

State of New Mexico
Commissioner of Public Lands

310 Old Santa Fe Trail, P.O. Box 1148, Santa Fe, New Mexico 87504-1148

NEW MEXICO STATE GAME COMMISSION EASEMENT

THIS EASEMENT, made and entered into this ___ day of _____, 2021 by and between the New Mexico Commissioner of Public Lands (“Commissioner”) and the New Mexico State Game Commission (“State Game Commission”) (collectively, the “parties”),

WITNESSETH: That the Commissioner, by virtue of the authority vested in her by the Constitution and Statutes of New Mexico, for and in consideration of the terms, covenants, conditions and rentals hereinafter set out, hereby grants to the State Game Commission an easement (“Easement”) upon those state trust lands described in Paragraph 2 below. The grant of this Easement is made upon the following terms and conditions and,

THE PARTIES HEREBY AGREE THAT:

1. **PURPOSE.** The purpose of this Easement is to provide entry upon and through certain state trust lands to authorized hunters, anglers and trappers for the regulated harvest of protected species as defined by Chapter 17 of the NMSA and State Game Commission regulations (“Licensee” or “Licensees”). Such entry will improve the ecological health of state trust lands by providing for the management of fish and wildlife using professional techniques. The State Game Commission, through the New Mexico Department of Game and Fish (“Department”) will, to the extent authorized by law, cooperate with the Commissioner by employing the police powers of the Department to seek to prevent waste and trespass on state trust lands subject to this Easement.

2. **LANDS SUBJECT TO EASEMENT.** The state trust lands subject to the Easement granted herein (“Easement Lands”) are depicted in the Easement Lands Map (see **Exhibit A**), available on each party’s website, and are comprised of those lands identified in the surface tract books of the State Land Office as being in the Commissioner’s care, custody and control and have not been withdrawn from this Easement pursuant to Paragraph 6 below and agreed to by the parties as useable for the purposes of this Easement. The parties agree that any lands covered by this Easement are usable if the

Licensee has the ability to gain entry upon them by legal means. The parties agree that the Easement Lands Map and any amendments thereto shall be available on each party's website within thirty (30) days of the effective date of this agreement and within fifteen (15) days of the effective date of any amendment.

3. **TERM.** Upon its execution by the Commissioner and the State Game Commission, this Easement shall become effective as of April 1, 2021, and remain effective until March 31, 2025, unless terminated earlier pursuant to Paragraph 8 below or by written agreement of the parties.

4. **PERMITTED USES.**

a. **USES:** The Easement Lands shall be used only by the Grantee and its Licensees for the Easement's purpose, identified in Paragraph 1 above, for the hunting, fishing, and trapping of protected species of fish and wildlife during the applicable open seasons, as established by the State Game Commission. The Easement also authorizes entry upon Easement Lands for purposes of scouting for such species up to fourteen (14) days immediately prior to the open seasons by Licensees holding valid licenses or permits issued by the State Game Commission. As more fully described in Paragraph 11, the Easement authorizes the Department and its Licensees to camp in designated areas on Easement Lands and only in association with the purposes of this Easement, namely hunting, fishing, and trapping of protected species. The Department, its employees, and its contractors may access Easement Lands for law enforcement patrol, enhancing sportsperson access, and habitat restoration. Unprotected species may also be taken on Easement Lands by Licensees holding valid hunting or trapping licenses for protected species on those lands during the period of the taking. The State Land Office will work with the Department to evaluate and develop strategies for the Department to effectively manage wildlife on Easement Lands. No other uses shall be allowed pursuant to this Easement.

b. **LIMITATIONS:**

- i. This Easement is subject to the rules and regulations of both the State Game Commission and State Land Office.
- ii. It is expressly understood and agreed by the parties that the rights granted herein shall not be exercised in a manner that materially interferes with other authorized uses or valid existing

rights to which the Easement Lands are subject, such as business or agricultural leases or rights-of-way, or that prevent or limit the Commissioner's exercise of her constitutional, statutory or regulatory responsibilities. It is also expressly understood and agreed by the parties that the rights exercised by the State Game Commission in conformity with Chapter 17 of the NMSA and the State Game Commission regulations shall not be deemed to interfere or conflict with other uses or existing rights or limit or prevent the Commissioner's exercise of her constitutional, statutory or regulatory responsibilities.

