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

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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	*Adjustment Period Escalator*	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

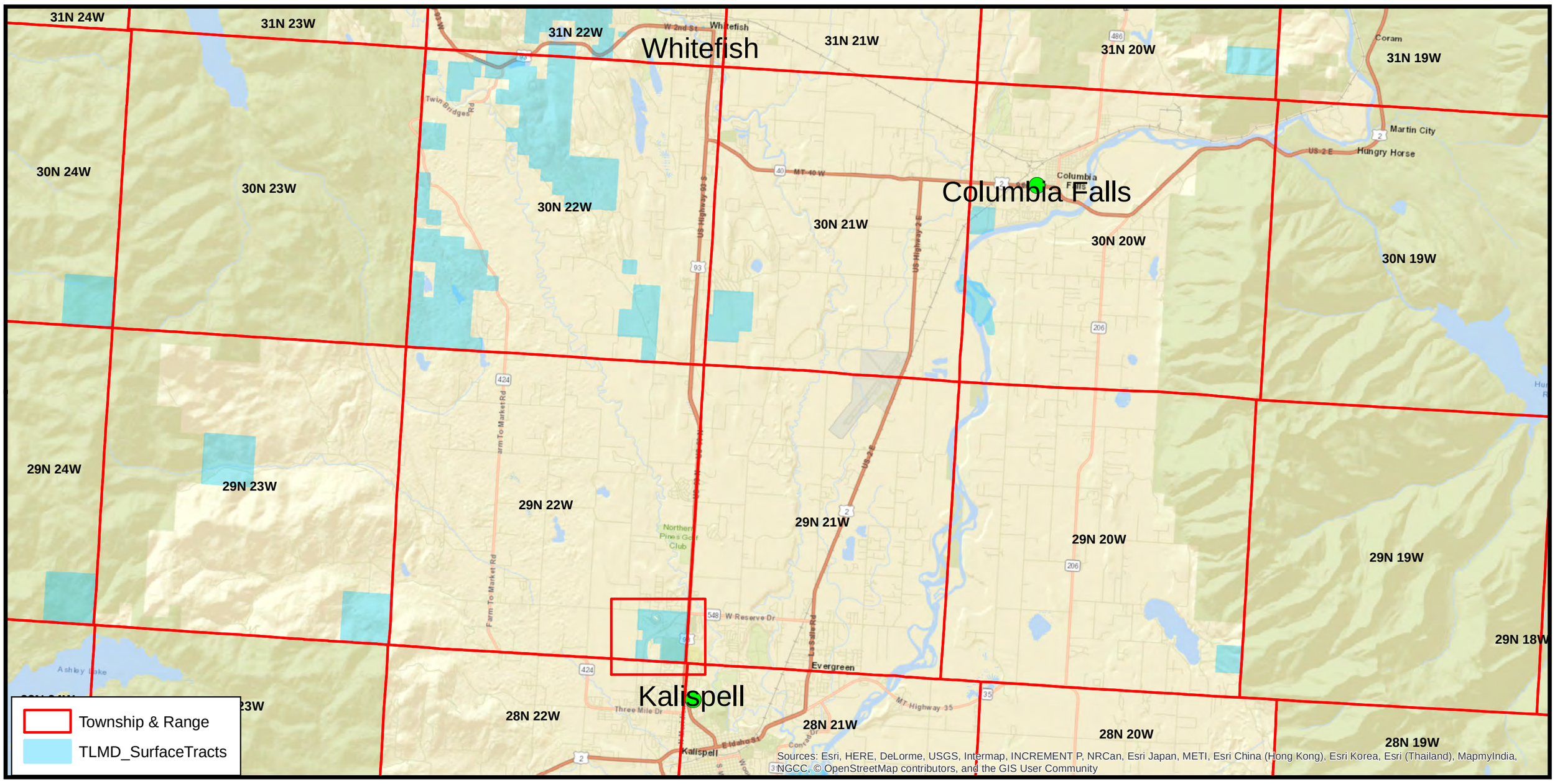
Required Items
Scored as Responsive or Unresponsive

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

MOUNTAINEER RFP - EXHIBIT A - PAGE 1



Legend

Mountaineer Parcel

N

Miles

0 0.5

Location: Flathead County
Date: 6-14-2018
Prepared By: REMB Staff Member
Projection: NAD83 Montana State Plane

Inset Area from top map shown in bottom map

MONTANA DNRC

MOUNTAINEER RFP EXHIBIT A - PAGE 2

Legend

- Mountaineer Parcel
- Treeline Road Extension
- BPA Transmission Lines
- Shared Traffic Signal Location

N

500 250 0 500 Feet

Location: Flathead County
Date: 4/22/2019
Prepared By: NWLO Staff
Projection: NAD83 Montana State Plane

