

REQUEST FOR PROPOSALS FOR COMMERCIAL LEASE OF STATE TRUST LAND

MOUNTAINEER

Trust Land, Kalispell, Montana



**Montana Department of Natural Resources and Conservation
Kalispell Unit
June 20, 2019**



Contents

| | |
|--|----|
| CHAPTER 1 – INSTRUCTIONS AND CHECKLIST | 4 |
| 1.1 Instructions | 4 |
| 1.1.1 Submitting the Proposal | 4 |
| 1.1.2 Proposal Requirements | 4 |
| 2. Checklist | 5 |
| CHAPTER 2 – SCHEDULE OF EVENTS | 6 |
| CHAPTER 3 - OVERVIEW | 6 |
| 3.1 Objective | 6 |
| 3.2 Description of Land for Lease | 6 |
| 3.3 Project Manager | 7 |
| 3.4 Optional Site Visit | 7 |
| CHAPTER 4 – RFP STANDARD INFORMATION | 7 |
| 4.1 Authority | 7 |
| 4.2 Costs of Preparing Lease Proposal | 7 |
| 4.3 Modification or Clarification of the Lease Proposal | 8 |
| 4.4 Confidentiality of Proposals | 8 |
| 4.5 Lease Format & Term | 8 |
| 4.6 Statutory Minimum Lease Fee | 8 |
| 4.7 Compatibility with Lease Terms | 8 |
| 4.8 Bid Deposit | 8 |
| 4.9 Proposer Oral Presentation | 9 |
| 4.10 Evaluation | 9 |
| 4.11 Land Board | 9 |
| 4.12 Contract Execution | 9 |
| 4.13 Montana Environmental Policy Act (MEPA) | 9 |
| 4.14 Conflict of Interest | 9 |
| 4.15 State’s Rights Reserved | 10 |
| CHAPTER 5 - LIMITATIONS | 10 |
| 5.1 Lease Proposal Limitations | 10 |
| CHAPTER 6 – PROPOSED DEVELOPMENT | 11 |
| 6.1 Summary of Proposal | 11 |
| 6.2 Site Plan, Construction, and Operation | 12 |
| CHAPTER 7 - QUALIFICATIONS | 12 |
| 7.1 Statement of Qualifications, Training, Experience, and Education | 12 |
| 7.2 Financial Ability and Cash Flow Analysis | 13 |
| CHAPTER 8 – CONTRACT TERMS | 13 |
| 8.1 Lease Terms | 13 |
| 8.2 Option to Lease | 13 |
| CHAPTER 9 – LEASE FEE | 14 |
| 9.1 Proposed Lease Fee | 14 |
| 9.2 Example Standard Rental Fee Schedule Table | 15 |
| CHAPTER 10 – PROPOSAL EVALUATION | 16 |
| 10.1 Evaluation of Proposals | 16 |
| 10.2 Minimum Score | 16 |
| 10.3 Scoring Guide | 16 |
| 10.4 Evaluation Criteria | 17 |

RFP EXHIBIT A - Maps

RFP EXHIBIT B – Commercial Ground Lease Document

RFP EXHIBIT C – Shared Traffic Signal Breakdown

RFP EXHIBIT D – Shared Traffic Signal Contributing Area

RFP EXHIBIT E – 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 September 18, 2019 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., September 18, 2019."

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
- _____ RFP Exhibit A – Map
- _____ RFP Exhibit B – Commercial Ground Lease
- _____ RFP Exhibit C – Shared Traffic Signal Breakdown
- _____ RFP Exhibit D – Shared Traffic Signal Contributing Area
- _____ RFP Exhibit E – Option to Lease Agreement

CHAPTER 2 – SCHEDULE OF EVENTS

| | |
|---|--------------------|
| Release of Request for Proposals | June 20, 2019 |
| Optional Site Visit (call to arrange) | July 2019 |
| Deadline for Questions | July 24, 2019 |
| Distributions of RFP Amendments if applicable | July 31, 2019 |
| Deadline to Submit Proposal | September 18, 2019 |

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 (K-12). 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 22.4+/- acres of school trust land in Kalispell, Montana.

3.2 Description of Land for Lease

The legal description of the land available for lease through this RFP is a 22.4 +/- acre parcel identified as Mountaineer, located in a portion of the NE1/4 of Section 36, Township 29 North, Range 22 West, in the city limits of Kalispell, in Flathead County, Montana. The property is located within the Spring Prairie Planned Unit Development, a large commercial development located on State Trust Land in Kalispell. Current retail outlets and professional offices located nearby include Lowe's, Costco, Cabela's, Springhill Suites, Kalispell Oral Surgery Center, Glacier High School, mixed-density residential development, and many others.

