REQUEST FOR PROPOSALS
FOR COMMERCIAL LEASE
OF STATE TRUST LAND

RESERVE STREET LOTS

State Trust Land, Missoula, Montana
905 and 911 South Reserve Street

Montana Department of Natural Resources and Conservation
August 11, 2026

Contents

EXHIBIT A - Map

EXHIBIT B – Sample Lease Agreement

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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 November 9, 2026 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. November 9, 2026."

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

1.1.2 Proposal Requirements

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

- ☐ **Initialed Checklist** found on page 5 of this RFP.
- ☐ **Transmittal Letter** which lists the complete name and address of the Proposer, and contact information for an authorized representative who can be contacted by DNRC concerning the proposal. It shall also include the notarized signature of the individual authorized to bind the Proposer. This letter shall serve as the application for lease.
- ☐ **Proof of authorization to sign** on behalf of another or corporation must be provided if applicable.
- ☐ **Conflict of Interest disclosure per section 4.14, if applicable.**
- ☐ **Detailed Response to Chapters 6, 7, 8, and 9**
- ☐ **$50 Application Fee;** nonrefundable.
- ☐ **10% Bid Deposit** of the proposed annual lease fee, paid via cashier's check drawn on any Montana bank.
- ☐ **Correct proposal quantity and format:** three hardcopies AND one digital copy.

2. Checklist

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

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

____ Chapter 1 – Instructions and Checklist

____ Chapter 2 – Schedule of Events

____ Chapter 3 – Overview

____ Chapter 4 – RFP Standard Information

____ Chapter 5 – Limitations

____ Chapter 10 – Proposal Evaluation

____ Exhibit A – Map

____ Exhibit B – Sample Lease Agreement

____ Exhibit C – Option to Lease Agreement

CHAPTER 2 – SCHEDULE OF EVENTS

Release of Request for Proposals	August 11, 2026
Optional Site Visit (call to arrange)	Aug.– Sept. 2026
Deadline for Questions	August 25, 2026
Distributions of RFP Amendments if applicable	September 8, 2026
Deadline to Submit Proposal	November 9, 2026

CHAPTER 3 - OVERVIEW

<u>3.1 Objective</u>

The Montana Department of Natural Resources and Conservation (DNRC) is the land management agency for state trust lands in Montana and is responsible for managing the state trust land to generate revenue for trust beneficiaries. The designated beneficiary of the subject property is Common Schools and Montana State University. 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 2.81+/- acres of state school trust land in Missoula, Montana.

3.2 Description of Land for Lease

The legal description of the land available for lease through this RFP is:
Lot 48, Dinsmore's Orchard Homes, ADD. No. 4, located in the NE1/4 of Sec. 30, T13N, R19W, as generally depicted on **Exhibit A.** The land is comprised of two adjacent lots, Parcel A (1.90 acres) and Parcel B (0.91 Acres). The parcels are available jointly or separately; however, any access developed off Reserve Street must serve both lots.

Parcel A (1.90 acres)

This parcel is a high visibility corner lot on South Reserve Street and South 7th Street West. The 1.90 acres, or 82,764 square feet, includes over 260 feet of frontage along South Reserve Street. The parcel is accessible from South 7th Street West, which serves as the northern boundary of the parcel. To the west of the parcel is a residential subdivision, and to the south is an irrigation ditch and Parcel B. The site's topography is mostly level, sloping downwards at the northwest corner towards South 7th Street West.

Parcel B (0.91 acres)

This parcel is relatively flat and similarly sized to other single-entity businesses on the corridor. The 0.91 aces, or 39,640 square feet, are accessible directly from South Reserve Street along the 204 feet of frontage. The northern boundary is an irrigation ditch and Parcel A, and to the west is a residential subdivision. The site's topography is level with vegetation consisting of a few trees and brush along the irrigation ditch.

The total size of both lots together is 2.81 acres or 122,404 square feet with 466.88 combined feet of South Reserve Street frontage. The Missoula Irrigation Ditch separates the parcels and provides a visual amenity. The Lessee(s) would be responsible for obtaining approval for any crossing(s) of the ditch with Tim Supola, Ditch Rider for Missoula Irrigation District at 406-544-5040.

The lessee is responsible for completing the approach permit application process with MDT off Reserve Street by submitting a final Traffic Study for the proposed use and an engineering report of the design. The lots are available jointly or separately; however, any access developed off Reserve Street must serve both lots.

City sewer runs along the east boundary at South Reserve Street, and the City water line is located near the north boundary on South 7th Street West. However, this line would need to be replaced with a larger 10" line for commercial use, according to the 2014 KLJ Engineering report. Public power is available along the west boundary. Please see the 2014 KLJ Engineering Report at Available For Lease Now under the Reserve Street RFP listing.

The parcels were recently rezoned from B2-2 Community Business to LU-MU (Limited Urban Mixed-Use) district. This can be found on the Missoula Growth Policy Update and Code Reform website at: Code Reform | Engage Missoula.

There are setbacks in the LU-MU District and site standard requirements such as landscaping and parking design. For questions on the zoning, contact the zoning desk on-call at (406) 552-6625 or email at cityzoner@ci.missoula.mt.us.

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

3.3 Project Manager

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

Elizabeth B. Mullins, Land Use Planner
DNRC, Southwestern Land Office
1401 27th Avenue
Missoula, MT 59804
Phone: (406) 542-4345
E-mail: lmullins@mt.gov

3.4 Optional Site Visit

An on-site inspection of the property is recommended. A site visit can be arranged during August and September 2026 by calling the Project Manager at (406) 542-4345.

CHAPTER 4 – RFP STANDARD INFORMATION

4.1 Authority

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

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

4.5 Lease Format & Term

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

4.6 Statutory Minimum Lease Fee

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

4.7 Compatibility with Lease Terms

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

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

4.8 Bid Deposit

A bid deposit of 10 percent of the proposed annual lease must be submitted by cashier's check. 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 State 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 proposer'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), MCA.

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 state trust lands; 2) establish a market price and sell the material to the developer/contractor for use elsewhere, or: 3) require developer to remove the material for off-site disposal.

h. The lessee will be responsible for the payment of all taxes, assessments, levies, fees, or other charges assessed upon any property owned by the lessee, in addition to any beneficial use taxes levied under MCA 15-24-1203. The lessee is also responsible for payment of any and all Special Improvement District (SID) or Rural Improvement District (RID) fees that may be assessed.

i. Any proposal not meeting these limitations or other criteria set out in this offering will be rejected at the discretion of DNRC and the Land Board per MCA 77-1-904(2) and (3).

j. DNRC reserves the right to waive technical defects in this RFP.

k. Upon expiration or cancellation of the lease, consistent with MCA 77-1-906(2), the title to all permanent improvements and fixtures located on the leased property and used in the operation and maintenance of the enterprise vests in the state. The lease must describe in detail the manner and subject matter of the transfer to the state. The DNRC also reserves the right to require the Lessee to remove and or reclaim all improvements constructed on the parcel during the term of this lease, at the expense of the Lessee.

l. Per MCA 77-1-907 (1) prior to executing a commercial lease, the Land Board may require the posting of bonds, sureties, guarantees, or a letter of credit sufficient to ensure that the commercial purposes will be conducted as proposed with no harm to the financial interests of the beneficiaries. All commercial leases of which the commercial purpose includes the use of a hazardous substance as defined in MCA 75-10-602 must be bonded to ensure a degree of cleanup of the hazardous substance that ensures protection of public health, safety, and welfare and of the environment in a manner that protects the long-term financial interest of the beneficiaries.