MONTANA DNRC

RFP EXHIBIT B

(TENANT)
MOUNTAINEER
KALISPELL, MONTANA

LEASE NO. XXXXXXX

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COMMERCIAL LEASE

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

1. LEASE TERMS AND PROPERTY DESCRIPTION

Lease Number	Commencement Date	Term of Lease	Expiration Date

Land Located in _____ County

Description	Sec.	Twp.	Rge.	Acres

2. BASE RENT SCHEDULE

Lease Year	Calendar Period	*Adjustment Period Escalator*	Adjusted Base Rent
1	1st 12 calendar months	0	**$xx,xxx**
Supplemental Billing period	# months to reach Feb 28	0	**$ xx,xxx**
2	March 1 – February 28	*x*%	**$ xx,xxx**
3	March 1 – February 28	*x*%	**$ xx,xxx**
4	March 1 – February 28	*x*%	**$ xx,xxx**
5	March 1 – February 28	*x*%	**$ xx,xxx**
6	March 1 – February 28	*x*%	**$ xx,xxx**
7	March 1 – February 28	*x*%	**$ xx,xxx**
8	March 1 – February 28	*x*%	**$ xx,xxx**
9	March 1 – February 28	*x*%	**$ xx,xxx**
10	March 1 – February 28	*x*%	**$ xx,xxx**
11	March 1 – February 28	*x*%	**$ xx,xxx**
12	March 1 – February 28	*x*%	**$ xx,xxx**
13	March 1 – February 28	*x*%	**$ xx,xxx**
14	March 1 – February 28	*x*%	**$ xx,xxx**
15	March 1 – February 28	*x*%	**$ xx,xxx**

3. PURPOSE.
The purpose of this lease is for commercial use consistent with the B-5 Mixed Commercial Zone of the Spring Prairie Planned Unit Development in Kalispell, MT.

4. DEFINITIONS.
In this Lease, the following defined terms have the meanings set forth for them below:

"Adjustment Period" is a multi-year Lease period, as specified in the Base Rent Schedule in Section 2 of this lease, during which an Adjustment Period Escalator is applied annually to the prior year's Base Rent.

"Adjustment Period Escalator" is X.X% compounded annually and applied to the prior year's Base Rent as demonstrated in the Base Rent Schedule. The Adjustment Period Escalator will not be applied to Base Rent for the First Lease Year and the first year that any Market Adjustment is applied (i.e. Year 16, 31, 46, 61…etc…). *(The minimum adjustment period escalator is established in the Request for Proposal and is not to be less than 2%. An actual number will be inserted and made part of this lease upon proposal selection).*

"Base Rent" means the amount obtained by multiplying the Land Value by the Lease Rate Percentage and as periodically adjusted by the Adjustment Period Escalator.

"Building" means any enclosed building constructed or installed upon the Land.

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

"Commercial Purpose" per MCA 77-1-902(3)(a) means 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.

"Default Rate" shall mean 1% 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 Law (hereafter, "Claims") or any permit issued under any such Environmental Law, including, without limitation (a) any and all Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, 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 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, The Comprehensive Environmental Cleanup and Responsibility Act, 75-10-701, et seq., MCA; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, et

seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; the Clean Air Act, 42 U.S.C. § 7401, et seq.; and the Safe Drinking Water Act, 42 U.S.C. § 300(f), et seq.

"First Lease Year" means the first twelve-month period starting on the Commencement Date.

"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.

"Hazardous Substances" means any and all substances, materials or wastes that are declared to be, or defined or regulated as, hazardous or toxic in CECRA, Section 75-10-701, et seq., MCA, or under any Environmental Law.

"Improvements" mean any Buildings, structures, pavement, landscaping, lighting fixtures or other improvements now or later installed or constructed upon the Land.

"Land" means the real property described in paragraph 1.

"Land Value" means the full market value of the Land as determined by the applicable appraisal.

"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 X.XX%, as bid in the proposal response. The Lease Rate Percentage is applied to the Land Value to determine the initial Base Rent for the First Lease Year and for the first year after a Market Adjustment. This percentage may not be less than the rate provided in 77-1-905, MCA, and may be modified accordingly as part of a scheduled Market Adjustment. *(The minimum is established in the Request for Proposal and is not to be less than that determined by Lessor in accordance with MCA 77-1-905. An actual number will be inserted and made part of this lease upon proposal selection.)*

"Lease Year" means, after the First Lease Year, each successive Lease Year is the one-year period during the Term from March 1 to the last day of February.

"Leasehold Mortgage" means any mortgage, deed of trust, assignment of rents, assignment of leases, security agreement or other hypothecating instrument encumbering Lessee's interest under this Lease or the leasehold estate in the Premises hereby created, 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, Land, Buildings, Improvements or other property constituting a part of the Premises.

"Leasehold Mortgagee" means the holder(s) of any promissory note or the obligee(s) of any other obligation secured by a Leasehold Mortgage.

"Local Management Office" means

Montana Department of Natural
Resources and Conservation
Attn: Kalispell Unit
655 Timberwolf Parkway, Ste. 2
Kalispell, MT 59901

"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 **Lease Exhibit B**.

"Premises" means the Land and all Improvements.

"Qualified Mortgagee" means any Leasehold Mortgagee who notifies Lessor in writing of its name, its address for notices and the fact that it is a Leasehold Mortgagee and includes with such notice a copy of any Leasehold Mortgage by virtue of which it became a Leasehold Mortgagee.

"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 and all other amounts required to be paid by Lessee under this

Lease. "Security Deposit" means a dollar amount equal to 1/3 Base Rent.

"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.

"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 Improvements that renders the Premises inoperable for its intended use for more than 180 days.

"Substantial Taking" means a Taking of at least 15% 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 as set forth in paragraph 1.

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:

Lease Exhibit A – Preliminary Site Plan, will replace with Final Plat upon City of Kalispell Approval
Lease Exhibit B – Market Adjustment Schedule and Provisions
Lease Exhibit C – Shared Traffic Signal Cost Breakdown
Lease Exhibit D – Shared Traffic Signal Contributing Area

6. LEASE TERM.

6.1 Lease.

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 XX years (*Minimum term is established in request for proposal. An actual number will be inserted and made part of this lease upon proposal selection*) starting on the Commencement Date.

