use or occupancy shall extend beyond the Expiration Date in which case the compensation shall be apportioned between the Lessor and the Lessee as of the Expiration Date.

## 16. ASSIGNMENT, SUBLETTING AND FINANCING.

**16.1 Assignment.**

Lessee shall not assign its interest under this Lease, in whole or as to any part, without Lessor's prior written consent, which shall not be unreasonably withheld, conditioned or delayed if the proposed assignee is: (a) an affiliate of Lessee; (b) a present or future purchaser of electricity generated by the Improvements or engaged in the transmission or distribution of such electricity; (c) a party to a merger or reorganization transaction involving Lessee or a sale or transfer involving all or substantially all of Lessee's assets, including, but not limited to, the Improvements; or (d) any collateral assignment of the Lease in connection with a financing transaction. For other such assignments, such consent may be determined in Lessor's sole and absolute discretion. Notwithstanding the foregoing, Lessor's consent will not be required for any transfer of Lessee's interest under this Lease to a Foreclosure Transferee. Lessor will recognize any Foreclosure Transferee as a substitute Lessee under this Lease and will honor all rights and interest of such substitute Lessee as if the substitute Lessee was the initial Lessee under this Lease. Any such Foreclosure Transferee shall be bound by the terms and conditions of this Lease. Additionally, if the Foreclosure Transferee is a Qualified Lender, such Qualified Lender shall have the right to assign its interest under this Lease without the consent of Lessor and, upon such assignment, Lessor shall recognize the assignee as a substitute Lessee under this Lease and the Qualified Lender shall be released of any further liability under the Lease. However, any assignee must be registered with the Montana Secretary of State to conduct business in the State of Montana. If Lessee assigns its rights in this Lease, as permitted or approved pursuant to this Section 16, then Lessee shall be relieved of all liabilities hereunder accruing from and after the date of such assignment, but only if (i) the assignor gives Lessor notice of the assignment, and where consent is required obtains Lessor's written consent; (ii) the assignment is expressly made subject to this Lease; (iii) the assignee expressly assumes Lessee's obligations which arise on or after the date of such assignment; and (iv) the assignee has the resources necessary to satisfy its obligations under this Lease. An assignment as described in this paragraph shall not relieve Lessee from any liability that arose prior to the assignment, in accordance with § 77-1-909, MCA. Any member of Lessee shall have the right from time to time without Lessor's consent to transfer any membership interest in Lessee to one or more persons or entities.

**16.2 Subletting.**

Lessee may sublease the Land or portions thereof in accordance with the terms of this Section. Lessee may grant possessory or use rights under its leasehold estate under this Lease, whether by sublease, license, or another instrument. Lessee shall not enter into any sublease without Lessor's prior written consent, which shall not be unreasonably withheld, conditioned, or delayed. Lessee shall inform Lessor of all proposed subleases by delivering a copy of the sublease to Lessor. No sublease shall be effective until a valid sublease agreement with a valid attornment provision is delivered to the Lessor, as hereinafter provided. All subleases shall include an attornment provision whereby upon the early termination of this Lease or repossession of the Land by Lessor, the Sublessee shall attorn to the Lessor as its landlord under all of the terms, covenants and conditions of this Lease (prorated for the actual amount of Land used by Sublessee) for the balance of the remaining Term, with the same force and effect as if Sublessee were the Lessee under this Lease. Such attornment shall be effective and self-operative immediately upon Lessee's termination, and each Sublessee subject thereto shall agree to execute, acknowledge, and deliver to Lessor any document that Lessor reasonably requests to confirm such attornment.

**16.3 Financing.**

**a) Lessee's Right to Encumber**. Throughout the Term, Lessee may from time to time, upon written notice to Lessor, but without having to secure Lessor's consent, execute and deliver one or more Lender's Liens recurring any indebtedness or other obligation of Lessee. Without limiting the generality of the foregoing, Lessee may execute and deliver Lender's Liens to secure promissory notes evidencing construction, interim or permanent financing for the Land or Improvements, or to secure Lessee's obligations under development, reimbursement or other agreements with governmental or quasi-governmental entities, utility companies or other third parties concerning matters such as sales or property tax abatement or rebate programs, public improvements or utilities. A Qualified Lender shall have the absolute right to do one, some, or all of the following things without further consent from Lessor: (a) assign its Lender's Lien; (b) enforce its Lender's Lien or other security instrument other than a mortgage or other interest in the underlying land; (c) acquire title to the Wind Power Facilities under this Lease as a Foreclosure Transferee; (d) take possession of and operate the Wind Power Facilities and the Improvements or any portion thereof in accordance with this Lease and perform any obligations to be performed by Lessee hereunder, or cause a receiver to be appointed to do so; (e) assign or transfer the leasehold estate under this Lease to a third party; or (f) exercise any rights of Lessee hereunder. Nothing in this section shall be construed to convey an interest in the underlying land.

**b) Qualified Lender's Cure Rights**. Each Qualified Lender shall have the absolute right to substitute itself for Lessee and perform the duties of Lessee hereunder, including for purposes of curing any default or alleged default by Lessee, including any uncured Default by Lessee (as defined below). As a precondition to exercising any rights or remedies as a result of any default or alleged default by Lessee, Lessor shall deliver a duplicate copy of the applicable default notice to each Qualified Lender concurrently with delivery of such notice to Lessee. In the event of an uncured Default by Lessee after delivery of such notice and the expiration of Lessee's cure period, but prior to terminating this Lease or exercising any other right or remedy hereunder for a Default by Lessee, Lessor will give each Qualified Lender notice of such Default by Lessee, and afford it a period of: (a) Thirty (30) days after such notice is given in which to cure such Default by Lessee if such Default by Lessee is a failure to pay Rent; or (b) Sixty (60) days after such notice is given in which to cure such Default by Lessee if such Default by Lessee is not a failure to pay Rent; provided, however, that if such Default by Lessee is not a failure to pay Rent and is susceptible of cure by a Qualified Lender, but cannot reasonably be cured within such 60-day period, then so long as any Qualified Lender commences a cure within such 60-day period (and notifies Lessor that it has done so), its cure period will be extended for as long as reasonably necessary for it to diligently pursue the cure to completion. However, if such Default by Lessee is not a failure to pay Rent and is susceptible of cure by a Qualified Lender, but cannot reasonably be cured until the Qualified Lender obtains possession of the Land, then so long as any Qualified Lender commences to obtain