m. DNRC reserves the right to request additional information and data from the proposer to ascertain proposer's capabilities and desire to develop the property. Any request for information by DNRC to the proposer is solely for the purpose of selecting a proposal and understanding its terms. Such a request shall not be considered to constitute a binding agreement or commitment by DNRC in any manner.

n. DNRC further reserves the right to reject at any time before a lease is executed, any application, proposal, or bid determined by DNRC to be contrary to the best interests of the State.

o. Per MCA 77-1-911 (1) The lessee of a commercial lease on state trust land shall furnish to the department:
   (a) officially certified descriptions of all state trust land included within the boundaries of a city or county improvement district that is the subject of the commercial lease; and
   (b) a description and listing of the amount of assessments and charges of every character made against the leasehold interest of the lessee and the leasehold interest of the state, as soon as the assessments or charges are levied
   (2) A promise by the lessee to make timely payment of all assessment charges and an acknowledgment of the assessment must be inserted in any lease for state trust land.
   (3) If assessments have been levied against any state trust land prior to commercial lease, the board shall require that all unpaid installments on assessments be paid to the improvement district before executing a lease.
   (4) If an installment on an assessment or charge against the leasehold interest of the lessee of land subject to a commercial lease is not paid when due, the nonpayment constitutes a breach of the lease.

CHAPTER 6 – PROPOSED DEVELOPMENT

6.1 Summary of Proposal

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

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

6.2 Site Plan, Construction, and Operation

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

The proposal shall include:

1. Conceptual plans for the proposed development including the following:

- Proposed uses, location, and scale;
- Typical rendering or elevation of buildings including building materials & color;
- Location of roads and sidewalks;
- Landscape and lighting plan;
- Other infrastructure to be installed such as water, sanitary, and storm sewer
- Open space and landscaping features

2. Proposals shall include detailed information regarding any improvement district or assessments that the property will become subject to as a result of the proposed development.

3. The anticipated schedule and plan for construction of the improvements on the property, including any phasing plan. Any request for a Lease Option Agreement should be indicated in this section.

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

CHAPTER 7 - QUALIFICATIONS

7.1 Statement of Qualifications, Training, Experience, and Education

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

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

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

7.2 Financial Ability and Cash Flow Analysis

Per MCA 77-1-907(1) before accepting any offer for a commercial lease, the board shall establish, to its satisfaction, the financial capability of the person or entity seeking the commercial lease (proposer) and the legal authority of the proponent to conduct business in the state. **The proposal must include:**

1. Estimated costs to develop the site.

2. Sufficient information to confidently establish the financial ability of the proposer such as:
    - Balance sheet
    - Profit and loss statement dated within 90 days of RFP release date.
    - Similar project profitability

- Disclosure of any past bankruptcy or loan defaults
- Certificate from Secretary of State to do business in the State of Montana
- Operating agreement (when applicable)

3. Cash flow analysis:
   - Pro forma forecasting income, costs and debt service, and earnings for the first five years of the operation of the proposed project, along with a discussion of the economic assumptions upon which the projections are based.

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 <u>not</u> be marked confidential.

CHAPTER 8 – CONTRACT TERMS

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

8.1 Lease Terms

The proposal shall include an acknowledgement that the proponent has read and accepts the lease terms in the Sample Lease Agreement provided as an Exhibit to this RFP, or they shall specify any changes to the lease terms and include an explanation for the purpose of the change.
DNRC reserves the right to modify or impose specific lease terms based on the proposed use in the highest scoring proposal, after the release of this RFP, and prior to offering a lease contract.

8.2 Option to Lease

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

CHAPTER 9 – LEASE FEE

9.1 Proposed Lease Fee

The minimum annual Base Rent is calculated by applying the minimum Lease Rate Percentage to the land value. The proposal shall include an annual rental fee that is greater than or equal to the minimum annual Base Rent as further described in section 9.1.1. A response to this section should include a fee schedule table similar to the example table provided in section 9.2 that is filled out according to the rental fee the proposer wishes to offer.

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 <u>minimum</u> annual Base Rent is calculated by applying the minimum Lease Rate Percentage to the land value.
2. Proposed Lease Rate Percentage
   - The <u>minimum</u> Lease Rate Percentage for this proposal is 5%.
   - A proposal for both Lots A and B 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
Both Lot A and Lot B	$2,935,000.00	$146,750.00

   - A proposal for Lot A only or for Lot B only 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
Lot A only	$1,986,336.00	$99,316.80
Lot B only	$951,360.00	$47,568.00

3. A minimum 2% annual rental escalator to account for changing land valuations and inflationary factors.
4. The **<u>minimum</u>** initial lease term of 15 years with renewal options up to 99 years.
5. Generally, market value adjustments based on reappraisal to "true up" the lease fee to market value occur at 15-year intervals through the initial term, and a maximum of 15-year intervals thereafter. DNRC will entertain deviations from this specific market value adjustment schedule, but they must be included in proposal with detailed logic and schedule. (See example of Market Adjustment Schedule in attached sample lease document - Exhibit B)
6. A rental payment period of either annual or semi-annual.

<u>9.1.2 Option Fee</u>

This is applicable only to proposals requesting an option to initiate a land lease by executing an Option to Lease Agreement, attached hereto as Exhibit C. 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 <u>minimum</u> 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%
Both Lot A and Lot B	$2,935,000.00	$44,025.00
Lot A only	$1,986,336.00	$29,795.04
Lot B only	$951,360.00	$14,270.40

9.2 Example Standard Rental Fee Schedule Table

The following demonstrates a **potential** rental fee schedule based on **example** proposed terms utilizing a **hypothetical** 10% lease rate with a 3.5% escalator based on a $2,935,000.00 land value.

Both Lot A and Lot B

Lease Year	Calendar Period	*Adjustment Period Escalator*	Adjusted Base Rent
1	March 1 – February 28	0	$293,500.00
2	March 1 – February 28	*3.5 %*	$303,772.50
3	March 1 – February 28	*3.5 %*	$314,404.54
4	March 1 – February 28	*3.5 %*	$325,408.70
5	March 1 – February 28	*3.5 %*	$336,798.00
6	March 1 – February 28	*3.5 %*	$348,585.93
7	March 1 – February 28	*3.5 %*	$360,786.44
8	March 1 – February 28	*3.5 %*	$373,413.96
9	March 1 – February 28	*3.5 %*	$386,483.45
10	March 1 – February 28	*3.5 %*	$400,010.37
11	March 1 – February 28	*3.5 %*	$414,010.74
12	March 1 – February 28	*3.5 %*	$428,501.11
13	March 1 – February 28	*3.5 %*	$443,498.65
14	March 1 – February 28	*3.5 %*	$459,021.10
15	March 1 – February 28	*3.5 %*	$475,086.84

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 non-responsive 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 points available, 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 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