6.2 Renewal Option.

If all Rent due under this lease has been paid when due and Lessee is not in default, after opportunity to cure, of any terms of this Lease, Lessee may renew the Lease for an additional XX (*Specifications established in request for proposal. Actual numbers will be inserted and made part of this lease upon proposal selection*) year Term and subsequently additional XX year Terms. The Base Rent will be adjusted at renewal according to the process outlined in **Lease Exhibit B**.

6.3 Lessor and Lessee Covenants.

Lessor covenants that Lessee will have quiet and peaceful possession of the Premises subject only to the terms and conditions of this Lease, and to observe and perform all of the terms, covenants and conditions applicable to Lessor in this Lease. Lessee covenants to pay the Rent when due, and to observe and perform all of the terms, covenants and conditions applicable to Lessee in this Lease.

6.4 Condition of Premises.

Except as expressly set forth in this Lease, Lessee accepts possession of the Premises on the Commencement Date in their then-current condition on an "AS IS, WHERE IS AND WITH ALL FAULTS" basis.

7. RENT.

7.1 Base Rent.

All Rent due to Lessor will be paid in lawful money of the United States of America, at Lessor's Address, post-marked on or before the due date, without notice or demand and without right of deduction, abatement or setoff.

7.2 Terms of Payment.

Per MCA 77-1-905(1), the First Lease Year is the twelve month period beginning on the Commencement Date. The First Lease Year Rent must be paid by cashier's check, drawn upon a Montana bank, and payment is due upon execution of the lease. Failure to pay the First Lease Year's Rent at the time of lease execution will result in the cancellation of the lease and forfeiture of all money paid.

Following the First Lease Year, a Lease Year will be March 1st – February 28th and Rent for the Lease Year will be payable annually, in advance, on or before the first day of March. If the First Lease Year does not end on February 28, there will be a supplemental billing period prorated at the First Lease Year's Rent for the difference in time between the end of the First Lease Year and February 28. See Base Rent Schedule.

7.3 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 on or before the due date, Lessee shall pay a late charge to Lessor. The late charge will be an amount equal to 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 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 by reason of the late payment by Lessee.

7.4 Lien for Unpaid Rent.
Lessor shall have a lien upon all Lessee Improvements for payment of all Rent specified herein.

7.5 Additional Rent.
This Lease is what is commonly called a "triple-net" Lease. It is the intent of the parties that the Base Rent provided in this Lease will be a net payment to Lessor and that Lessor will not be required to pay any costs or expenses or provide any services in connection with the Premises. Accordingly, Lessee covenants and agrees to separately pay, in addition to the Base Rent, all utilities and services, taxes, fees, and special assessments, and for all maintenance and repairs of the Premises.

8. IMPROVEMENTS AND ALTERATIONS.

8.1 Improvements and Alterations.
Lessee shall not construct, install, alter, or demolish and remove, any utilities or Improvements without the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed. Lessee is responsible for obtaining all necessary licenses or permits required by any governmental authority to implement the improvement and/or alteration as well as responsible for conforming to all land use regulations, design, and construction standards of the appropriate jurisdictional authority. Prior to Lessee's submission of subdivision plats to the jurisdictional authority, Lessee will submit same to Lessor for review and approval. All expenses of securing permits for, constructing, installing, 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. Lessee shall promptly provide the "Local Management Office" with copies of all project-related applications submitted and licenses/permits secured, as well as pertinent public meeting agendas and staff reports. Lessor will have the right to post notices of non-responsibility or similar notices on the Premises in order to protect the Land against any liens resulting from such work. Upon completion of the initial Improvements for the Premises Lessee shall deliver to Lessor an engineer's certificate for the Premises and an electronic "as-built" survey of the Premises in both AutoCAD and .pdf format.

8.2 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 or termination of the Lease. Lessee shall have the right to grant liens or other security interests in the Improvements. Upon the expiration or

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

9. USE AND ENVIRONMENTAL COMPLIANCE.

9.1 Use and Compliance.

Lessee shall use the Premises in a manner that does not reduce the value of the Land. The Lessee agrees to comply with all applicable laws, rules, and regulations in effect upon the Commencement Date of this Lease and those laws, rules, and regulations which may be enacted or adopted thereafter from time to time and which do not impair or impede the obligations of this Lease and which do not deprive the Lessee of an existing property right recognized by law. Lessee shall keep the Premises in good repair, including but not limited to necessary repairs to the interior, exterior and structure of any Buildings, snow removal, sidewalk cleaning, mowing of grass and general landscaping, and contract for the same in Lessee's own name and pay all costs and expenses in connection therewith. Lessee shall not commit waste or permit impairment or deterioration of the Premises, ordinary wear and tear and damage by casualty and condemnation excepted.

9.2 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 of the Montana Code Annotated and all associated Administrative Rules of Montana.

9.3 Weed Management.

The Lessee shall be responsible for controlling any noxious weeds on the Lease Premises. The Lessee shall comply with the Montana County Noxious Weed Management Act and any applicable local regulations. The "Local Management Office" may at its discretion review/approve the Lessee's methods of weed control.

9.4 Environmental Matters.

Lessor has made no representations to Lessee concerning the presence of Toxic or Hazardous Substances within the definition of the Montana Comprehensive Environmental Cleanup and Responsibility Act (CECRA) on the Land. Lessee agrees as follows: Lessee will (a) comply with all Environmental Laws applicable to the operation or use of the Premises by Lessee or the construction, installation, alteration or demolition of any Improvements by Lessee; (b) use reasonable efforts to cause all Sublessees and other persons occupying the Premises 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 Premises to be kept free and clear of any liens arising from Lessee's use and occupancy of the Premises 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 Premises, or transport or permit the transportation of any Hazardous Substances to or from the Premises, in each case in any quantity or manner which violates any Environmental Law.