5. **CONSIDERATION.** The State Game Commission shall pay a rental of \$1,000,000.00 for each year of the easement (starting April 1 and ending the following March 31), comprised of the following two parts: (a) The State Game Commission shall pay an initial rental to the Commissioner in the sum of \$800,000.00 on or before April 1, 2021 for the first year of this Easement, and an additional rental to the Commissioner in the sum of \$800,000.00 on or before April 1 for each subsequent year of this Easement; (b) The State Game Commission shall pay a second rental to the Commissioner in the sum of \$200,000.00 on or before March 31, 2022, for the first year of this Easement, and on or before March 31 each subsequent year of this Easement. The Commissioner may accept in-kind expenditures by the State Game Commission and/or the Department, up to the full amount of this second payment, for projects mutually agreed upon by the Commissioner and the Department. If the State Game Commission and/or Department opts to make in-kind expenditures toward the additional payment, it shall provide reasonable documentation of those expenditures and project details to the State Land Office upon request. The State Game Commission shall pay any remaining balance of the \$200,000.00 annual payment to the Commissioner by March 31 of each year, or a later date if approved by the Commissioner in writing. The State Land Office will confirm receipt of payment with the Department.
6. **ADDITION OR WITHDRAWAL OF LANDS.** The Commissioner may at any time add or withdraw land from this Easement if she determines doing so would be in the best interests of the state land trust. If the Commissioner determines to withdraw land from the Easement other than through the execution of a business lease, the Commissioner will provide reasonable advance notice to the Department's Director and an opportunity to consult prior to taking such action; except that the Commissioner may, without advance notice or prior consultation, withdraw lands where in the Commissioner's determination it is necessary to do so

to protect public health or safety or for other exigent circumstances. If the Commissioner withdraws lands, the Commissioner shall consult with the Director within two (2) weeks of the withdrawal to determine if there are means to mitigate the concern and reopen the lands. If the Commissioner adds or withdraws land, the Department shall be notified of such action and provided with an amended Easement Lands Map, which shall then be made available on both the State Land Office's and the Department's websites pursuant to Paragraph 2 above. If withdrawal of acreage results in a loss of access to adjacent public lands, provisions of the withdrawal will maintain access across the withdrawn acreage to those adjacent public lands. Notwithstanding the above, no acreage will be withdrawn from Easement Lands for the purpose of allowing privatized hunting during the term of this Easement.

7. SURFACE USE AGREEMENTS. Both parties shall meet prior to March 1 of each year to develop potential unitization opportunities that facilitate public hunting, fishing, or trapping while reducing confusion, trespass potential, and lessee concerns. Draft unitization recommendations shall be posted on both parties' websites for public review and comment, and any final unitization(s) shall be incorporated into the Easement Lands Map by means of amendment to the Easement Lands Map.
8. CANCELLATION. If the State Game Commission fails to timely pay the annual rental when due or if the State Game Commission or the Commissioner materially violate any of the terms, covenants or conditions contained herein, the non-violating party may cancel this Easement after thirty (30) days written notice to the violating party of the nature of such violation(s). The thirty-day period shall commence on the date the written notice is mailed by registered mail, or hand-delivered. The non-violating party may cancel the Easement thirty days following the delivery of the notice if the violating party has not cured the default in the manner discussed below. Such cancellation shall terminate all rights held by the violating party under this Easement. If, however, within the thirty-day notice period, the violating party substantially complies with all demands made by the non-violating party in the notice, or if substantial completion is not reasonably possible, cancellation (for other than the payment of money by the State Game Commission) shall not be made if the violating party has initiated cure by that date and reasonably pursues completion. If the default (other than the non-payment of money by the State Game Commission) is not cured within a commercially reasonable period of time following commencement of cure, this Easement and all rights associated with it shall terminate without further notice. If a default can be

cured only by monetary payment, said monies must be received by the Commissioner or the Department in full within sixty (60) days of the date of the notice, or the Easement and all rights associated with it shall terminate without further notice. Interest shall accrue on monies owed at the rate of one percent (1%) per month, pursuant to NMSA 1978, 19-1-3 (1953).