Reserve Street Parcels - Missoula, MT
Exhibit A

Legend

Reserve Street Parcel A

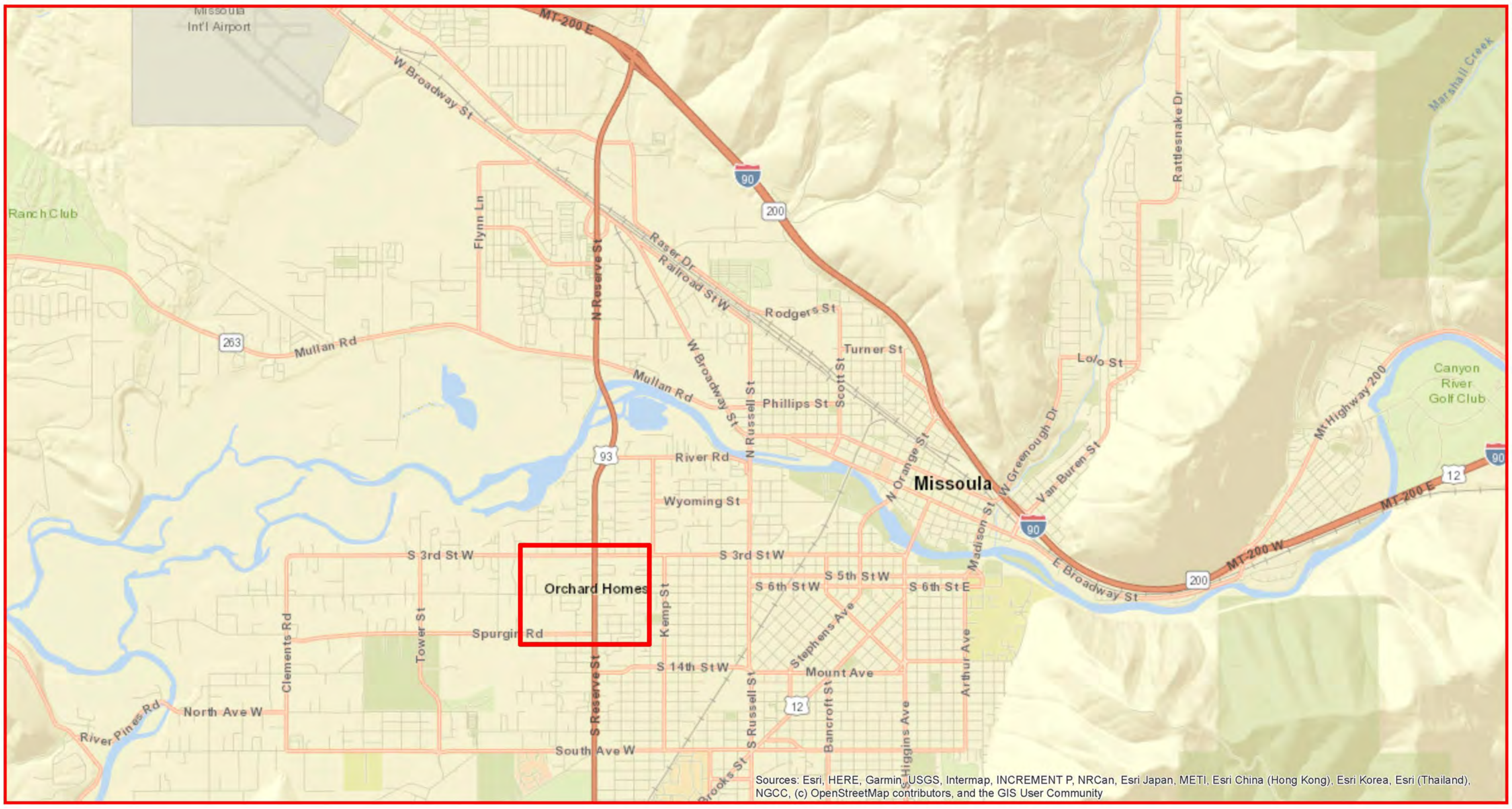
Reserve Street Parcel B

Location: **Missoula County, MT**
Date: **3-2024**
Prepared By: **REMB Staff Member**
Projection: **NAD83 Montana State Plane**

N

Inset Area from top map shown in bottom map

Reserve Street Parcels - Missoula, MT
Exhibit A



Legend

Reserve Street Parcel A

Reserve Street Parcel B

Location: Missoula County, MT
Date: 3-2024
Prepared By: REMB Staff Member
Projection: NAD83 Montana State Plane

N

Inset Area from top map shown in bottom map

EXHIBIT ENTER EXHIBIT NUMBER

(TENANT)
PROPERTY NAME
CITY, MONTANA

LEASE NO. XXXXXXX

Contents

COMMERCIAL LEASE

THIS COMMERCIAL LEASE (this "Lease") is entered into by and between the **Montana State Board of Land Commissioners** ("Board"), acting by and through the Montana Department of Natural Resources and Conservation 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[1]

Subject to the terms and conditions stated in this Lease, Lessee agrees to lease from Lessor real property Section __, Township ___, Range ____, ____________ County, Montana, (approximately ___ acres) which is more particularly described as follows:

[Legal description for the parcel based on a recorded document, if possible. If the parcel is described in a recorded Plat or Certificate of Survey, the Plat or COS should be attached as Exhibit A. If the Plat or COS will be recorded with the clerk and recorder after the execution of the lease but before the commencement date, Exhibit A should be the preliminary site plan, and the legal description should state that once the Plat/COS is approved by the Lessor and duly recorded with the local clerk and recorder, the recorded document should be attached to the lease and replace Exhibit A as the formal legal description for the parcel subject to the lease.]

2 RENT SCHEDULE.

[SELECT EITHER OPTION #1 OR OPTION #2 AS APPROPRIATE]

RENT SCHEDULE [OPTION #1 – BASE RENT W/ ESCALATOR]

The rental for any given year shall be the **Base Rent** as increased annually by the Adjustment Period Escalator. See table below:

Lease Year	Calendar Period	*Adjustment Period Escalator*	Adjusted Rent
1	1st 12 calendar months	0	$xx,xxx
Supplemental Billing period	# months and days between the first 12 months of the lease and Feb 28	0	**$ 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**

[1] The contents of this table are for general information purposes only, and the specific details in this Lease concerning the term of lease and expiration date shall control.

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**

RENT SCHEDULE [OPTION #2 – MARKET VALUE RATE]

The rental for any given year shall be the **Market Value Rate** as increased annually by the Adjustment Period Escalator. See table below:

Lease Year	Calendar Period	*Adjustment Period Escalator*	Adjusted Rent
1	1st 12 calendar months	0	$xx,xxx
Supplemental Billing period	# months and days between the first 12 months of the lease and Feb 28	0	**$ 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 _____________________. *(The actual purpose will be inserted and made part of this lease upon proposal selection. If appropriate, the clause can include a list of non-permitted uses).*

4 DEFINITIONS.

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

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

4.2. "Adjustment Period Escalator" is X.X% compounded annually and applied to the prior year's [INSERT EITHER BASE RENT OR MARKET VALUE RATE AS APPROPRIATE] as demonstrated in the Rent Schedule. The Adjustment Period Escalator shall not be applied to [BASE RENT OR MARKET VALUE RATE] 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. An actual number will be inserted and made part of this lease upon proposal selection).*

4.3. **[INCLUDE ONLY "BASE RENT" OR "MARKET VALUE RENTAL" DEFINITION DEPENDING ON SELECTION IN PARAGRAPH 2]** "Base Rent" means $[INSERT BASE RENT AMOUNT], obtained by multiplying the Land Value by the Lease Rate Percentage and as periodically adjusted by the Adjustment Period Escalator.

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

4.5. "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.

4.6. "Commencement Date" means the date listed in Section 1, which is legally binding the Lessor and Lessee to the terms of the Lease.

4.7. "Commercial Purpose" per MCA 77-1-902(4)(a) means an industrial enterprise, retail sales outlet, business and professional office building, warehouse, motel, hotel, hospitality enterprise, commercial or concentrated recreational use, single-family or multifamily residential development authorized under a lease with a master lessee, including a lease executed with a nonprofit corporation for the purposes of developing attainable workforce housing, the development of mobile home parks or multiple manufactured housing units for lease or rent, and other similar business.