possession of the Land within such 60-day period (and notifies Lessor that it has done so), its cure period will be extended for as long as reasonably necessary for it to obtain possession of the Land, and then promptly commence and thereafter diligently pursue the cure to completion. If a Qualified Lender is prohibited by any process or injunction issued by any court or by reason of any action of any court having jurisdiction over any bankruptcy or insolvency proceeding involving Lessee from commencing or prosecuting the proceedings described above, then the 60-day period specified above for commencing such proceedings shall be extended for the period of such prohibition.

**c) Prohibition against Mutual Rescission**. No mutual termination, cancellation, rescission or modification of a material provision of this Lease by Lessor and Lessee will be effective unless and until the same is approved in writing by each Qualified Lender. All rights and remedies of the Qualified Lender hereunder will be cumulative with, in addition to, and non-exclusive of one another.

**d) New Lease to Qualified Lender**. If this Lease (a) terminates because of Lessee's uncured Default by Lessee; or (b) is rejected or disaffirmed pursuant to bankruptcy law or any other law affecting creditors' rights, then, so long as a Qualified Lender has cured any such monetary Default by Lessee, and is making commercially reasonable efforts to cure any such non-monetary Default by Lessee as provided herein, Lessor shall immediately, upon written request from such Qualified Lender, received within ninety (90) days after any such event, without demanding additional consideration therefor, recognize the Qualified Lender's interest in this Lease, or enter into a new lease in favor of such Qualified Lender. The new lease shall: (i) contain the same agreements, terms, provisions and limitations as this Lease (except for any requirements that have been fulfilled by Lessee prior to such termination, foreclosure, rejection or disaffirmance hereinafter referred to as a "Terminating Event"); (ii) be for a term commencing on the date of such Terminating Event, and continuing for the remaining Term before giving effect to such Terminating Event; (iii) contain a lease of the Land or such portion thereof as to which such Qualified Lender held a Leasehold Mortgage on the date of such Terminating Event; (iv) enjoy the same priority as this Lease over any lien, encumbrance or other interest created by Lessor. At the option of the Qualified Lender, the new lease may be executed by a designee of such Qualified Lender, without the Qualified Lender assuming the burdens and obligations of Lessee thereunder. The provisions of this paragraph shall survive the termination or cancellation of this Lease.

### 16.4 Assignment by Lessor.

If Lessor sells or otherwise transfers the Land, or if Lessor assigns its interest in this Lease, such purchaser, transferee or assignee thereof shall be deemed to have assumed Lessor's obligations hereunder which arise on or after the date of sale or transfer, and Lessor shall thereupon be relieved of all liabilities hereunder accruing from and after the date of such transfer or assignment, but this Lease shall otherwise remain in full force and effect.

## 17. LEASE EXPIRATION.

### 17.1 Condition at End of Lease.

Upon the expiration or termination of this Lease, Lessee shall leave the Land in good condition and shall peaceably surrender the same to Lessor. Prior to expiration or termination, Lessee shall have removed its Improvements and personal property and shall have restored the Land according to the terms of this Lease. All Improvements and personal property remaining on the Land on the day after the expiration or termination date, shall be conclusively deemed abandoned by the Lessee and shall become property of Lessor without further notice to Lessee.

### 17.2 Holding Over.

If the Premises are not surrendered on the Expiration Date, Lessee shall immediately indemnify Lessor against loss or liability resulting from the delay by Lessee in so surrendering the Premises, including, without limitation, any claims made by any succeeding Lessee founded on such delay. Should the Lessee remain in possession of the Premises after the Expiration Date or termination without a written agreement providing for the same, Lessee will, at Lessor's option be deemed to be a Lessee from month

to month, at a monthly Base Rent, payable in advance, equal to 150% of the monthly Rent that was payable during the last full "Production Year" prior to the Expiration Date or termination of this Lease, and Lessee will be bound by all of the other terms, covenants and agreements of this Lease as the same may apply to a month-to-month tenancy.

## 18. LIENS AND ESTOPPEL CERTIFICATES.

### 18.1 Liens.

Lessee will not allow any liens to be recorded, filed, claimed, or asserted against the Land. In the event a lien is recorded, filed, claimed, or asserted, Lessee will cause the same to be released or discharged within thirty (30) days thereafter. If the Lessee defaults under the foregoing covenant, then the Lessor may, upon written notice to Lessee, cause any such claimed lien to be released of record by bonding or payment or any other means available. All sums paid and costs and expenses incurred by the Lessor in connection therewith, together with interest on all such sums at the Default Rate from the date incurred until paid, will be due and owing from the Lessee to the Lessor upon demand therefore.

### 18.2 Lien Contests.

If Lessee has a good faith dispute as to any lien for which Lessee is responsible, Lessee may contest the same by appropriate proceedings so long as Lessee bonds over the lien or deposits with Lessor security in an amount acceptable to Lessor (but in no event more than the amount required by applicable laws) which may be used by Lessor to release such lien and pay interest and costs if Lessee's contest is abandoned or is unsuccessful. Upon final determination of any permitted contest, Lessee will promptly pay any judgment rendered and cause the lien to be released.