If Lessor has knowledge of any pending or threatened Environmental Claim against Lessee or the Premises or has good reason to believe that Lessee or the Premises are in violation of any Environmental Law, 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 Premises, 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 Premises. 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 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 Premises.

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 Premises, which are on the Premises 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.

9.5 Lessee Indemnity for Environmental Compliance.
Lessee agrees to defend (with attorneys reasonably satisfactory to Lessor), protect, indemnify and hold harmless Lessor from and against any and all liabilities, obligations (including removal and remedial actions), losses, damages penalties, actions, judgments, suits, claims, costs, expenses and disbursements (including reasonable attorneys' and consultants' fees and disbursements) of any kind or nature whatsoever that may at any time be incurred by, imposed on or asserted against Lessor directly or indirectly based on, or arising or resulting, in whole or in part, from: (i) the actual or alleged presence of Hazardous Substances on the Premises Released by Lessee or anyone acting by, through or under Lessee in any quantity or manner which violates Environmental Law, or the removal, handling, transportation, disposal or storage of such Hazardous Substances by Lessee or anyone acting by, through or under Lessee; or (ii) any Environmental Claim with respect to Lessee or the Premises resulting from a Release by Lessee or anyone acting by, through or under Lessee regardless of when such indemnified matters arise.

9.6 Survival of Indemnification.
The remedial indemnification and reimbursement obligations under this Section 8 will survive the expiration or earlier termination of this Lease.

10. UTILITIES AND REPAIRS.

10.1 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 leased land, subject to the provisions in section 8.1. Any utility installation for the leased area sufficient to service areas outside the leased land is subject to Lessor's prior review and approval, and may be subject to further permitting. Lessee will maintain, repair, replace and keep the Premises in reasonably good condition and repair.

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

11. TAXES.

11.1 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, including privilege taxes, also known as beneficial use taxes, per MCA 15-24-1203.

11.2 Special Assessments.

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

11.3 Notice and Acknowledgment of Assessments.

Pursuant to MCA 77-1-911, the lessee shall furnish to the department an officially certified description of all state trust land included within the boundaries of a city or county improvement district and 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. Lessee hereby covenants and warrants to timely pay all charges so assessed. If any such assessment is not paid when due, the nonpayment shall constitute a breach of this lease.

12. INSURANCE.

12.1 Acquisition of Insurance Policies.

Lessee shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained during the entire Term, the insurance described in this Section 12 issued by an insurance company(ies) licensed to do business in the State of Montana that are reasonably satisfactory to Lessor.

12.2 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 during the Term:

a) Liability Insurance. Comprehensive or commercial general liability insurance covering claims arising out of the ownership, operation, maintenance, condition or use of the Premises, for personal and bodily injury and death, and damage to others' property, with limits of not less than $1,000,000.00 for any one accident or occurrence, $2,000,000.00 aggregate. Lessee may obtain some portion of this required coverage in the form of an excess liability policy. Lessor will be named as an additional insured in the policy(ies) providing such liability insurance, which will include cross liability and severability of interests clauses.

b) Property Insurance. All-risk fire and extended coverage insurance (including standard extended endorsement perils, leakage from fire protective devices and other water damage) covering loss or damage to the Improvements on a full replacement cost basis, excluding existing architectural and engineering fees, undamaged excavation, footings and foundations.

c) Workers' Compensation Insurance. Workers' compensation and employer's liability insurance covering Lessee's employees, officers, agents and representatives employed at the Premises.

12.3 Terms of Insurance.

The policies required above, shall name Lessor as an additional insured and Lessee shall provide promptly to Lessor certificates of insurance evidencing the policies obtained by Lessee hereunder as hereinafter described. Proof of insurance ("Proof") shall consist of either (a) an insurance binder or premium payment

receipt, (b) a copy of the policy, or (c) an "ACORD 27 Evidence of Property Insurance" or "ACORD 25 Certificate of Liability Insurance," whichever is appropriate (or such other similar certificates), issued by Lessee's insurer with respect to each required policy. Lessee shall deliver Proof before the Lease is executed. Thereafter, during the Term, within 30 days after the renewal date of each policy, the issuance of a new policy or on such other date as Lessor reasonably requires, Lessee will deliver a copy of the latest Proof to Lessor. Each policy of insurance will require the issuer of the insurance policy to give Lessor 30 days' advance written notice of the termination or modification of the policy. Further, all policies of insurance described above, shall:

a) be written as primary policies not contributing with and not in excess of coverage that Lessor may carry;

b) contain an endorsement providing that such insurance may not be materially changed, amended or canceled except after 30 days' prior written notice from insurance company to Lessor;

c) expressly provide that Lessor shall not be required to give notice of accidents or claims and that Lessor shall have no liability for premiums; and

d) not have a deductible in excess of $20,000.00.

13. <u>DAMAGE OR DESTRUCTION.</u>

In the event of any Substantial Damage to the Premises from any causes whatsoever, Lessee shall promptly give written notice thereof to Lessor. Lessee shall promptly repair or restore the Premises 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 completion of a remediation plan developed by the Department. Lessee's duty to repair any damage or destruction of the Premises shall not be conditioned upon the availability of insurance proceeds from which the cost of repairs may be paid. Unless this Lease is so terminated by mutual agreement, there shall be no abatement or reduction in Rent during such period of repair and restoration. If a Default by Lessee shall have occurred and be continuing at the time such damage or destruction occurs, Lessor may elect to terminate this Lease by providing written notice of such election to Lessee and Lessee shall forfeit the Security Deposit.