4.8. “Default Rate” shall mean 1% compounded monthly.

4.9. “Department” means the Montana Department of Natural Resources and Conservation.

4.10. “Environmental Claims” means any and all Claims relating in any way to any Environmental Law 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.

4.11. “Environmental Laws” means any 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.

4.12. “First Lease Year” means the first twelve month period starting on the Commencement Date and ending on the anniversary thereof.

4.13. “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.

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

4.15. “Improvements” mean any Buildings, structures, installations, additions, alterations, fixtures, affixed upon the Land, or incidental or appurtenant thereto, and other property of a permanent or semi-permanent nature located on or affixed to the Land, whether initially classified as fixtures or movable personal property under applicable Law. For purposes of this Lease, “Improvements” include semi-permanent trade fixtures or equipment that, although detachable, are intended for long-term use and integration with the Premises. “Improvements” do not include movable furniture, inventory, supplies, or other items of Lessee’s personal property that are not affixed to the Premises and are readily removable without material injury to the Premises.

4.16. “Land” means the real property described in Section 1.

4.17. "Land Value" means the full market value of the Land as determined by that certain appraisal dated [INSERT DATE], attached hereto as Exhibit "[EXHIBIT NUMBER]," or in a subsequent appraisal conducted for purposes of performing a Market Adjustment pursuant to Exhibit "B" attached hereto.

4.18. "Laws" means any and all 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.

4.19. "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 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.)*

4.20. "Lease Year" means, after the First Lease Year, a one-year period during the Term from March 1 to the last day of February in the following calendar year.

4.21. "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.

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

4.23. "Lessee's Address" means:

[INSERT LESSEE ADDRESS]

4.24 "Lessor's Address" means:

Montana Department of Natural Resources and Conservation
Attn: Real Estate Management Bureau Property Mgmt Section
1539 Eleventh Avenue
PO BOX 201601
Helena, MT 59620-1601

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

4.26 **[INCLUDE ONLY "BASE RENT" OR "MARKET VALUE RENTAL" DEFINITION DEPENDING ON SELECTION IN PARAGRAPH 2]** Market Value Rate" means

$_______________ which is an amount determined by identification, comparison and research of rental rates charged for other leases of private lands in the relevant market area and for state trust lands in this and other states. In setting the Market Value Rate the Lessor has considered, without limitation: consultation with state trust land commercial leasing programs in other states; developers of commercial properties in the same geographical area as this Lease; and information provided by current or former lessees or developers of other trust lands managed by Lessor. The Market Value Rate is subject to periodic adjustment in accordance with the Adjustment Period Escalator.

4.27 "Performance Bond" means a surety bond, letter of credit, or other form of security acceptable to Lessor, issued by a financial institution, licensed to do business in the State of Montana, and satisfactory to Lessor which guarantees Lessee's full and timely performance of its obligations under this Lease (including without limitation the payment of rent and the performance of all non-monetary covenants).

4.28 "Premises" means the Land and all Improvements.

4.29 "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.

4.30 "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.

4.31 "Rent" means [BASE RENT or MARKET VALUE RATE] and all other amounts required to be paid by Lessee under this Lease.

4.32 "Sublease" means a sublease, assignment, 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.

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

4.34 "Substantial Damage" means permanent harm to Improvements that renders the Premises inoperable for its intended use.

4.35 "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.

4.36 "Supplemental Billing Period" means the period beginning the day after conclusion of the First Lease Year and ending on the next ensuing February 28.

4.37 "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.

4.38 "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.

4.39 "Term" means the duration of this Lease, beginning on the Commencement Date and concluding on the Expiration Date, as set forth in Section 1.

4.40 "Utilities and Services" means electric, gas, communication, internet, water, sewage, and garbage disposal.

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 shall control. The Exhibits to this Lease are:

Exhibit A – [Plat, Certificate Of Survey, or Site Plan For Legal Description].
Exhibit B –Market Adjustment Schedule and Provisions

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.

6.2 Renewal Option.

If all Rent due under this lease has been paid when due and Lessee is not in default 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 subsequent additional XX year Terms upon terms and conditions mutually agreeable to lessor and lessee. In no event shall the Term, together with any renewal terms, in the aggregate, exceed 99 years.

6.3 Lessor and Lessee Covenants.

Lessor covenants that Lessee shall 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. Lessee acknowledges that neither Lessor nor any agent of Lessor has made any representation or warranty, express or implied, regarding the condition of the Premises or its suitability for Lessee's intended use.

7 RENT.

7.1 Rent.

Lessee shall pay to Lessor, on or before the date due, the Rent, 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. The [Base Rent OR Market Value Rate] shall each be subject to Market Adjustment pursuant to **Exhibit B** attached hereto.

7.2 Terms of Payment.
Per MCA 77-1-905(1), the First Lease Year Rent must be paid by cashier's check or electronic funds transfer, as defined in MCA 32-6-103, , and payment is due upon execution of this Lease. Failure to pay the First Lease Year's Rent at the time of lease execution shall result in the cancellation of this Lease and forfeiture of all money paid.

Following the First Lease Year, Rent for a Lease Year shall be payable annually, in advance, on or before the first day of March. If the First Lease Year does not end on the last day of February in the calendar year immediately following the year of the Commencement Date, there shall be a Supplemental Billing Period prorated at the First Lease Year Rent for the difference in time between the end of the First Lease Year and the next ensuing final day of February. See Rent Schedule in Section 2.

7.3 Late Charge.
Lessee hereby acknowledges that late payment of Rent by Lessee to Lessor will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Accordingly, if Lessor does not receive the full amount of any Rent postmarked, or electronically transfer initiated on or before the due date, Lessee shall pay a late charge to Lessor. The late charge shall 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. 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. If payment of the Rent and late charge are not made in full within 30 days of the Rent 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, the late charge and interest, before applying a payment to current Rent.

7.4 Lien for Unpaid Rent.
Lessor shall have a lien upon all Improvements for payment of all Rent specified herein, which may be publicly recorded. Lessor may foreclose upon the lien according to the Laws of the State of Montana.

7.5 Additional Rent.
This Lease is what is commonly called a "triple-net" Lease. It is the intent of the parties that Lessor shall not be required to pay any costs or expenses or provide any services in connection with the Premises. Accordingly, Lessee shall separately pay, in addition to the Rent, all Utilities and Services, insurance, tax assessments, and special assessments, maintenance of the Premises, and repairs of the Premises directly to the applicable vendor, service provider, taxing authority, or other entity to which any such payment is due. Any amounts payable by Lessee under this Lease other than Rent shall constitute "additional rent" and a failure to pay any such amount when due shall have the same consequences as a failure to pay Rent.

8 <u>IMPROVEMENTS AND ALTERATIONS.</u>

8.1 Improvements and Alterations.
Lessee shall not construct, install, alter, demolish, or remove, any Improvements, including Improvements previously made by Lessee, without the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed. All expenses of constructing, installing, altering, or demolishing any Improvements shall be the sole responsibility of Lessee. Lessee, in its Lessor-approved installation, alteration, demolition and/or removal of Improvements, shall at all times comply with all Laws, including any applicable city and state building codes and fire codes. Lessee shall provide Lessor copies of all project-related permit applications and permit approvals. Lessor shall 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 any Improvements to the Premises Lessee shall deliver to Lessor an

engineer's certificate for the Premises and, if available, "as-built" surveys of the Premises in both AutoCAD and .pdf formats.