9. ACCESS. This Easement does not grant a right of entry upon lands not under the control and custody of the Commissioner. If Easement Lands are fenced and no gate exists to provide vehicle access to them from an immediately adjacent public highway or established road, access shall be limited to travel by foot. The Department and the Commissioner will work together to identify GPS waypoints (“Access Points”), by which motor vehicle access to Easement Lands exists as of the execution of this Easement, and by which such access to Easement Lands will continue to be made available to the Department and its Licensees. The Department and the Commissioner will publish the location of the various GPS waypoints on a map, which will be available publicly on both agency webpages. The aforementioned Access Points will remain open during all hunting, fishing and trapping seasons. The Commissioner will ensure that any gates at these Access Points will be free from locking mechanisms that are not able to be opened by the Department or State Land Office personnel. If any of these Access Points are locked during open season, the Commissioner authorizes Department personnel to open such Access Points by cutting the chain immediately next to the lessee’s lock or, if no chain accompanies a locking mechanism, the lock itself but ensures closure of the Access Point. This will allow the conservation of wildlife within the Easement Lands, as well as prevent straying of livestock onto public roadways, thereby avoiding potential danger to the public. For purposes of this Easement, the definitions of “established roads” and “public highways” or “public roads” include:

- a. definitions provided for such terms by section 67-2-1 NMSA 1978; and
- b. roads built and/or maintained on public land by equipment which show no evidence of being closed to vehicular traffic by such means as berms, ripping, scarification, reseeding, fencing, gates, barricades or posted closures. Such roads must reasonably indicate recent (i.e., within a prior period), continuous usage or consistent usage during prior periods open for hunting, fishing or trapping on public land. In addition, observable two-track roads are included. A two-track road is defined as one which shows use prior to hunting seasons for other

purposes, such as recreation, mining, logging and ranching or shows no evidence of being closed to vehicular traffic by such means as berms, reseeding, gating, fencing or signing.

The Department and the Commissioner will meet within 30 days of the execution of this agreement to discuss additions, deletions, and other changes to the Access Points. Access Points will be finalized by May 15 of each year.

The Department shall provide the State Land Office with a dedicated after-hours point of contact for law enforcement-related calls and complaints, including but not limited to reports of violations, locked gates or other access problems, and resource damage (such as unlawfully cut fences or unauthorized road construction).

10. **VEHICLE AND OHV USE.** Vehicles of any kind, including but not limited to Off-Highway Vehicles, are restricted to public roads or highways, or established roads as defined in Paragraph 9 above. There will be no off-road vehicle access to retrieve game. Certified Mobility Impaired Hunters, or other hunters with approved reasonable accommodations as determined by the Department, may drive vehicles off established roads only if they have obtained prior authorization by the Department to do so.

11. **CAMPING.** Camping is authorized:

- a. in areas where camping is a practical necessity for the exercise of this Easement for Licensees of the State Game Commission when permitted by and at the discretion of the Commissioner, in consultation with the Director of the Department (whether camping is a practical necessity shall be within the sole and exclusive discretion of the Commissioner);
- b. in areas where camping is not a practical necessity for the exercise of this Easement, only as permitted by the surface lessee;
- c. at pre-approved camping locations on Easement Lands, which locations are identified by legal description in **Exhibit B**, attached hereto;
- d. dispersed/roadside camping in specific areas and Game Management Units designated by the Commissioner; and
- e. backpack camping in specific areas and Game Management Units designated by the Commissioner.

Usage of campground sites shall be limited to the relevant license term or maximum of fourteen (14) days, whichever is less. Notwithstanding the

above, camping or parking a trailer or motor vehicle, within three hundred (300) yards of a man-made water hole, water well or watering tank is prohibited without the prior express consent of the Commissioner or the surface lessee.