### 18.3 Estoppel Certificates.

Lessor and Lessee agree that at any time, and on occasion (but on not less than ten (10) business days prior request by the other party), each party will execute, acknowledge and deliver to the other a certificate indicating any or all of the following: (a) the date on which the Term commenced and the date on which it is then scheduled to expire; (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the date and nature of each modification); (c) the date, if any, through which Rent had been paid; (d) that no Default by Lessor or Default by Lessee exists which has not been cured, except as to defaults stated in such certificate; (e) that the responding party has no existing defenses or set-offs to enforcement of this Lease, except as specifically stated in such certificate; and (f) such other matters as may be reasonably requested by the requesting party. Any such certificate may be relied upon by the requesting party, and will be provided by the requesting party.

## 19. DEFAULTS BY LESSEE AND LESSOR'S REMEDIES.

### 19.1 Defaults by Lessee.

Each of the following events, which continue beyond any applicable notice and cure period, will constitute a "Default by Lessee" under this Lease, except that the parties may agree, in writing, to extend the time for cure provided for any of the Defaults listed below, and if the time for cure is so extended the Default shall not be held to have occurred until the mutually agreed time for cure has elapsed:

**a) Failure to Pay Rent**. Lessee fails to pay any Base Rent or any other Rent, including late charges and interest accruing thereon, payable by Lessee under the terms of this Lease when due, and such failure continues for thirty (30) days after written notice from Lessor to Lessee of such failure;

**b) Failure to Perform Other Obligations**. Lessee breaches or fails to comply with any term, provision, or covenant of this Lease applicable to Lessee other than a covenant to pay Rent, and such breach or noncompliance continues for a period of thirty (30) days after written notice thereof from Lessor to Lessee; or, if such breach or noncompliance cannot be reasonably cured within such 30-day period, Lessee does not commence to cure such breach or noncompliance within such 30-day period and thereafter pursue such cure in good faith to completion;

**c) Execution and Attachment against Lessee**. Lessee's interest under this Lease or in the Premises is taken upon execution or by other process of law directed against Lessee, or is subject to any attachment by any creditor or claimant against Lessee and such attachment is not discharged or disposed of within thirty (30) days after levy; provided, however, that this provision shall not apply in the event of a foreclosure or transfer in lieu of foreclosure under a Leasehold Mortgage or other exercise of rights under a Lender's Lien by a Qualified Lender, or to a transfer of Lessee's interest in this Lease and the Premises to a Foreclosure Transferee.

**d) Fraud or Misrepresentation**. Lessee's fraud or misrepresentation, or concealment of material facts relating to its procurement of this Lease, which if known to Lessor would have prevented its issuance of this Lease. Any material false certification or statement by Lessee in any other document or report required to be submitted under this Lease, which was known to be false by Lessee at the time it was made, shall, at the discretion of Lessor, be deemed a Default by Lessee under this Lease.

**e) Unauthorized Use of Premises.** Lessee's, Lessee's employees and agents, its subcontractors, or its subcontractor's employees' and agents' use of the Premises for any unlawful or unpermitted purpose, and such unlawful use continues for thirty (30) days after written notice from Lessor to Lessee to cease such use.

**f) Abandonment or Non-operation.** Lessee's express or implied abandonment of the Lease Premises or non-operation of Wind Power Facilities upon the Land for 12 consecutive months.

**19.2 Lessor's Remedies.**

Time is of the essence. If any Default by Lessee occurs, Lessor will have the right, at Lessor's election, then or at any later time while such Default by Lessee shall be continuing, to exercise any one or more of the remedies described below. Exercise of any of such remedies will not prevent the concurrent or subsequent exercise of any other remedy provided for in this Lease or otherwise available to Lessor at law or in equity.

**19.3 Cure by Lessor.**

In the event of a Default by Lessee, Lessor may, at Lessor's option but without obligation to do so, and without releasing Lessee from any obligations under this Lease, make any payment or take any action as Lessor deems necessary or desirable to cure any Default by Lessee in such manner and to such extent as Lessor in good faith deems necessary or desirable, utilizing all appropriate care, provided that, prior to making any such payment or taking any such action, Lessor notifies Lessee in writing of Lessor's intention to do so and affords Lessee at least ten (10) days in which to make such payment or take such action. Lessee will pay Lessor, upon written demand, all advances, costs, and expenses of Lessor in connection with making any such payment or taking any such action, together with interest at the Default Rate, from the date of payment of any such advances, costs and expenses by Lessor.

**a) Termination of Lease**. In the event of a Default by Lessee, Lessor shall have and shall be entitled to exercise any and all remedies available to it at law or in equity, all of which remedies shall be cumulative; provided, however, that Lessor shall not commence any action or proceeding in which termination, cancellation, rescission or reformation of this Lease is sought as a remedy except as provided below:

i. Lessor shall not seek termination, cancellation, rescission, or reformation without first allowing Lessee an opportunity to cure any alleged failure, breach, or default through notice as provided by Section 24.2;

ii. Lessor shall not seek termination, cancellation, rescission, or reformation for any of the defaults listed in Section 19.1(a) – (c) except as provided for nonpayment of awarded damages described in subpart (iii) below;

iii. If Lessee fails to pay to Lessor within the time specified by any court of last resort with jurisdiction any damages awarded Lessor by such court, then Lessor may, after giving a notice and subject to Section 16.3(b), terminate this Agreement. Lessor may pay or perform

any obligations of the Lessee that have not been paid or performed as required hereunder and to obtain (a) subrogation rights therefor and (b) prompt reimbursement from Lessee for the actual, reasonable and verifiable out-of-pocket costs of such payment or performance.

**b) Receiver**. To properly effectuate the recovery of damages and other sums owing from Lessee to Lessor hereunder following a Default by Lessee, Lessor, in conjunction with any dispossession proceeding commenced pursuant to this Lease, may seek an appointment of a receiver by a court of competent jurisdiction to the extent provided for in and compliance with the requirements of Title 25, Chapter 14, Part 2, Montana Code Annotated, and Rule 66, Montana Rules of Civil Procedure, as they may be amended. In no event will Lessor be obligated to post a bond in connection with the appointment of a receiver.