14. <u>CONDEMNATION.</u>

14.1 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.

14.2 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 60 days after the Taking Date. In such event this Lease will terminate 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.

14.3 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.

14.4 Awards for Permanent Taking.
If there is compensation paid as a result of any permanent Taking of the Premises, the award will be allocated as follows: Lessee will be entitled to receive an amount equal to the then current appraised fair market value of the Improvements placed by the Lessee upon the Premises and Lessor will be entitled to the balance of the award.

14.5 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.

15. ASSIGNMENT, SUBLETTING AND FINANCING

15.1 Assignment.
Lessee shall not assign its interest under this Lease, in whole or in part, without Lessor's prior written consent. Such consent shall be determined in Lessor's sole and absolute discretion. 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 and such Foreclosure Transferee shall be bound by the terms and conditions of this Lease. Additionally, if the Foreclosure Transferee is a Qualified Mortgagee, such Qualified Mortgagee 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 Mortgagee shall be released of any further liability under the Lease. If Lessee assigns its rights in this Lease, as permitted pursuant to this Section, and the assignee assumes, in writing, Lessee's obligations hereunder which arise on or after the date of such assignment, then Lessee shall be relieved of all liabilities hereunder accruing from and after the date of such assignment, but this Lease shall otherwise remain in full force and effect.

15.2 Subletting.
Lessee may sublease the Premises or portions thereof in accordance with the terms of this section. Lessee shall require any sublesees to maintain the Premises pursuant to the terms and conditions contained in this Lease. Lessee shall inform Lessor of all subleases by delivering a copy of the sublease to the Lessor, addressed as follows: DNRC, Real Estate Management Bureau Chief, P.O. Box 201601, Helena, MT 59620. Lessee shall own all Improvements on the Premises subject to the sublease. No sublease shall be effective until a valid sublease agreement with a valid attornment provision is delivered to the Lessor, as hereinafter provided. Upon receipt of copy of the sublease by Lessor, Lessor shall have thirty (30) days in which to object to the sublease. Lessor hereby reserves the right to object to any sublease arrangement for any reason, in the sole discretion of the Lessor. All subleases shall include an attornment provision whereby upon the early termination of this Lease or repossession of the Premises by Lessor, the sublessee shall attorn to the Lessor as its landlord. Such attornment shall be effective and self-operative immediately upon Lessee's termination. Sublessee shall agree to execute, acknowledge and deliver to Lessor any document that Lessor reasonably requests to confirm such attornment.

15.3 Financing.

a) Lessee's Right to Encumber. Throughout the Term, Lessee may from time to time and without Lessor's consent execute and deliver one or more Leasehold Mortgages securing any indebtedness or other obligation of Lessee. Without limiting the generality of the foregoing, Lessee may execute and deliver Leasehold Mortgages to secure promissory notes evidencing construction, interim or permanent financing for the Premises 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.

b) Qualified Mortgagees' Cure Rights. Prior to terminating this Lease or exercising any other right or remedy hereunder for a Default by Lessee, Lessor will give each Qualified Mortgagee notice of such Default by Lessee and afford it a period of 30 days after such notice is given in which to cure such Default by Lessee; provided, however, that (i) if such Default by Lessee is not a failure to pay Rent and is susceptible of cure by a Qualified Mortgagee but cannot reasonably be cured within such 30-day period, then so long as any Qualified Mortgagee commences a cure within such 30-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; (ii) if such Default by Lessee is not a failure to pay Rent and is susceptible of cure by a Qualified Mortgagee but cannot reasonably be cured until the Qualified Mortgagee obtains possession of the Premises, then so long as any Qualified Mortgagee commences to obtain possession of the Premises within such 30-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 Premises and then promptly commence and thereafter diligently pursue the cure to completion.

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 Mortgagee. All rights and remedies of the Qualified Mortgagee hereunder will be cumulative with, in addition to and non-exclusive of one another.

15.4 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.

16. DISPUTE RESOLUTION.

16.1 Issues Subject to Administrative Hearing.

Any controversy which may arise between Lessor and Lessee regarding the provisions hereof shall be resolved by an administrative contested case hearing before the Department under the Montana Administrative Procedures Act.

16.2 Administrative Hearing Procedure.

All administrative hearings hereunder shall be conducted in the offices of the Department in Helena, Montana. The findings of fact, conclusions of law, and proposed decision of the hearing examiner shall be rendered within sixty (60) days of the completion of the hearing and submission of any briefs. Either party may file exceptions to the hearing examiner's findings, conclusions, and proposed decision with the Department's Director. The Lessee may, as permitted by the Department's administrative rules, petition for judicial review of the final administrative decision of the Department. Fees of the respective counsel engaged by the parties, and fees of expert witnesses or other witnesses called for the parties shall be paid by the respective party engaging such counsel or calling or engaging such witness.

17. LEASE EXPIRATION.

17.1 Condition at End of Lease.

Upon vacating the Premises on the Expiration Date, Lessee shall leave the Premises in good condition and shall peaceably surrender the same to Lessor. Lessee shall remove all of its personal property on or before the Expiration Date. All personal property remaining on the Premises on the day after the Expiration 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 monthly Base Rent payable during the last full "Lease 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 Premises. In the event a lien is recorded, filed, claimed or asserted, the Lessee will cause the same to be released or discharged within 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 from time to time (but on not less than 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:

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 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 provision of this Lease applicable to Lessee other than a covenant to pay Rent, and such breach or noncompliance continues for a period of 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 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 by a Qualified Mortgagee 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 issue, which if known would have prevented its issue in the form or to the party issued.

e) Unauthorized Use of Premises. Lessee's use, or knowledge or permission of someone else's use, of the Premises for any unlawful or unpermitted purpose, and such unlawful use continues for 30 days after written notice from Lessor to Lessee to cease such use.