8.2 Title to Improvements.
During the Term, Lessee or its designated, Sublessee, approved pursuant to Paragraph 16.2 hereof, shall 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, so long as they are expressly subordinate to the State's reversionary interest in the Improvements upon termination of the Lease. Upon the expiration or earlier termination of the Lease, title to all Improvements and fixtures then held by Lessee, except moveable personal property, shall automatically vest in Lessor without representation or warranty pursuant to MCA §77-1-906(2).

9 <u>USE AND ENVIRONMENTAL COMPLIANCE.</u>

9.1 Use and Compliance.
The Lessee agrees to comply with all applicable Laws in effect upon the Commencement Date and those Laws which may be enacted or adopted thereafter from time to time and which do not impair or impede the obligations of this Lease or deprive the Lessee of an existing property right recognized by Law. Lessee shall keep the Premises in good condition and repair, including, without limitation, any necessary repairs, maintenance, and/or replacement to the interior, exterior and structure of any Buildings, or other Improvements, mowing of grass and general landscaping, and to contract for the same in Lessee's own name and to pay all costs and expenses in connection therewith. Lessee shall not commit waste or permit waste, impairment or deterioration of the Premises, ordinary wear and tear and damage by casualty or 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 Board 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. To the extent any provisions of State Law conflict with the terms of this Lease, the provision of State Law or regulations shall control.

9.3 Weed Management.
Lessee shall be responsible for controlling any noxious weeds on the Premises. Lessee shall comply with the Montana County Noxious Weed Management Act, MCA Title 7, Chapter 22, Part 21.

9.4 Environmental Matters.
Lessor has made no representations to Lessee concerning the presence any Hazardous Substances on the Land. Lessee agrees as follows: Lessee shall (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, assignees, permittees, licensees, 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 shall 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 shall 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 shall 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) shall 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 shall conduct any investigation, study, sampling or testing, and undertake any cleanup, removal, remedial or other action necessary to remove and/or remediate 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 and/or remediated 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 shall 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, Claims, judgments, 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 9 shall survive the expiration or earlier termination of this Lease.

10 <u>UTILITIES AND REPAIRS.</u>

10.1 Installation and Repairs.
Lessee shall install, at Lessee's cost and expense, any necessary infrastructure for Utilities and Services, storm water drainage infrastructure, roads, sidewalks, and/or any other infrastructure as required for the development of the Land, subject to the provisions in section 8.1. Lessee shall maintain, repair, replace and keep the Premises in reasonably good condition and repair.

10.2 Utilities.
Lessee shall pay, or arrange for payment by its approved sublessees, before delinquent all fees, costs, assessments or other payments associated with Utility and Services related to the Premises including, without limitation, those which, if not paid, may be asserted as a lien or charge against the Premises. This

provision is without regard to any agreements regarding payment of utility charges, whether written or verbal, between Lessee and any Sublessees.

10.3 Sidewalks (If applicable).

Lessee shall assume full responsibility for maintenance of any sidewalks or bike and pedestrian paths within the project, whether or not any portion of those sidewalks or bike and pedestrian paths were constructed, reconstructed, or repaired in connection with the project. Maintenance shall include all things ordinarily associated with sidewalk and bike and pedestrian path maintenance (including but not limited to, grinding or milling down sidewalk displacements, surface patching, crack sealing, replacing small portions of damaged sidewalk, sweeping, cleaning, washing, removing snow, debris and other obstructions or impediments to safe pedestrian travel, and any and all other normally accepted maintenance practices). Lessee shall inspect the sidewalks/paths at regular and reasonable intervals, determined solely by Lessee to be adequate, to determine what, if any, maintenance and or repair is reasonably necessary. Lessee shall enforce its contract provisions to recover all costs associated with its maintenance activities from sublessors who lease property adjacent to the sidewalks/paths and/or which receive the benefit of the maintenance performed.

11 TAXES.

11.1 Payment of Taxes.

Lessee shall 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, pursuant to MCA § 15-24-1203.

11.2 Special Assessments.

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

11.3 Notice and Acknowledgment of Assessments. Pursuant to Mont. Code Ann. § 77-1-911, Lessee shall do the following:

Lessee Deliveries. Lessee shall promptly furnish to the Department the following:

an officially certified description of all state trust land included within the boundaries of a city or county improvement district that is the subject of this Lease;

a description and listing of the amount of assessments and charges of every character made against the leasehold interest of Lessee and the leasehold interest of the state, as soon as the assessments or charges are levied.

Payment of Assessments. Lessee shall make timely payment of all assessment charges as contemplated in this Paragraph 11.3.

Non-Payment. 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.

Except as provided in Section 12.4, below, Lessee shall procure and maintain, or cause one or more of its Sublessees to provide and keep in force, 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 **$2,000,000.00** for any one accident or occurrence and $2,000,000 in the aggregate. The foregoing liability insurance policy(ies) shall 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 at all times during the Term. Lessee shall promptly provide, 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 shall deliver a copy of the latest Proof to Lessor. Each policy of insurance shall 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.

12.4 Review of Insurance Coverages and Liability Limits.

The types and amounts of insurance provided for in this Section 12 shall be subject to amendment under any renewal or extension of this Lease contemplated by Section 6 hereof. At least 90 days, but no more than 180 days, prior to commencement of any renewal term of this Lease, Lessor shall deliver to Lessee written notice of any revision to the types or amounts of insurance required for any renewal term hereof. Any such revision to the insurance requirements under this Lease shall be made in the sole discretion of Lessor and shall be for the purpose of complying with insurance requirements then in effect for similar leases to which Lessor is a party, and to comply with any applicable Laws in effect at the time of renewal hereof. If Lessee elects to renew the Lease pursuant to Paragraph 6.2, any new insurance requirements shall automatically replace and supersede the Insurance provisions in Section 12 (except for this paragraph, which shall carry forward) when the lease is renewed and Lessor shall append a copy of the Insurance provisions to any renewal lease

13 INDEMNIFICATION.

Lessee shall protect, defend, indemnify, and save harmless Lessor its elected and appointed officials, agents, and employees, from and against all Claims, liabilities, demands, causes of action, judgments, penalties, fines, and losses, including all costs of defense and reasonable attorney fees, arising in favor of or asserted by Lessee's employees and agents, its subcontractors, its subcontractor's employees and agents, or third parties relating to property damage, personal injury, bodily injury, death, violation of or non-compliance with any Laws, or financial or other loss or obligation of any kind that in any way, directly or indirectly, arise or allegedly arise out of, in connection with, or on account of this Lease, any act or omission of Lessee, or any act or omission of Lessee's officers, agents, employees, or subcontractors.

Notwithstanding the foregoing, Lessee shall not be required to indemnify Lessor to the extent any Claims are the result of the gross negligence or willful misconduct of Lessor. The obligations contained in this Section 13 shall survive expiration or earlier termination of this Lease.

Lessor shall give Lessee prompt notice, in writing, of any Claim, liability, demand, cause of action, judgment, penalty, fine, or loss and shall, at Lessee's expense, cooperate in the defense thereof by Lessee. Lessee acknowledges that under the laws of the State of Montana, the Montana Attorney General may participate in an action involving the State of Montana.

If Lessee fails to comply with its obligations under this Section 13, Lessor may undertake its own defense. If Lessor undertakes its own defense, Lessee shall reimburse Lessor for all: (i) losses, liabilities, damages, judgments, settlements, penalties and fines arising from the Claim, and (ii) costs arising from defense of the Claim, including but not limited to attorney fees, court costs, and costs of investigation, discovery, and experts. Lessee shall reimburse Lessor within 30 days after receiving Lessor's justification for such expenditures.