**c) Bankruptcy Relief**. Nothing contained in this Lease will limit or prejudice Lessor's right to obtain adequate assurances of Lessee's future performance under 11 USC Section 365, or other applicable laws, or any other legal rights, in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding.

## 20. DEFAULTS BY LESSOR AND LESSEE'S REMEDIES.

### 20.1 Defaults by Lessor.

Either of the following events, which continue beyond the applicable notice and cure period, will constitute a "Default by Lessor" under this Lease: (a) Lessor breaches or fails to comply with any provision of this Lease applicable to Lessor, and such breach or noncompliance continues for a period of thirty (30) days after notice thereof from Lessee to Lessor; or, (b) if such breach or noncompliance cannot be reasonably cured within such 30-day period and Lessor does not commence to cure such breach or noncompliance within such 30-day period and does not thereafter pursue such cure in good faith to completion.

### 20.2 Lessee's Remedies.

If any Default by Lessor occurs, Lessee will have the right, at Lessee's election, then or at any later time, to exercise the remedy described below. Exercise of such remedy will not prevent the concurrent or subsequent exercise of any other remedy otherwise available to Lessee at law or in equity. Lessee may, at Lessee's option but without obligation to do so, and without releasing Lessor from any obligations under this Lease, make any payment or take any action as Lessee deems necessary or desirable to cure any Default by Lessor in such manner and to such extent as Lessee in good faith deems necessary or desirable, provided that, prior to making any such payment or taking any such action, Lessee notifies Lessor of Lessee's intention to do so and affords Lessor at least ten (10) days in which to make such payment or take such action. Lessor will pay Lessee, upon demand, all advances, costs, and expenses of Lessee in connection with making any such payment or taking any such action, together with interest at the Default Rate, from the date of payment of any such advances, costs and expenses by Lessee.

## 21. DECOMISSIONING AND RECLAMATION PLAN AND BOND.

Prior to any construction on the Land, the Lessee shall furnish Lessor a good and sufficient corporate surety bond or letter of credit, in the amount specified in the Reclamation Plan attached to this lease as **Exhibit D**. The bond shall secure the full performance by the Lessee of its decommissioning of the project and reclamation of the Land. The bond shall be in form and issued by a surety company acceptable to the Lessor. The bond shall be reviewed every five (5) years and may be adjusted by the Lessor to assure that reclamation will occur in accordance with the Reclamation Plan. A new or modified bond shall be delivered to the Lessor not less than thirty (30) days following Lessor's request for an additional bond. The Lessee shall have a bond or letter of credit in effect at all times until one (1) year after the expiration of the Lease Term, or one (1) year after cessation of operations, whichever is later, unless fully drawn upon earlier by Lessor or unless Lessor provides the issuer of the bond or letter of credit written notice authorizing the termination of the bond. Upon (a) the expiration of the Lease Term, and (b) Lessee's compliance with its reclamation obligations, as reasonably determined by Lessor, Lessor

shall be obligated to provide written notice to the issuer of the bond or letter of credit authorizing the termination of the bond or letter of credit, as applicable. Any such written notice shall be provided by Lessor within ten (10) days of written request by Lessee. Lessee's failure to have a bond or letter of credit in effect at all times required by this Lease in the full amount required by Lessor shall constitute a material breach of this Lease unless otherwise agreed to by Lessor. The Lessee's obligation under this paragraph shall survive the termination of this Lease.

## 22. LESSEE LIABILITY; INDEMNIFICATION.

Lessee shall protect, defend, indemnify, and save harmless Lessor, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, from and against all claims, liabilities, demands, causes of action, judgments, penalties, fines, and losses, including all costs of defense and reasonable attorney fees, arising in favor of or asserted by Lessee's employees and agents, its subcontractors, its subcontractor's employees and agents, or third parties on account of property damage, personal injury, bodily injury, death, violation of or non-compliance with any laws, regulations, or rules, or financial or other loss of any kind that in any way, directly or indirectly, arise or allegedly arise out of, in connection with, or on account of this Lease, any act or omission of Lessee, or any act or omission of Lessee's officers, agents, employees, or subcontractors, provided, however, that in no event shall Lessee be responsible for defending, indemnifying or holding harmless Lessor to the extent of any claim, damage, injury, judgment, liabilities, penalties, fines or losses caused by, arising from or to the extent contributed to by the negligence or willful misconduct of Lessor.

In no event shall Lessor or Lessee or any of their respective officers, directors, members, partners, shareholders, employees, agents or affiliates be liable for special, indirect, exemplary, punitive or consequential damages of any nature whatsoever connected with or resulting from the performance or non-performance of this Lease or any exhibit attached hereto, including without limitation damages or claims in the nature of lost revenue, income or profits, loss of use, or cost of capital, irrespective of whether such damages are reasonably foreseeable and irrespective or whether such claims are based upon negligence, strict liability, contract, operation of law or otherwise.

Lessee waives all claims, demands, causes of action, and recourse against Lessor, including claims of contribution or indemnity, arising in favor of Lessee on account of property damage, personal injury, bodily injury, death, violation of or non-compliance with any laws, regulations, or rules, or financial or other loss of any kind that in any way, directly or indirectly, arise or allegedly arise out of or in connection with, any act or omission of Lessee not authorized by this Lease, or any act or omission of Lessee's officers, agents, employees, or subcontractors not authorized by this Lease.

## 23. UTILITY INSTALLATION

The Lessee, at its sole cost and expense, shall determine the availability of, and shall cause to be installed in, on, and about the Land, all facilities necessary to supply thereto all water, sewer, gas, electricity, telephone, and other like services required in the Lessee's operations hereunder. The Lessee shall pay all connection or acreage assessments or charges levied by any public utility, agency, or municipality with respect to their services. Notwithstanding the foregoing, the Lessee shall not enter into any contract or agreement with any city, county, or other governmental agency or body or public utility with reference to sewer lines or connections, water lines or connections, or street improvements relating to the Land without the prior written consent of the Lessor, which consent shall not be unreasonably withheld.