Mountaineer is bordered on the north by Treeline Road, by a portion of the US Highway 93 Alternate (Kalispell Bypass) to the northwest, by Old Reserve Drive to the southwest, and to the east by Spring Prairie Center. The City of Kalispell Fire Department Station #62 is located adjacent to the southeast corner of the parcel. The property currently has no improvements.

There is a Bonneville Power Administration (BPA) power transmission line that runs across a portion of the property. It is anticipated that BPA will apply for an easement for same and the easement will impact how portions of the property may be utilized. BPA regulations limit uses within and near BPA transmission corridors and equipment. Proposer will be responsible to insure any development proposal is compliant with all applicable BPA requirements.

No survey exists for this tract and subdivision has yet to occur. The DNRC is using a 22.4± acre lot value to set the minimum bid amount for this Request for Proposals (RFP). The lot described in this RFP has general boundaries, however, the boundaries will not be finalized until a proposal is selected, a lease is executed, and approval of the Final Subdivision Plat is granted.

The subject property is zoned **Spring Prairie PUD (Planned Unit Development)/B-5 – Mixed Commercial**. Use and development of Section 36 is guided by an adopted neighborhood plan that has been integrated into the Kalispell Growth Policy. Specific guidance is provided by the PUD Agreement. Both documents are available for review at the Kalispell Planning Office and/or the City of Kalispell’s website at <https://www.kalispell.com/250/Planning> , see “Section 36 PUD (DNRC).” The PUD development agreement establishes the property zoning and expectations for development and extension of services. It is ultimately the proposer’s responsibility to ensure that the proposed use complies with current local regulations by contacting the applicable Planning Department.

3.2.1 Shared Traffic Signal Costs. Any selected proposal will be subject to Section 3.2.1.

If at any time prior to April 1, 2027, signalization of the intersection of Treeline Road and Old Reserve Drive is required, Lessee shall share in the installation cost with the trust land lessees in the contributing area as illustrated in **RFP Exhibit D**. Lessee’s cost shall be a proportion of the total cost based on estimated typical Average Daily Traffic volume and size of the Land, as calculated and provided in **RFP Exhibit C**, which is incorporated herein by reference. Eligible shared costs are those directly attributable to the installation of a coordinated traffic signal system, and except as required to serve the traffic signal, eligible shared costs will not include street improvements or expansion, sidewalks, boulevards, islands, curb and gutter, utilities or storm water improvements. Lessee shall make payment directly to the developing entity that is responsible for contracting the installation, payment of which shall be made within 60 days of receipt of certified actual costs for the traffic signal installation. All development parcels that are included within the contributing area are illustrated in **RFP Exhibit D**, and their applicable cost proportions are provided in **RFP Exhibit C**.

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:

Anne Shaw Moran
DNRC, Kalispell Unit
655 Timberwolf Parkway Suite 2
Kalispell, MT 59901
Phone: 406-751-2274
E-mail: asmoran@mt.gov

3.4 Optional Site Visit

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

CHAPTER 4 – RFP STANDARD INFORMATION

4.1 Authority

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

4.2 Costs of Preparing Lease Proposal

It is the responsibility of the successful Proposer to finance or obtain private financing for all costs associated with the design, construction and operation of the proposal. The Proposer assumes the risk of loss in the submission of any proposal or its operation. DNRC is not liable for any costs or consequential damages incurred by Proposers in proposal preparation, negotiations, or any other costs that may result from activities in connection with this Lease Proposal.

4.3 Modification or Clarification of the Lease Proposal

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

4.4 Confidentiality of Proposals

All proposals and material submitted become the property of DNRC. 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 proposer. DNRC shall not disclose any information it receives from a proposer that the proposer 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 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 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 lease terms in the Sample Lease Agreement provided as an Exhibit to this RFP, or they shall specify any required or desired changes to the lease terms and include an explanation for the purpose of the change. DNRC reserves the right to request additional information and data from the proposer to ascertain the proposal’s compatibility with the terms of the Sample Lease Agreement.

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

4.8 Bid Deposit

A bid deposit of 10 percent of the proposed annual lease must be submitted by cashier’s check 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 Project Manager will contract with a consultant, at the proponent's expense. DNRC will be the primary contact for the MEPA contractor and will have final authority over the management of the consultant and the MEPA document.

4.14 Conflict of Interest

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

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

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

4.15 State's Rights Reserved

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

CHAPTER 5 - LIMITATIONS

5.1 Lease Proposal Limitations

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

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

- j. DNRC reserves the right to waive technical defects in this RFP.
- k. Upon expiration or cancellation of the lease, consistent with MCA 77-1-906(2), the title to all permanent improvements and fixtures located on the leased property and used in the operation and maintenance of the enterprise vests in the state. The lease must describe in detail the manner and subject matter of the transfer to the state. The DNRC also reserves the right to require the Lessee to remove and or reclaim all 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, design, and construction standards of the appropriate jurisdictional authority. Proposals must also be planned with adequate access, utility service, setback compliance, 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 and 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
 - Depiction of proposed phasing plan(s), if applicable
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 the 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 entity, 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. Other documentation relevant to the entity's ability to conduct business may also be required at DNRC's discretion.