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, 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 Remedies.

a) 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, 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 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.

b) Termination of Lease. In the event of a Default by Lessee, Lessor may terminate this Lease, effective at such time as may be specified by written notice to Lessee, and demand (and, if such demand is refused, recover) possession of the Premises from Lessee. In such event, Lessor will be entitled to recover from Lessee such damages as are allowable by applicable Laws.

c) Repossession and Reletting. In the event of a Default by Lessee, Lessor may reenter and take possession of all or any part of the Premises, without additional demand or notice, and repossess the same and expel Lessee and any party claiming by, through or under Lessee, and remove the effects of both, without being liable for prosecution for such action or being deemed guilty of any manner of trespass, and without prejudice to any remedies for arrears of Rent or right to bring any proceeding for breach of covenants or conditions. No such reentry or taking possession of the Premises by Lessor will be construed as an election by Lessor to terminate this Lease unless a notice of termination is given to Lessee. No notice from Lessor or notice given under a forcible entry and detainer statute or similar Laws will constitute an election by Lessor to terminate this Lease unless such notice specifically so states. Lessor reserves the right, following any reentry or reletting, to exercise its right to terminate this Lease by giving Lessee such notice, in which event the Lease will terminate as specified in such notice. After recovering possession of the Premises, Lessor will use reasonable efforts to relet the Premises on commercially reasonable terms and conditions. Lessor may make such repairs, alterations or improvements as Lessor considers appropriate to accomplish such reletting, and Lessee will reimburse Lessor upon demand for all reasonable costs and expenses, which Lessor may incur in connection with such reletting. Lessor may collect and receive the rents for such reletting but Lessor will in no way be responsible or liable for any inability to relet the Premises or to collect any rent due upon such reletting. Regardless of Lessor's recovery of possession of the Premises, so long as this Lease is not terminated Lessee will continue to pay on the dates specified in this Lease, the Base Rent and other Rent which would be payable if such repossession had not occurred, less a credit for any payments actually received by Lessor through any reletting of the Premises.

d) 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 of the Montana Code Annotated and Rule 66 of the 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.

e) Bankruptcy Relief. Nothing contained in this Lease will limit or prejudice Lessor's right to obtain adequate assurances of the 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.

The following event, which continues beyond the applicable notice and cure period, will constitute a "Default by Lessor" under this Lease: 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 30 days after notice thereof from Lessee to Lessor; or, 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 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. SECURITY DEPOSIT
To secure compliance with the terms of this Lease, on or before the Commencement Date, the Lessee shall deposit with Lessor a $XXXX Security Deposit, to be held by Lessor without interest. Lessor shall not be required to segregate the Deposit from other funds of Lessor. In the event Lessor assigns or transfers Lessor's interest in this Lease, Lessor shall transfer the Security Deposit to Lessor's successor-in-interest, whereupon Lessor shall be automatically deemed released from all liability in connection with the Security Deposit.

21.1 Security Deposit upon the Expiration Date.
Upon the Expiration Date of this Lease, Lessor may deduct the amount necessary from the Security Deposit to compensate Lessor for all tangible loss, injury or deterioration of the Premises caused by Lessee, or Lessee's guests, plus all unpaid Rent and the Department's costs to reclaim the Land. Within sixty (60) days following Lessee's departure, Lessor will deliver to Lessee a written list of all deductions from the Security Deposit and pay the remaining balance (if any) to Lessee. Said list and payment will be mailed to Lessee's Address unless Lessee provides Lessor of a new address in writing. If the Security Deposit is insufficient to satisfy the damages, reclamation charges and unpaid Rent, Lessor may collect the deficiency from Lessee.

21.2 Security Deposit Upon Early Termination by Lessee.
Upon early termination of this Lease by Lessee for any reason other than a Taking or Substantial Damage, the parties acknowledge and agree that the Lessor will suffer damages the exact amount of which will be extremely difficult to ascertain. Accordingly, Lessee shall forfeit the entire amount of the Security Deposit and the parties hereby agree that such forfeiture represents a fair and reasonable estimate of the costs that Lessor will incur by reason of Lessee's early termination. If the Security Deposit is insufficient to satisfy the damages, reclamation charges and unpaid Rent, Lessor may collect the deficiency from Lessee.

21.3 Security Deposit Upon Default of Lessee.
Upon a Default by Lessee, Lessor may, but without obligation to do so or prejudice to or waiver of any other remedy available to Lessor, use or apply the Security Deposit in the manner and to the extent deemed appropriate or necessary by Lessor, in its sole discretion (an "Application") to remedy, cure, or otherwise address the Default by Lessee, which Application shall not cure or waive such Event of Default and shall be restored to its original amount upon request by Lessor.

22. MISCELLANEOUS

22.1 Notices.

All notices required under this Lease must be in writing and will 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 business day after deposit with a private courier or overnight delivery service with a written acknowledgment of receipt; or (c) 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 noticee's address shown in this Lease unless the party giving notice has been notified, in writing, of a more recent address for the noticee. In the case of notices to a Qualified Mortgagee, to the address set forth in its most recent notice to Lessor.

22.2 Binding Effect.

Each of the provisions of this Lease will extend to bind or inure to the benefit of, as the case may be, Lessor and Lessee, and their respective heirs, successors and assigns.