14 DAMAGE OR DESTRUCTION.

In the event of any Substantial Damage to the Premises from any causes whatsoever, Lessee shall give written notice thereof to Lessor as soon as reasonably possible following discovery of Substantial Damage by Lessee. 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's completion of remediation work, provided in 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 Lessor shall have the right, but not the obligation, to make demand upon and draw upon the Performance Bond as provided in Paragraph 21, hereafter. All insurance proceeds payable with respect to any damage or destruction of Improvements shall be applied to the cost of repair and restoration, and Lessee shall be responsible for any deficiency.

15 <u>CONDEMNATION.</u>

15.1 Notice.

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

15.2 Termination Option on Substantial Taking.

If a Substantial Taking occurs during the Term, Lessee may, at its option, terminate this Lease by giving notice to Lessor on or before 60 days after the Taking Date. In such event this Lease shall terminate 30 days after the date of Lessee's notice of termination and all Rent and other Rent shall be prorated on a per diem basis through and including the date Lessee surrenders possession.

15.3 Continuation of Lease.

If a Taking occurs during the Term that is not a Substantial Taking, then this Lease shall remain in full force and effect according to its terms, except that effective as of the Taking Date this Lease shall terminate automatically as to the portion of the Premises that is the subject of such Taking and Rent due and owing after the Taking Date shall be reduced by a proportion equal to the total value of the surface acres subject to the Taking as it bears to the total value of the Premises. If a Substantial Taking occurs but Lessee does not exercise its termination option, this Lease shall remain in full force and effect according to its terms, except that effective as of the Taking Date this Lease shall terminate automatically as to the portion of the Premises that is the subject of such Taking and Rent due and owing after the Taking Date shall be reduced by a proportion equal to the total value of the surface acres subject to the Substantial Taking as it bears to the total value of the Premises .

15.4 Awards for Permanent Taking.

If there is compensation paid as a result of any permanent Taking of the Premises, the award shall be allocated as follows: Lessee shall 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 pursuant to Section 8 of this Lease, and Lessor shall be entitled to the balance of the award.

15.5 Award for Temporary Taking.

If all or any portion of the Premises shall be taken for temporary use or occupancy, the foregoing provisions shall not apply and the Lessee shall continue to pay the full amount of Rent and the Lessee shall perform and observe all of the other terms, covenants, conditions and obligations of this Lease as though the temporary Taking had not occurred, subject to any order of the condemning authority. In the event of a temporary Taking, Lessee shall be entitled to receive the entire amount of the compensation award for such taking, unless the period of temporary use or occupancy shall extend beyond the Expiration Date in which case the compensation shall be apportioned on a per diem basis with Lessee being entitled to that portion of any compensation award equal to the proportion the days of temporary use or occupancy during the Term or any renewal thereof bears to the total number of days of temporary use or occupancy.

16 <u>ASSIGNMENT, SUBLETTING AND FINANCING</u>

16.1 Assignment.

Lessee shall not assign its interest under this Lease, in whole or in part, without Lessor's prior written consent. Such consent may be withheld in Lessor's sole and absolute discretion. Any direct or indirect transfer of voting control of Lessee, or of substantially all of Lessee's assets, shall be deemed an assignment of this Lease requiring Lessor's prior written consent. Lessor's consent shall not be required for any transfer of Lessee's interest under this Lease to a Foreclosure Transferee. Lessor shall recognize any Foreclosure Transferee as a substitute Lessee under this Lease and shall honor all rights and interests 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.

16.2 Subletting.

Lessee may sublease the Premises or portions thereof in accordance with the terms of this section. Lessee shall require any sublessees 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 Lessor. No Sublease shall be effective until a valid Sublease agreement with a valid attornment provision is delivered to Lessor, as hereinafter provided. Upon receipt, by Lessor, of a copy of the Sublease, along with a description of the proposed sublessee's intended use of the portion of the Land subject to the Sublease, Lessor shall place consideration of said Sublease on the agenda for the next available scheduled meeting for the Board, and the Board shall have forty-five (45) days from the date of receipt of said Sublease by Lessor in which to disapprove the Sublease. The Board hereby reserves the right to disapprove any Sublease arrangement for any reason in the sole discretion of the Board. 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-opereative immediately upon Lessee's termination. All sublessees shall agree to execute, acknowledge and deliver to Lessor any document that Lessor reasonably request to confirm such attornment.

Lessee shall be fully responsible for the acts and omissions of any sublessee to the same extent as if such acts or omissions were the acts or omissions of Lessee itself. Any act or omission of a sublessee that, if performed or omitted by Lessee, would constitute a breach or default of this Lease, shall be deemed a breach or default of this Lease by Lessee, without the need for any separate notice to such Sublessee. Lessor may enforce any remedy for default hereunder against Lessee based on such act or omission by a sublessee, and Lessee's obligations and liabilities under this Lease shall in no way be diminished, waived, or released by reason of any sublease or occupancy by a sublessee. Notwithstanding anything herein to the contrary, no sublease or other occupancy agreement shall be construed to create any direct contractual relationship between Lessor and any sublessee.

16.3 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, however, all such Leasehold Mortgages must be expressly subject to the Lessor's reversionary interest in the Premises upon the expiration or termination of the Lease. 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 shall 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 shall 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 shall 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 shall be effective unless and until the same is approved in writing by each Qualified Mortgagee. All rights and remedies of the Qualified Mortgagee hereunder shall be cumulative with, in addition to and non-exclusive of one another.

16.4 Assignment by Lessor.

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

17 DISPUTE RESOLUTION.

17.1 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.

17.2 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.

18 LEASE EXPIRATION.

18.1 Condition at End of Lease.

Upon vacating the Premises on the Expiration Date or upon early termination of this Lease, Lessee shall surrender the Premises to Lessor in good order, condition, and repair, ordinary wear and tear excepted; free of all occupants ; and with all Lessee-caused environmental conditions remediated to the standard required by applicable Environmental Laws. Lessee shall remove all of its personal property on or before the Expiration Date and shall cause all Sublessees, if any, to remove their personal property. All personal property remaining on the Premises on the day after the Expiration Date shall be conclusively deemed abandoned by Lessee, or Sublessees as the case may be, and shall become property of Lessor without further notice to Lessee or any Sublessees. Lessor may, at its discretion, remove, store, or dispose of such property in any manner deemed appropriate. Lessee shall be responsible for all costs incurred by Lessor in connection with such removal, storage, or disposal. Lessor may apply all or any portion of the Performance Bond provided for in Section 22.4, hereafter, to reimburse itself for such costs without prior notice to Lessee.

18.2 Holding Over.

If the Premises are not surrendered on the Expiration Date or earlier termination 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 earlier termination without a written agreement providing for the same, Lessee shall, at Lessor's option be deemed to be a Lessee from month to month, at a monthly Rent, payable in advance, equal to 150% of monthly Rent payable during the last full "Lease Year" prior to the Expiration Date or early termination of this Lease, and Lessee shall 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. This remedy is not exclusive of any other remedies available to Lessor under appliable Law.

19 <u>LIENS AND ESTOPPEL CERTIFICATES.</u>

19.1 Liens.

Lessee shall 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 against the Premises, Lessee shall cause the same to be released, satisfied, or discharged within 30 days thereafter. If Lessee fails to timely release, satisfy, and/or discharge any such lien pursuant to this Paragraph 18.1, then 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 Lessor in connection therewith, together with interest on all such sums at the Default Rate from the date incurred until paid, shall be due and owing from Lessee to Lessor upon demand therefore.

19.2 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 shall promptly pay any judgment rendered and cause the lien to be released.

19.3 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 shall 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 shall be provided by the requested party.