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. Estimated cost to develop the site.
2. Projected 5-year cash flow analysis of proposed project.
3. Description of the planned financing of the cost to develop the site.
4. Applicable supporting documents for planned project financing that demonstrate the financial capability of the proposer to complete the proposed project. Depending on the planned financing, supporting documents should include:
 - Pre-approval letter from financial institution, if applicable
 - Financial statements for proposer as reviewed by a Certified Public Accountant for time period of 2 years, including a balance sheet, profit and loss statement, and statement of cash flows.
 - Profitability of existing or previous comparable projects if not otherwise included in the financial statements.
 - Disclosure of any past bankruptcy.
 - FICO Credit Score

DNRC reserves the right to ask for more information in accordance with RFP section 5.1 m.

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. When evaluating competitive proposals, the exclusion of a Lease Option Agreement request is preferred.

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 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 RFP 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 **5%**
 - The current land value is \$2,585,722 (\$2.65/square foot or \$115,434 per acre) based on an approximate 22.4-acre parcel. Once boundaries are finalized per Section 3.1, Lessor may adjust proposed fee rates on a per-square-foot basis to reflect exact boundaries.
 - A proposal at the minimum Lease Rate Percentage would result in Base Rent for the first full lease year of 5% x the land value. The current land value **and resulting Base Rent at the minimum Lease Rate Percentage of 5% is as follows:**

| Tract | Land Value: | Base Rent at 5% Lease Rate Percentage |
|---------------------------------|-------------|---------------------------------------|
| Mountaineer Parcel – 22.4 acres | \$2,585,722 | \$129,286.10 |

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 RFP Exhibit C. The Option to Lease Agreement is available for a maximum of 2 years. 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:

1. Proposed Option Fee
 - The minimum annual Option Fee is 1.5% of the land value.
 - A proposal at the minimum annual 2-year Option Fee for each tract would be as follows:

| | | |
|---------------------------------|--------------------|--|
| Tract | Land Value: | Minimum Annual Option Fee at 1.5% |
| Mountaineer Parcel – 22.4 acres | \$2,585,722 | \$38,785.83 |

9.1.3 Energy Generation Facility Rental Fee

An energy generation facility will pay an annual fee of the greater of these three amounts: percentage of land value (Base Rent, as described in section 9.1.1), percentage of gross annual income or a fixed amount of each installed megawatt capacity. If the proposed use is for a renewable energy facility, the proposer should detail the planned compensation to the DNRC for lease of the site based on:

1. Proposed Installation Fee based on nameplate capacity installed on the leased area.
 - A onetime fee, not to be less than \$1,000 per MW
2. Minimum Base Rent as described in Section 9.1.1; AND
3. Proposed Annual Operating Fees:
 - 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, along with estimated payment to the State based on projected revenue; and
 - 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.

| Lease Year | Calendar Period | <i>Adjustment Period Escalator</i> | Adjusted Base Rent |
|-----------------------------|-----------------------------------|------------------------------------|---------------------|
| 1 | August 1 – July 31 | 0 | \$129,286 |
| Supplemental Billing period | August 1 – February 28 (212 days) | 0 | \$ 75,092 |
| 2 | March 1 – February 28 | 2% | \$131,871.72 |
| 3 | March 1 – February 28 | 2% | \$134,509.15 |
| 4 | March 1 – February 28 | 2% | \$137,199.34 |
| 5 | March 1 – February 28 | 2% | \$139,943.32 |
| 6 | March 1 – February 28 | 2% | \$142,742.19 |
| 7 | March 1 – February 28 | 2% | \$145,597.03 |

| | | | |
|----|-----------------------|----|---------------------|
| 8 | March 1 – February 28 | 2% | \$148,508.98 |
| 9 | March 1 – February 28 | 2% | \$151,479.15 |
| 10 | March 1 – February 28 | 2% | \$154,508.74 |
| 11 | March 1 – February 28 | 2% | \$157,598.91 |
| 12 | March 1 – February 28 | 2% | \$160,750.89 |
| 13 | March 1 – February 28 | 2% | \$163,965.91 |
| 14 | March 1 – February 28 | 2% | \$167,245.23 |
| 15 | March 1 – February 28 | 2% | \$170,590.13 |

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 to the evaluation criteria, the evaluation committee will consider the following guidelines:

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

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

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

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

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 |