22.3 Modifications.

This instrument contains the entire agreement between the parties, and no statement, promises or inducements made by either party, or agents of either party, which are not contained in this Lease shall be valid or binding. All modifications to this Lease must be in writing and signed by the Lessor and the Lessee. If executed properly under this section, modifications of this Lease do not need independent consideration to be legally enforceable.

22.4 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.

22.5 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.

22.6 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.

22.7 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.

22.8 Waiver of Jury Trial.

Lessor and Lessee waive trial by jury in any action, proceeding or counterclaim brought by Lessor or Lessee against the other with respect to any matter arising out of or in connection with this Lease, Lessee's use and occupancy of the Premises, or the relationship of Lessor and Lessee.

22.9 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.

22.10 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.

22.11 Reservation of Oil, Gas, and Minerals.
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; provided, however, that no drilling, mining or other surface disturbance will be undertaken on the surface of this Lease, nor shall the Lessor interfere with the Lessee's right to subjacent support, during the Term of this Lease.

22.12 Reservation of Rights-Of-Way.
Lessor expressly excepts and reserves from this Lease and retains the right to grant rights-of-way on the Land for other purposes to third-parties.

22.13 Right of Inspection.
Lessor, or its authorized representatives, may, at any reasonable hour, enter upon and inspect the Premises to ascertain compliance with this Lease. Any inspection or examination of the Buildings and Improvements shall not interfere with Lessee's use of the Premises or the business conducted therein.

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

22.15 Governing Law; **Venue and Jurisdiction.**
This Lease will be governed by and construed according to the laws of the State of Montana. Venue and jurisdiction for any dispute arising under this Lease shall be before the Lessor as a contested case proceeding under the Montana Administrative Procedures Act before the Department.

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

22.17 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.

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, LESSEE NAME

By: _____

Its:_____

ACKNOWLEDGMENT

STATE OF _____)

COUNTY OF _____)

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

_____
(Notary Signature)

[SEAL]

LESSOR, STATE OF MONTANA, DNRC:

By _____
NAME OF DNRC SIGNATORY
TITLE
LAND OFFICE OR DIVISION

ACKNOWLEDGMENT

STATE OF _____)

COUNTY OF _____)

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

_____
(Notary Signature)

[SEAL]

LEASE EXHIBIT A

Site Plan/Plat

LEASE EXHIBIT B
MARKET ADJUSTMENT
SCHEDULE AND PROVISIONS

MARKET ADJUSTMENT 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 Year 16, 31, 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 15, 30, 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 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. See the following example of a scheduled Market Adjustment for a 50,000 square foot lease, at a 6% lease rate 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 a percentage determined in accordance with 77-1-905, MCA, 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. 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**
16	"Market Adjustment"
17 through 30	"Adjustment Period" applied to Base Rent resulting from previous Market Adjustment.
31	"Market Adjustment"
32 through 45	"Adjustment Period" applied to Base Rent resulting from previous Market Adjustment.
46	"Market Adjustment"
47 through 60	"Adjustment Period" applied to Base Rent resulting from previous Market Adjustment.
61	"Market Adjustment"
62 through 75	"Adjustment Period" applied to Base Rent resulting from previous Market Adjustment.
76	"Market Adjustment"
77 through 90	"Adjustment Period" applied to Base Rent resulting from previous Market Adjustment.
91	"Market Adjustment"
92 through 99	"Adjustment Period" applied to Base Rent resulting from previous Market Adjustment.

Lease Exhibit C

Shared Traffic Signal Cost Breakdown
Treeline Road/Old Reserve Drive Intersection

The City of Kalispell has indicated that development around the intersection of Treeline Road and Old Reserve Drive will eventually necessitate signalization of the intersection. The development that instigates the requirement of signalization is responsible for contracting this installation of the traffic signal. There are four lease parcels whose development will directly impact traffic on the intersection; they are depicted as the "Contributing Area" on **Lease Exhibit D**. If at any time prior to April 1, 2027, the intersection requires signalization, lessees on all four parcels will be responsible to share in the cost of the traffic signal installation. The following represents the shared cost break down under three different scenarios for required signalization.

Scenario 1: Table 1 is the Shared Stoplight Cost Breakdown under a scenario where signalization is not required until development of the "Mountaineer" parcel. In this scenario, lessees of all four parcels contribute to the entire signalization cost. If any of the Contributing Development Parcels are not under lease, the Cost Breakdown will be recalculated to distribute responsible shares among leased Contributing Development Parcels.

Scenario 2: Table 2 is the Shared Stoplight Cost Breakdown under a scenario where signalization is required prior to any development of the "Mountaineer" parcel. In this scenario, lessees of the three parcels on the same side of Old Reserve Drive will contribute to the entire cost of signalization as required at the time. Any future lessee of "Mountaineer" would fully bear any further signalization work required from the subsequent development of "Mountaineer."

Scenario 3: If signalization is not required prior to April 1, 2027, the developing entity that is responsible for contracting the installation will bear the costs entirely.

If traffic signal improvements at the junction of Treeline Road and Old Reserve Drive are required upon development of the "Mountaineer" parcel, the costs shall be shared as follows assuming full occupancy of the Contributing Area:

TABLE 1.				
Contributing Development Parcel	**Zoning**	**Acres**	**ADT**	**% of Total**
Treeline Center	B-5-PUD	5.6	1,846	***18.1%***
Treeline One	B-5-PUD	1.2	396	***3.9%***
Mountaineer Development	B-5-PUD	21.5	7,087	***69.5%***
Snowline Parcel	R-4-PUD	8.3	870	***8.5%***
Total		36.6	10,199	100.0%

If traffic signal improvements at the junction of Treeline Road and Old Reserve Drive are required in association with one of the following developments any development of the "Mountaineer" parcel the costs shall be shared as follows. Costs associated with upgrades or any other improvements as may be required by the subsequent development of the Mountaineer parcel will be borne entirely by the Mountaineer project.