20 DEFAULTS BY LESSEE AND LESSOR'S REMEDIES.

20.1 Defaults by Lessee.

Each of the following events, which continue beyond any applicable notice and cure period, shall constitute a "Default by Lessee" under this Lease:

a) Failure to Pay Rent. Lessee fails to pay any 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 such Rent is due.

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 diligently 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 issuance of this Lease, which if known would have prevented issuance of this Lease in the form or to the party so 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.

f) Bankruptcy or Insolvency. If Lessee files for bankruptcy or an involuntary bankruptcy petition is filed involving Lessee. Further, if a Court of competent jurisdiction determines that Lessee is insolvent.

g) Dissolution. If at any time during the Term or any renewals, Lessee is voluntarily or involuntarily dissolved or otherwise is no longer in good standing as a legal entity.

20.2 Lessor's Remedies.

If any Default by Lessee occurs, Lessor shall 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 such remedies shall 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.

20.3 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 shall 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) Performance Bond. In the event of any Default by Lessee, Lessor may make demand, and draw upon, the Performance Bond provided for in Paragraph 21, hereafter, and to apply any proceeds received therefrom to (i) the payment of any sums then due and owing to Lessor under this Lease; (ii) the cost of curing any Default by Lessee or performing any obligation of Lessee that Lessee has failed to perform; and (iii) any other loss, damage, cost, or expense (including reasonable attorneys' fees) incurred by Lessor as a result of such Default by Lessee.

c) 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 possession of the Premises from Lessee. In such event, Lessor shall be entitled to recover from Lessee such damages as are allowable by applicable Laws.

d) Repossession and Reletting. In the event of a Default by Lessee, Lessee grants permission to Lessor to 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 of this Lease. No such reentry or taking possession of the Premises by Lessor shall 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 shall 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 shall terminate as specified in such notice. After recovering possession of the Premises, Lessor shall 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 shall reimburse Lessor upon demand for the actual costs and expenses, which Lessor may incur in connection with such reletting. Lessor may collect and receive the rents for such reletting but Lessor shall 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 shall continue to pay on the dates specified in this Lease, the 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.

e) Receivership. To properly effectuate the recovery of damages and other sums owing by Lessee to Lessor hereunder following a Default by Lessee, Lessor, in conjunction with any dispossession proceeding commenced pursuant to this Lease may seek the 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 shall Lessor be obligated to post a bond in connection with the appointment of a receiver.

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

21 DEFAULTS BY LESSOR AND LESSEE'S REMEDIES.

21.1 Defaults by Lessor.

The following event, which continues beyond the applicable notice and cure period, shall 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 diligently pursue such cure in good faith to completion.

21.2 Lessee's Remedies.

If any Default by Lessor occurs, Lessee shall have the right, at Lessee's election, then or at any later time, to exercise the remedy described below. Exercise of such remedy shall 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 shall 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.

22 PERFORMANCE BOND.

Prior to execution of this Lease, as a condition to Lessee's right to enter onto and occupy the Premises, Lessee shall furnish, to Lessor, and maintain in full force and effect throughout the Term, including any renewal term of this Lease, a Performance Bond. The Performance Bond shall name Lessor as obligee; be in an amount not less than [AMOUNT]; and guarantee Lessee's full and timely performance of each and every of its obligations under this Lease. Lessee shall deliver to Lessor evidence of any renewal or replacement of the Performance Bond at least 30 days prior to its expiration, so that the Performance Bond remains continuously in effect throughout the Term and any renewal term hereof. Failure, by Lessee, to deliver or maintain the Performance Bond as required hereunder shall constitute an event of default under this Lease and in such event Lessor shall have the right to procure a substitute bond or other security and to pay the cost thereof, in which event, Lessee shall reimburse Lessor upon Lessor's demand for any and all premiums and related expenses incurred by Lessor as additional rent. Lessor's acceptance of any Performance Bond shall not limit or waive any other rights or remedies under this Lease or at law or in equity.

23 MISCELLANEOUS.

23.1 Notices.

All notices required under this Lease must be in writing and shall be deemed properly given and received (a) when actually 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 with return receipt requested, and postage prepaid. All such notices shall be sent to Lessor's Address when directed to Lessor and to Lessee's Address when directed to Lessee, unless the party to whom notice is directed has requested, in writing, that notice be provided to a different address. In the case of notices to a Qualified Mortgagee, notice shall be sent to the address set forth in that Qualified Mortgagee's most recent notice to Lessor.

23.2 Binding Effect.

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

23.3 Modifications.

This instrument contains the entire agreement between the parties, and no statement, promise or inducement 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.

23.4 Enforcement Expenses.

In any action, proceeding, or dispute arising out of or relating to this Lease, including, without limitation, administrative proceedings initiated under Section 16 hereof, each party shall bear its own attorneys' fees, expert fees, court costs, and all other expenses incurred, regardless of which party prevails or whether any such action or proceeding is prosecuted to judgment.

23.5 No Waiver.

No waiver of any provision of this Lease shall 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 shall affect any provision other than the one specified in such waiver, and that only for the time and in the manner specifically stated.

23.6 Captions.

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

23.7 Severability.

If any provision of this Lease is declared void or unenforceable by a final judicial or administrative order, this Lease shall continue in full force and effect, except that the void or unenforceable provision shall 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.

23.8 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.

23.9 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.

23.10 Only Lessor/Lessee Relationship.

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

23.11 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 shall 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.

23.12 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.

23.13 Right of Inspection.

Lessor, or its authorized representatives, may, at any reasonable hour and without notice, 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.

23.14 Reasonableness.

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

23.15 Governing Law; **Venue and Jurisdiction**.

This Lease shall 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 Department as a contested case proceeding under the Montana Administrative Procedures Act . Any legal action related to, or arising out of, this Lease, must be filed with the Montana First Judicial District Court in Lewis and Clark County.

23.16 Time of Essence.

Time is expressly declared to be of the essence of this Lease and each and every term hereof.

23.17 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 shall 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 Lessee.

23.18 Further Assurances.
Each party shall, upon the reasonable request of the other and without additional consideration (but without incurring material out-of-pocket expense unless reimbursed), execute, acknowledge, and deliver such further documents and instruments, and take such additional actions, as may be reasonably necessary or desirable to carry out the intent and purposes of this Lease and to give full effect to its terms.

23.19 Counterparts and Electronic Signatures.
This Lease may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Signatures delivered by facsimile, PDF, or other reliable electronic means shall be deemed original signatures for all purposes, and the parties agree that this Lease may be executed and delivered by electronic signature in a manner permitted by applicable Law.

23.20 Neutral Construction.
This Lease is the result of negotiations between the parties and shall be deemed to have been jointly drafted by them. Accordingly, any rule of construction that ambiguities are to be resolved against the drafting party (including the doctrine of contra proferentem) shall not apply to the interpretation of this Lease or any amendments hereto.

23.21 No Third-Party Beneficiaries.
This Lease is entered into solely for the benefit of Lessor and Lessee and their respective permitted successors and assigns. Nothing in this Lease, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Lease, as a third-party beneficiary or otherwise.

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: ____

[AUTHORIZED SIGNATORY NAME AND TITLE]

STATE OF ______________________)
) ss:
COUNTY OF _____________________)

The foregoing instrument was acknowledged before me this ______ day of __________, 20____ by [LESSEE AUTHORIZED SIGNATORY NAME] as authorized signatory of [LESSEE NAME].

Witness my hand and official seal.

My commission expires: __________________________________.