## 24. MISCELLANEOUS

### 24.1 Force Majeure.

If performance of this Lease or any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of "Force Majeure", the affected party, upon giving notice to the

other party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction, or interference. The affected party shall use reasonable efforts to avoid or remove such causes of nonperformance and shall immediately continue performance hereunder whenever such causes are removed.

**24.2 Notices.**

All notices or other communications required or permitted under this Lease shall be in writing and shall be deemed properly given and received: (a) when actually given and received, if delivered in person to a party who acknowledges receipt in writing; or (b) one (1) business day after deposit with a private courier or overnight delivery service with a written acknowledgment of receipt; or (c) five (5) business days after the date postmarked on the cover of any correspondence or notice when deposited in the United States mail, certified - return receipt requested, with postage prepaid. All such notices shall be sent to the address shown for Lessor and Lessee respectively in the introductory paragraph of this Lease. In the case of notices to a Qualified Lender, to the address set forth in its most recent notice to Lessor. Any party may change its address for purposes of this paragraph by giving written notice of such change to the other parties in the manner provided in this paragraph.

**24.3 Binding Effect.**

Each of the provisions of this Lease shall run with the land and will extend to bind or inure to the benefit of, as the case may be, Lessor and Lessee, and their respective heirs, successors, Sublessees, and assigns during the Term of this Lease.

**24.4 Entire Agreement; Modifications.**

This Lease contains the entire agreement between the parties respecting its subject matter. Any agreement, understanding, representation, statement, promise, or inducement respecting the Premises, this Lease, or any other matter referenced herein not expressly set forth in this Lease or a subsequent writing signed by both parties is null and void. All modifications to this Lease must be in writing and signed by the Lessor and the Lessee. No purported modifications or amendments, including without limitation any oral agreement (even if supported by new consideration), course of conduct, or absence of a response to a unilateral communication, shall be binding on either party. If executed properly, modifications of this Lease do not need independent consideration to be legally enforceable.

**24.5 Enforcement Expenses.**

Regardless of any statutory rights, each party agrees to bear their own costs, charges and expenses, including the fees and out-of-pocket expenses of attorneys, agents and others retained, incurred in successfully enforcing the other party's obligations under this Lease.

**24.6 No Waiver.**

No waiver of any provision of this Lease will be implied by any failure of either party to enforce any remedy upon the violation of such provision, even if such violation is continued or repeated subsequently. No express waiver will affect any provision other than the one specified in such waiver, and that only for the time and in the manner specifically stated.

**24.7 Captions.**

The captions of sections are for convenience of reference only and will not be deemed to limit, construe, affect, or alter the meaning of such sections.

**24.8 Severability.**

If any provision of this Lease is declared void or unenforceable by a final judicial or administrative order, this Lease will continue in full force and effect, except that the void or unenforceable provision will be deemed deleted and replaced with a provision as similar in terms to such void or unenforceable

provision as may be possible and be valid and enforceable.

**24.9 Authority to Bind.**

The individuals signing this Lease on behalf of Lessor and Lessee represent and warrant that they are empowered and duly authorized to bind Lessor or Lessee, as the case may be, to this Lease according to its terms.

**24.10 Only Lessor/Lessee Relationship.**

Lessor and Lessee agree that neither any provision of this Lease nor any act of the parties will be deemed to create any relationship between Lessor and Lessee other than the relationship of Lessor and Lessee.

**24.11 Reasonableness.**

At any time during this Lease, if either party is to use reasonable judgment, it shall be deemed to mean ordinary business judgment.

**24.12 Governing Law; Venue; Jurisdiction; Rule of Construction.**

This Lease will be governed by and construed according to the laws of the State of Montana. In the event of litigation concerning this Lease, venue shall be in the First Judicial District in and for the County of Lewis and Clark, Montana. The parties acknowledge and agree that they have each participated in the drafting of this Lease, and therefore, any rule of construction to the effect that ambiguities are to be resolved against the party drafting a contract shall not be employed in the interpretation of this Lease and is hereby waived.

**24.13 Time of Essence.**

Time is expressly declared to be of the essence under this Lease.

**24.14 Broker.**

Lessor represents and warrants that no broker or agent negotiated, or was instrumental in negotiating or consummating this Lease on behalf of Lessor. Lessee will indemnify and hold Lessor harmless from all damages paid or incurred by the Lessee from any claims asserted against Lessor by brokers or agents claiming through the Lessee.

**24.15 Cooperation.**

Lessor shall fully support and cooperate with Lessee in the conduct of its Operations and the exercise of its rights hereunder, and in carrying out and otherwise giving full force and effect to the purpose and intent of this Lease, including in Lessee's efforts to obtain from any governmental authority or any other person or entity any environmental impact review, permit, entitlement, approval, authorization or other rights necessary or convenient in connection with Operations. Lessor shall have no monetary obligation in paying any permit fees or consultant charges associated with any governmental permits required.

**24.16 Recording.**

This Lease may not be recorded. Lessor and Lessee shall execute in recordable form and Lessee shall then record a memorandum of this Lease in the form attached to this Lease as **Exhibit A**. Following due and proper compliance with its rules, regulations, and procedures, Lessor shall consent to the recordation of the interest of an assignee in the Land and the recordation of any documents related to the Project.

**24.17 Wind Energy Rights Act.**

The parties acknowledge and agree that this Lease shall be construed and given effect in accordance with §70-17-401, MCA, et seq., the Montana Wind Energy Rights Act, to the extent applicable, as follows:

**a) Term Specification**. The parties acknowledge and agree that, if this Lease and/or the leasehold

estate demised hereunder shall not have sooner expired or terminated in accordance with the terms hereof, the Term shall expire and terminate on_____, said date defining the specified term and date of termination contemplated under §70-17-406(1)(d), MCA.