TABLE 2.				
Contributing Development Parcel	**Zoning**	**Acres**	**ADT**	**% of Total**
Treeline Center	B-5-PUD	5.6	1,846	***59.3%***
Treeline One	B-5-PUD	1.2	396	***12.7%***
Snowline Parcel	R-4-PUD	8.3	870	***28.0%***
Total		15.1	3,112	100.0%

NOTES:

1) Traffic count data taken from Institute of Transportation Engineer's (ITE) Trip Generation Handbook.

2) B-5 PUD ADT set at 330/acre based on typical or expected mix of retail/hotel/restaurant/office uses.

3) Based on best available estimate of net lease area acreage of parcels.

4) Mountaineer Development net lease acreage is based on an estimated 23.4-acre parcel less 1.9 acres for ROW dedication for Treeline Road from Holiday Inn Express to Old Reserve Drive.

5) Snowline Parcel ADT Based on development of 116 multi-family units per zoning administrator's determination regarding density.

Lease Exhibit D

Shared Traffic Signal Contributing Area

RFP Exhibit C

Shared Traffic Signal Cost Breakdown
Treeline Road/Old Reserve Drive Intersection

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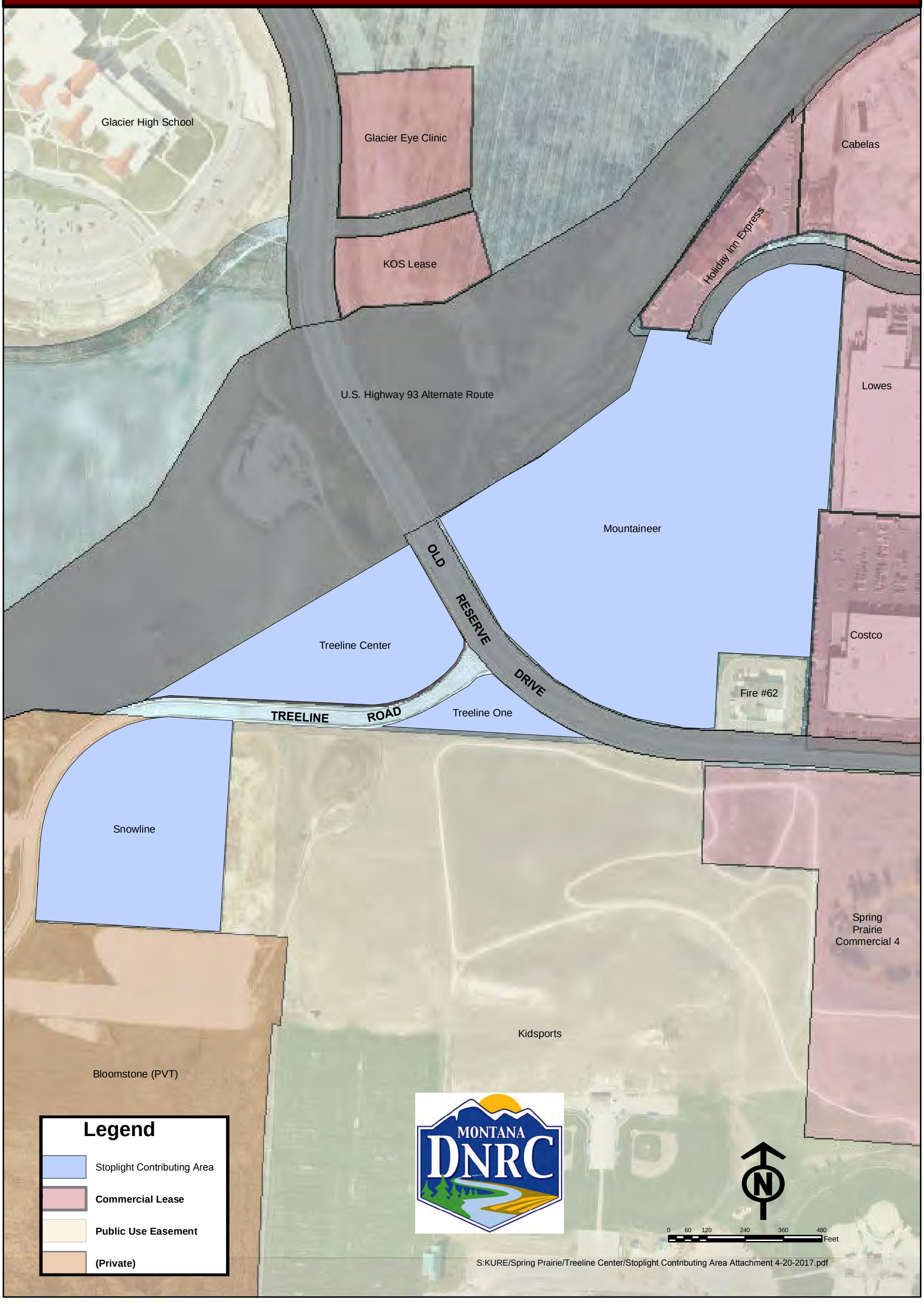
RFP EXHIBIT D
Treeline/Old Reserve Traffic Signal Contributing Area