____
Notary Public

LESSOR, STATE OF MONTANA, DNRC:

By: _________________________________
[NAME OF DNRC SIGNATORY
TITLE
LAND OFFICE OR DIVISION]

STATE OF MONTANA)
) ss:
COUNTY OF _______________________)

The foregoing instrument was acknowledged before me this ______ day of __________, 20____ by [NAME OF DNRC SIGNATORY, TITLE LAND OFFICE OR DIVISION], State of Montana, DNRC.

Witness my hand and official seal.

My commission expires: __________________________________.

____
Notary Public

EXHIBIT A

COS/Plat

<u>EXHIBIT B</u>
MARKET ADJUSTMENT
SCHEDULE AND PROVISIONS

MARKET ADJUSTMENT PROVISIONS

Rent for the Land shall be subject to Market Adjustments determined in accordance with these provisions. The Market Adjustments shall apply in Lease Years [MARKET ADJUSTMENT YEARS TO BE INSERTED BASED ON NEGOTIATION WITH LESSEE]. The process for the Market Adjustment will commence on the date that is 90 days after the first day of Lease Years [INSERT THE YEAR PRIOR TO MARKET ADJUSTMENT YEARS].

The Market Adjustment shall 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 shall 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 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 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. Rent for the land, as adjusted by the Market Adjustment, shall be the amount obtained by multiplying the Land Value by the Lease Rate Percentage determined in accordance with 77-1-905, MCA.

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

Table to be completed upon negotiation with Lessee

Lease Year	**Schedule**
INITIAL MARKET ADJUSTMENT YEAR	"Market Adjustment"
[LEASE PERIOD UNDER MARKET ADJUSTMENT NO. 1]	"Adjustment Period" applied to Base Rent resulting from previous Market Adjustment.
2ND MARKET ADJUSTMENT YEAR	"Market Adjustment"
[MARKET ADJUSTMENT PERIOD NO. 2]	"Adjustment Period" applied to Base Rent resulting from previous Market Adjustment.

[3RD MARKET ADJUSTMENT YEAR]	“Market Adjustment”
MARKET ADJUSTMENT PERIOD NO. 3]	“Adjustment Period” applied to Base Rent resulting from previous Market Adjustment.
[4TH MARKET ADJUSTMENT YEAR]	“Market Adjustment”
[MARKET ADJUSTMENT PERIOD NO. 4]	“Adjustment Period” applied to Base Rent resulting from previous Market Adjustment.
[5TH MARKET ADJUSTMENT YEAR]	“Market Adjustment”
[MARKET ADJUSTMENT PERIOD NO. 5]	“Adjustment Period” applied to Base Rent resulting from previous Market Adjustment.
[6TH MARKET ADJUSTMENT YEAR]	“Market Adjustment”
[MARKET ADJUSTMENT PERIOD NO. 6]	“Adjustment Period” applied to Base Rent resulting from previous Market Adjustment.

EXHIBIT # C

MONTANA DEPARTMENT OF NATURAL RESOURCES & CONSERVATION

OPTION TO LEASE AGREEMENT #xxx

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

GRANT OF OPTION: In consideration of an annual payment ("Option Fee"), the Department grants to the Optionee an exclusive option to lease premises described in Exhibit A, ("Premises") attached hereto upon those terms and conditions as in the form, terms, and conditions of that lease agreement attached hereto as Exhibit B, ("Lease") and incorporated herein as if fully set forth. The Option Fee shall be:

____

TERM: This Option shall remain in effect from the Effective Date until 12 noon Mountain Time on the ______ Day of __________________, 20__, at which time it will expire and terminate automatically. Subject to the contingency provided herein, Optionee may exercise this Option to Lease and execute a Lease at any time during the Term. If the Option to Lease is exercised prior to the expiration of the Term, rent paid for the unused portion of the Term will be applied to the first-year rental payment of the lease agreement.

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

ASSIGNMENT: Optionee shall not assign its interest under this Option, in whole or as to any part, without Optionor's prior written consent.

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

MANNER OF EXERCISE OF OPTION: The Optionee may exercise the option granted in the preceding paragraph at any time before the expiration of the option period by giving written notice of exercise of the option to the Department, at the address of the Department set out above. The notice of exercise of the option must specify the date upon which the lease is to commence, and such date must be within the term of the option.

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

Optionee must deliver the fully executed duplicate lease agreements to the Department within fourteen (14) days after receipt by the Optionee.

DUE DILIGENCE AUTHORIZED: Through the Option Term, Optionee is permitted to access the Land for the limited purpose of conducting due diligence activities in support of project regulatory approval, in accordance with the following:

PERMITTED ACTIVITIES:

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

During the Option Term the Optionee will conduct its activities on the Land in a neat and orderly manner and will allow no waste or debris of Optionee to accumulate thereon.

ACCESS TIMING RESTRICTIONS: Optionee must notify Department prior to accessing the Land during the Option Term. Department reserves the right to restrict or preclude any activity to the extent necessary for environmental concerns, safety, or other land management reasons, provided that Department shall make a good faith effort to ensure that Optionee’s due diligence activities are reasonably accommodated during the Option Term.

EXISTING RIGHTS: Optionee enters into this Option subject to any leases or other rights existing on the Effective Date, and any easements, agriculture, grazing or mineral rights that that may be conveyed after the Effective Date but prior to Optionee exercising their Option and executing a lease (Future Lease). A list of the leases existing on the Effective Date and copies of the contracts are attached hereto as Exhibit C. Should the Department enter into any Future Lease, the Department shall furnish Optionee with a copy. Any Future Lease shall not interfere or compete with Optionee’s Permitted Activities.

WEEDS: Optionee shall be responsible for controlling all noxious weeds on the Land that were introduced by Optionee’s activities thereon.

RECLAMATION: Optionee shall take all reasonable precautions to prevent or minimize damage to natural (i.e., vegetation, soil, water, wildlife), and cultural resources on the Land. Optionee shall reclaim any disturbed areas in the Land to the condition such Land was in prior to Optionee’s due diligence activities. When any action requires disturbance, all soil materials shall be salvaged, safeguarded from loss due to wind or water erosion or machinery activity, and shall be replaced on all disturbed areas.

LIABILITIES: Optionee hereby assumes all responsibility for all claims, damages, and lawsuits that may result from any and all damages, injury or death to persons and/or property that occur upon or about the Land that is caused by or arising out of Optionee's use of the Land. The Optionee further agrees that they will be responsible for any damage caused by Optionee when entering, crossing or leaving state-owned subject land.

ENVIRONMENTAL REVIEW CONTINGENCY: All terms of this Option to Lease are contingent upon an environmental review conducted in compliance with the Montana Environmental Policy Act (MEPA), and associated decision document signed by Department. Department will have the sole right to determine whether MEPA compliance shall consist of the completion of an Environmental Assessment (EA) or Environmental Impact Statement (EIS). The Department shall ultimately be responsible for signing a Record of Decision (ROD) or other appropriate decision document. Optionee and Department agree that the final decision for the MEPA may require modifications to the attached lease document to ensure compliance with the MEPA decision.

Date:___________________________

STATE OF MONTANA, MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

By:_______________________________________
Name of DNRC Signatory
Title
Land Office or Division

ACKNOWLEDGMENT

STATE OF MONTANA
County of Lewis and Clark

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

____
(Notary Signature)

[SEAL]

Date:___________________________

OPTIONEE

By:_______________________________________

Its:_______________________________________

ACKNOWLEDGMENT

STATE OF ________________

County of _________________

This instrument was acknowledged before me on ____________________________, _____, by ___________________________________, as _______________________________ of Optionee, ______________________________.

____
(Notary Signature)

[SEAL]