**b) Tax Liability**. Nothing in this Lease shall be construed as making Lessor liable, and Lessee shall be responsible, for any property tax associated with the Wind Power Facilities and the Projects or other equipment related to the development of the Wind Power Facilities and the Projects during the Term, as required under §70-17-406(1)(f), MCA.

**c) Compliance with Laws**. Lessee shall comply with federal, state, and local laws and regulations, including those applicable to the Wind Power Facilities and the Projects, as required under §70-17-406(1)(h), MCA.

**d) Remedies**. Notwithstanding anything in this Section or this Lease to the contrary, to the extent that this Lease or any terms hereof should fail to be in accordance with the requirements set forth in §70-17-401, MCA, *et seq.*, including specifically, but without limitation, §70-17-406(1), MCA, this Lease shall be construed as reformed to the minimum extent necessary so as to satisfy such requirements. The parties agree that, to the fullest extent permitted by law, reformation of this Lease shall be the sole and exclusive remedy of the parties in the event of any failure or alleged failure of this Lease to be in accordance with the foregoing requirements.

**24.18 Confidentiality.**

Lessee understands that, in accordance with Mont. Const. art. II, § 9, and Montana's public records laws, as such laws may be amended, that Lessor must disclose to the public upon request any records it receives from Lessee. Lessor shall not disclose any information it receives from Lessee that Lessee has previously identified as confidential and that the Lessor determines in its sole discretion is protected from mandatory public disclosure under a specific exemption to the Montana public records laws.

**24.19 Survival of Terms, Conditions, Restrictions Reservations, and Covenants.**

Any term, condition, restriction, reservation, or covenant that gives rise to any rights or claims of Lessor against Lessee and Lessee against Lessor shall be deemed to survive the termination, relinquishment, or abandonment of this Lease until all claims have been settled or resolved.

**25. SIGNATURES**

Having read and intending to be bound by the terms and provisions of this Lease, Lessor and Lessee have signed it as of the date first stated above.

**LESSEE, xxx:**

By: _____
AUTHORIZED SIGNATORY NAME AND TITLE

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ by _____ as authorized signatory of _____, a _____ limited liability company.

STATE OF _____

COUNTY OF _____

_____
Notary Public

**LESSOR, STATE OF MONTANA, DNRC:**

By: _____

MIKE ATWOOD, CHIEF
REAL ESTATE MANAGEMENT BUREAU

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ by MIKE ATWOOD, CHIEF, REAL ESTATE MANAGEMENT BUREAU, State of Montana, DNRC.

STATE OF MONTANA

COUNTY OF _____

_____

Notary Public

# EXHIBIT A

## Form of Memorandum – Placeholder

The placeholder will be replaced with the actual exhibit prior to lease signature.

**EXHIBIT B**

**Vicinity Map**

This placeholder will be replaced with the actual exhibit prior to the Commencement Date.

# EXHIBIT C
# MARKET ADJUSTMENT
# SCHEDULE AND PROVISIONS

Base Rent for the Land shall be subject to Market Adjustments determined in accordance with these provisions. The Market Adjustments will apply in Lease Years 36, 46, 61, 76 and 91. The process for the Market Adjustment will commence on the date that is 90 days after the first day of Lease Years 35, 45, 60, 75, and 90 as applicable (the "Market Date").

The Market Adjustment will be determined by appraisal in accordance with the following provisions:

**SELECTION OF APPRAISERS**

Lessor and Lessee shall each hire an appraiser meeting the qualifications set forth in these provisions and shall instruct such appraiser to prepare an appraisal of the market value of the Land based upon the assumptions and meeting the requirements set forth in these provisions. The appraiser so retained by Lessor is herein referred to as "Lessor's Appraiser," and the appraisal prepared by Lessor's Appraiser is herein referred to as "Lessor's Appraisal." The appraiser so retained by Lessee is herein referred to as "Lessee's Appraiser," and the appraisal prepared by Lessee's Appraiser is herein referred to as "Lessee's Appraisal." Each appraiser shall be subject to the approval of the other party, which approval will not be unreasonably withheld. Lessor's Appraiser and Lessee's Appraiser shall each be instructed to complete their respective appraisals and deliver their results to both Lessor and Lessee.

**DETERMINATION OF BASE RENT**

If the difference between the dollar amount of Lessor's Appraisal and the dollar amount of Lessee's Appraisal is equal to or less than 10%, then the Land Value shall be deemed to be the mathematical average of the two appraisals. The Lease Rate Precentage shall be determined as of the Market Date. See the following example of a scheduled Market Adjustment for a 50,000 square foot lease, at a 6% Lease Rate Percentage with two different appraisal values:

Lessor Appraisal = $6.50 per square foot

Lessee Appraisal = $6.10 per square foot

Land Value= $6.30 per square foot

New Annual Base Rent = $6.30 x 50,000 (or applicable square footage) x 6% (or applicable Lease Rate) = $18,900.

If the difference between the dollar amount of Lessor's Appraisal and the dollar amount of Lessee's Appraisal is greater than 10%, then:

a) Lessor and Lessee shall have 30 days from the Appraisal Report Date within which to agree upon the Land Value between the two appraisals; OR
b) If Lessor and Lessee are unable to agree on the Land Value within such 30 day period, then Lessor and Lessee shall jointly select a third appraiser to prepare an appraisal of the market value of the Land utilizing the same scope of work from the Lessor's Appraisal and the Lessee's Appraisal. The third appraiser shall be provided copies of both appraisals. The third appraisal shall be prepared and delivered to both Lessor and Lessee.

The Land Value shall be the mathematical average of the two appraisals that are closest in dollar amount.