12. **GROUND BLINDS.** Attaching any ground blind to, or physically using water wells, metal, plastic, fiberglass, or rubber water tanks or windmills to establish blinds is prohibited without the prior express consent of the surface lessee.

13. **ACCOMPANIMENT.** Up to three (3) guests may accompany each licensed hunter, angler or trapper, including but not limited to scouting.

14. **OUTFITTER AND GUIDE PERMITS.** All individuals seeking to provide commercial big game hunting services on state trust lands are required to obtain a permit through the Commissioner and must abide by State Game Commission rules. The Department will notify individuals seeking to provide commercial big game hunting services on Easement Lands of this requirement and will further request proof of possession of such permit from an individual encountered on Easement Lands providing commercial big game hunting services. The Department will provide the Commissioner the identifying information of any individual who fails to produce such proof of permit. Upon the receipt of a written memorandum from the Commissioner evidencing that she has substantiated a violation of State Land Office law or regulations, the Commission, after appropriate due process, may administratively assess points against the individual determined to be in violation.

15. **APPROPRIATION.** The performance of this agreement is subject to the condition that funds are appropriated, and allocated by the Legislature of the State of New Mexico or federal government. If sufficient appropriations are not made, this agreement may be terminated by the State Game Commission. The State Game Commission's determination as to whether sufficient appropriations are available shall be accepted by the Commissioner and shall be final.

16. **NOTICE.** The State Game Commission agrees to notify its agents, employees, Licensees and permittees of the rights granted herein and the obligations to the Commissioner and other authorized users of Easement Lands that the State Game Commission, its agents, employees, Licensees, and permittees hereby assume.

17. **COORDINATED RESOURCE MANAGEMENT.** In order to promote a

coordinated and cooperative approach to the administration of this Easement and its impact on Easement Lands, the parties shall meet periodically during the term of the Easement to discuss all aspects of the Easement's administration, including such issues as each party's rights and obligations under the Easement, wildlife management and population objectives, land resource conditions, conflict resolution and efforts to inform the general public about the Easement. The parties shall meet at least once each year or when requested by either party.

18. AMENDMENT. This agreement shall only be amended by mutual consent of the parties in writing.
19. ENFORCEMENT; NO INDIVIDUAL RIGHTS CREATED. Only the parties to this Easement have standing to enforce it. It does not confer individual legal rights (including those of a third-party beneficiary) on persons who hold licenses or permits from the State Game Commission, or on any other individuals, corporations or other entities.
20. ENTIRE AGREEMENT; SEVERABILITY; GOVERNING LAW. This Easement represents the entire agreement of the parties with respect to the subject matter hereof, any previous oral or written agreement inconsistent with the terms of this Easement notwithstanding. If any part of this Easement should be found by a court of competent jurisdiction to be unenforceable, the remainder of this agreement shall remain in full force and effect. This Easement shall be applied and interpreted under the laws of New Mexico.
21. COOPERATION. The parties shall attempt to resolve at the local level all conflicts or other issues, including access. The local District Resource Manager on behalf of the Commissioner and a local Conservation Officer on behalf of the Department shall meet to attempt to resolve such issues. If a State Trust Lands lessee or their agent has wrongfully denied access to or upon Easement Lands to an authorized State Game Commission Licensee, the local District Resource Manager, on behalf of the Commissioner, may authorize the local Conservation Officer, as the agent of the Commissioner, to provide access by cutting the chain, cable or lock or removing any berms, blockages, fences or other barriers on Easement Lands preventing access. The Commissioner shall use all reasonable actions to ensure that State Trust Land lessees or permittees do not impede or interfere with authorized access to the Easement Lands by the Department or Licensees of the State Game Commission.

IN WITNESS WHEREOF, the parties have executed this Easement as of the date of signatures below.

NEW MEXICO COMMISSIONER OF PUBLIC LANDS

By: _____
STEPHANIE GARCIA RICHARD,
COMMISSIONER

Date: _____

NEW MEXICO STATE GAME COMMISSION

By: _____
SHARON SALAZAR HICKEY
CHAIR

Date: _____