The Land Value determined in accordance with the foregoing provisions shall be binding and conclusive on the parties. Base Rent for the land, as adjusted by the Market Adjustment, shall be amount obtained by multiplying the Land Value by the Lease Rate Percentage determined in accordance with 77-1-905, MCA, or subsequent laws governing rental rates for wind power developments on State Trust Land or the rate bid in the lease proposal, whichever is higher.

**QUALIFICATIONS OF APPRAISERS; REPLACEMENT**

Each of Lessor's Appraiser, Lessee's Appraiser and any third appraiser must (a) have an MAI designation by the Appraisal Institute (or similar designation available on the Market Date); (b) be a Certified General Appraiser licensed in the State of Montana; and (c) have appraised similar types of uses in the three years prior to such Market Date. If any appraiser designated to serve in accordance with these provisions shall fail, refuse, or otherwise become unable to act, a new appraiser shall be appointed by the contracting party.

**SCOPE OF WORK**

The Lessor shall draw up the scope of work that meets the statutory requirements at the time, and supply the scope of work to all appraisers. The scope of work shall specify that the appraisal is for the Land only, and does not consider the presence of Wind Power Facilities. All appraisals conducted during a Market Adjustment shall be subject to the same scope of work.

**BRIEFING SESSION**

Lessor's Appraiser and Lessee's Appraiser, should either so elect, shall be entitled to require a briefing session, to be held at Lessor's offices on a day and at a time mutually acceptable to Lessor, Lessee, Lessor's Appraiser and Lessee's Appraiser but in all events not earlier than 10 nor later than 15 days following the Market Date. At such session, both such appraisers shall be present and each shall be entitled to ask such questions of Lessor and Lessee.

**PAYMENT**

Lessor shall pay all costs, fees and expenses of Lessor's Appraiser, and Lessee shall pay all costs, fees and expenses of Lessee's Appraiser. If a third appraiser is required, Lessor and Lessee shall share equally all costs, fees and expenses of such third appraiser.

MARKET ADJUSTMENT SCHEDULE

| **Lease Year** | **Schedule** |
|---|---|
| 35 | "Market Adjustment" |
| 36 through 45 | Base Rent resulting from year 35 Market Adjustment applied. |
| 45 | "Market Adjustment" |
| 46 through 60 | Base Rent resulting from year 45 Market Adjustment applied. |
| 60 | "Market Adjustment" |
| 61 through 75 | Base Rent resulting from year 60 Market Adjustment. |
| 75 | "Market Adjustment" |
| 76 through 90 | Base Rent resulting from year 75 Market Adjustment applied. |
| 90 | "Market Adjustment" |
| 91 through 99 | Base Rent resulting from year 90 Market Adjustment applied. |

# EXHIBIT D

## Reclamation Plan

This exhibit is dependent on the lease proposal and subsequent Environmental Analysis.

The placeholder will be replaced with the actual exhibit prior to lease signature. The final exhibit will include specific reclamation requirements, including reclamation bond amount and review schedule.

# EXHIBIT E

## Environmental Monitoring

This placeholder will be replaced with the actual exhibit prior to the Commencement Date.

# EXHIBIT F

## Existing Rights

This placeholder will be replaced with the actual exhibit prior to the Commencement Date.

# EXHIBIT G

## Site Plan

This placeholder will be replaced with the actual exhibit no later than one (1) year after the Commencement Date and will be amended in accordance with this Lease.

MONTANA DEPARTMENT OF NATURAL RESOURCES & CONSERVATION

# OPTION TO LEASE AGREEMENT #XXXX

This Option to Lease Agreement, is entered into this ____ Day of _____ 20___ (the "Effective Date"), by and between the Montana Department of Natural Resources and Conservation, whose address is P.O. Box 201601, Helena, MT 59620 (hereinafter referred to as the "Department") and _____ whose address is _____ (hereinafter referred to as the "Optionee").

**GRANT OF OPTION:** In consideration of an annual payment, the Department grants to the Optionee a non-assignable exclusive option to lease x acres described as:

| County | Description | Sec. | Twp. | Rge. | Acres |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

And as illustrated in Exhibit A ("Premises"), attached hereto, upon those terms and conditions as in the form, terms, and conditions of that lease agreement attached hereto as Exhibit B, and incorporated herein as if fully set forth. The annual fee for the option to lease shall be: $xxxx

**TERM**: This Option to Lease shall remain in effect from the date of this Option to Lease Agreement for x years until 12 noon, Mountain Time on the _____ Day of _____ 20___, at which time it will expire and terminate automatically. Optionee may exercise this Option to Lease and execute a Lease at any time during the term. If the option is exercised prior to the expiration of the term of this Option to Lease Agreement, rent paid for the unused portion of the option term will be applied to the first year rental payment of the Lease.

The Optionee may terminate this Option to Lease at any time prior to the expiration of the foregoing term. The Optionee will provide the Department with a written notice of early termination at least thirty (30) days prior to the intended date of early termination. Upon the Department's receipt of such notice of termination, this Option shall terminate and the Optionee shall be released from all obligations under this Option, other than those obligations that expressly survive such termination. Under early termination, Optionee shall not be entitled to any refund of any prepaid payments for the Grant of Option.

**PAYMENT OF SPECIAL ASSESSMENTS AND TAXES:** Optionee will pay all special assessments (i.e. SIDs, RIDs, etc.) and other like impositions levied, assessed, or attributable to the lease premises described in Exhibit "A" during the Term. The Optionee will pay before delinquent, directly to the taxing authority, all Taxes that may accrue during or are attributable to any part of the Option term, including privilege taxes, also known as beneficial use taxes, per MCA 15-24-1203.

**EXISTING LEASES:** Optionee acknowledges that Optionee enters into this Option to Lease subject to any leases or other rights existing on the Effective Date. A list of the leases existing on the Effective Date is attached hereto as Schedule 1.

**LEASES DURING THE OPTION TERM:** Should the Department enter into additional lease or leases after the effective date of this Option to Lease and before Optionee exercises its option ("Future Leases"), the Department shall furnish Optionee with a copy of such lease or leases upon execution of such agreement(s). Further, all Future Leases shall contain (i) a notice to the lessee under the Future Lease of the existence of this Option to Lease and Optionee's rights hereunder and under the Lease and (ii) require that all lessees under the Future Leases work in good faith with Optionee and the Department to site any buildings, roads, pipelines, drill sites, utility lines, drainage areas, retention areas, and other structures and infrastructure (permanent or temporary) in a manner that will not materially interfere with Optionee's intended use of the Premises under this Option and the Lease.

**MANNER OF EXERCISE OF OPTION:** The Optionee may exercise the option granted in the preceding paragraph at any time before the expiration of the option period, for any or all of the Option to Lease premises, by giving written notice of exercise of the option to the Department, at the address of the Department set out above. The notice of exercise of the option must specify the date upon which the lease is to commence, and such date must be within the term of the option. If no date is specified, the lease term will begin immediately as of the date of the notice of exercise of the option.

**EXECUTION OF LEASE AGREEMENT**: Upon receipt of the notice of exercise of lease option, the Department must prepare or cause to be prepared duplicate originals of the lease agreement which is attached as Exhibit "B" (the "Lease"). The Department will deliver these duplicate originals for execution to the Optionee within thirty (30) days after receipt of the Optionee's notice of exercise of the option. The Optionee must deliver the fully executed duplicate lease agreements to the Department within fourteen (14) days after receipt by the Optionee. The Department will send one original fully-executed lease to Optionee within fourteen (14) days after execution by the Department.

**DUE DILIGENCE AUTHORIZED**: Through the term of this Option to Lease, Optionee is permitted to access the option to lease Premises for the limited purpose of conducting due diligence activities in support of project regulatory approval, data collection, and environmental monitoring, in accordance with the following:

PERMITTED ACTIVITIES:

1) Data collection, survey, geotechnical sampling, and environmental research in support of project design, review and land use regulatory approval.
2) The Optionee shall obtain prior written approval, not to be unreasonably withheld, from the Department for the locations of all geotechnical borings and/or siting of any towers, or other equipment. All disturbed sites shall be reclaimed pursuant to the Reclamation section listed below.

At all times the Optionee will maintain the area within the Option to Lease Premises in a neat and orderly manner and will allow no waste or debris to accumulate thereon.

**DATA SHARING:** Should the Optionee choose to not exercise this lease option, and does not enter into a lease, the Optionee agrees to share any and all data collected on the lease premises described in Exhibit "A", including, but not limited to raw wind data and environmental data.

**ACCESS TIMING RESTRICTIONS:** Optionee must consult with the Department at least twenty-four (24) hours prior to accessing the option to lease Premises during the option period. The Department reserves the right to restrict any activity to the extent necessary to accommodate environmental or safety concerns, provided that the Department shall make a good faith effort to ensure that Optionee's due diligence activities are reasonably accommodated during the Option term.

**WEEDS AND INVASIVE PLANTS:** Optionee shall be responsible for controlling all noxious weeds and non-native grass species and other plants regulated by the Montana Weed Control Association on the Premises that were introduced by Optionee's activities thereon.

**RECLAMATION:** Optionee shall take all reasonable precautions to prevent or minimize damage to natural (i.e., vegetation, soil, water, wildlife), and cultural resources within the areas of the Option to Lease. Optionee shall reclaim any disturbed areas in the option to lease premises to the specifications of the Department. Such reclamation shall include, but not be limited to, the elimination of all traces of disturbance, compaction, and movement of construction equipment. Optionee shall be required to reseed all disturbed areas with native species of grasses, unless other arrangements are agreed upon between the Department and Optionee in writing. The seed mix used in the reclamation shall be approved in advance by the Northeastern Land Office. When any action requires disturbance, all soil materials shall be salvaged, safeguarded from loss due to wind or water erosion or machinery activity, and shall be replaced on all disturbed areas.

**LIABILITIES:** Optionee hereby assumes all responsibility for all claims, damages, and lawsuits that result from any and all damages, injury or death to persons and/or property that occur on or about said land caused by or arising out of Optionee's use of the subject area hereunder. Optionee does not assume any liability for any claims, damages, and lawsuits caused by the negligence or willful misconduct of the Department. The Optionee further agrees that it will be responsible for any damage caused when entering, crossing or leaving state-owned subject land. In no event will Optionee be liable for consequential or punitive damages.

**CONTINGENCY:** The Department's obligation to enter into the lease is contingent upon an environmental review conducted in compliance with the Montana Environmental Policy Act ("MEPA"), and associated decision document signed by the Department. The Department will have the sole right to determine whether MEPA compliance shall consist of the completion of an Environmental Assessment ("EA") or Environmental Impact Statement ("EIS"), or update to an existing EIS. The Department shall ultimately be responsible for signing a Record of Decision ("ROD") or other appropriate decision document. Optionee and the Department agree that the final decision for completion of MEPA analysis may require modifications to the attached lease document to ensure compliance with the MEPA decision.

Date:_____

STATE OF MONTANA, MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

By:_____
Mike Atwood, Chief
Real Estate Management Bureau

**ACKNOWLEDGMENT**

STATE OF MONTANA
County of Lewis and Clark

This instrument was acknowledged before me on _____, ____, by _____, as _____ of the Montana Department of Natural Resources and Conservation.

_____
(Notary Signature)

[SEAL]

---

Date:_____

OPTIONEE

xx

By:_____

Its:_____

**ACKNOWLEDGMENT**

STATE OF _____

County of _____

This instrument was acknowledged before me on _____, ____, by _____, as _____ of Optionee, _____.

_____
(Notary Signature) [SEAL]