



**Stephanie Garcia Richard, Commissioner of Public Lands
State of New Mexico**

BID PACKET OUTLINE

Long-Term Solar Energy Lease Number ES-0168
Valencia County, New Mexico

THIS BID PACKET CONTAINS THE FOLLOWING EXHIBITS:

1. BID INFORMATION SHEET
2. NOTICE OF PUBLIC AUCTION
3. SOLAR ENERGY LEASE ES-0168
4. BID APPLICATION AND QUALIFICATION FORM
5. LIST OF ENCUMBRANCES
6. NMSLO RULE 9 (19.2.9 NMAC) BUSINESS LEASING
7. SEALED BID FORM
8. MAP



**Stephanie Garcia Richard, Commissioner of Public Lands
State of New Mexico**

EXHIBIT 1: BID INFORMATION SHEET

Long-Term Solar Energy Lease Number ES-0168
Valencia County, New Mexico

I. GENERAL INFORMATION.

The New Mexico Commissioner of Public Lands (the “Commissioner”) will accept sealed bids seeking the highest bid for a long-term solar energy lease, ES-0168 (the “Lease”), for a renewable energy (solar power) facility, which must conform to any and all restrictions and reservations in the Lease, and all applicable laws and rules including but not limited to 19.2.9.1- 19.2.9.21 NMAC. ES-0168 is for 79.96 ± acres of state trust lands located in Valencia County, New Mexico. The Lease will permit a renewable energy (solar power) facility, subject to all environmental requirements and all other restrictions and reservations of record. This bid information sheet is part of a bid packet, and describes the state trust lands offered for lease under ES-0168 and some of the principal terms of this Lease. It also describes the qualifications required and the process by which qualified persons or entities may bid on the Lease. The entire bid packet should be reviewed before submitting a bid.

II. DESCRIPTION OF THE LAND OFFERED FOR LEASE. The land is offered only as a single parcel of 79.96 Acres ±, and is described as follows (the “Land”):

Township, Range, Section	Subdivision	Acreage
07N03E32	SW4SW4, Pt. SE4SW4 (39.7707 ± ac.), Pt. SW4SE4 (0.1921 ± ac.)	79.9628 acres
Total Acreage:		79.9628 acres, more or less

- A. Location: The property is located approximately 6 miles east of Los Lunas, near the community of Meadow Lake, NM.
- B. Known Encumbrances: See Bid Packet, Exhibit 5: List of Encumbrances on State Trust Lands.
- C. Inspection of the Land: Permission from the Commissioner is required to access and inspect the Land. Please contact the New Mexico State Land Office (“NMSLO”), Office of Renewable Energy for information on obtaining a permit at (505) 827-5724 or visit the public website www.nmstatelands.org.

- D. Bidders Responsible for Due Diligence: The Land is offered “AS IS” and will be leased as a single tract only. Bids to lease less than the entire Land will not be considered. Prospective bidders are encouraged to inspect the records for the Land at the NMSLO and the Valencia County Clerk’s Office, and to apply to the Commissioner for a permit to physically inspect the Land. The Commissioner makes no representation or warranty, express or implied, written or oral, with respect to the condition of the Land, or its fitness, suitability, or availability for any particular use.
- E. Surrounding Area: Subject tract exists primarily as gently sloping range land coming off the Manzano foothills with slopes ranging from level to no more than 3%. There are transmission lines that run just north of section 32 that run parallel to Meadow Lake Rd.

III. LEASE TERMS.

- A. The Lease will require the Lessee to submit a plan to develop, manage and operate a renewable energy (solar power) facility.
- B. See Exhibit 3 for a complete copy of Solar Energy Lease ES-0168.

IV. BIDDER QUALIFICATION.

- A. Application: The bidder should submit a complete application including the qualifications of the bidder to develop the Land, to construct the improvements contemplated by the prospective bid Lease, and to provide the NMSLO’s trust beneficiaries with sustainable long-term returns from the intended use. The bidder qualification criteria are set out more fully in Exhibit 4, Bid Application and Qualification Form.
- B. Deposits: Deposits may be in the form of a certified or cashier’s check or bank money order, made payable to the Commissioner of Public Lands. Deposits may also be sent via ACH. Please contact the SLO Accounting Dept. at (505) 827-5785 for ACH instructions. Actions which will result in disqualification of a deposit and the related bid include without limitation: funds being drawn on banks or issuers located outside the United States, payment of deposits being subject to contingencies unrelated to the transaction, or deposit documents which are postdated. The deposits of unsuccessful bidders will be refunded, minus the application fee which is non-refundable. If no person or entity qualifies to bid or submits a bid, the applicant nominating the land to be auctioned and leased will be responsible for payment of all advertising costs. The successful bidder shall pay the total costs of advertising and will be billed for any lease sale costs in excess of the amounts set out in the transaction deposit. The monies to be submitted as part of the bidder qualification prior to bidding on this lease are:

1. Application Fee (non-refundable)	\$ 500.00
2. Transaction Deposit (estimated advertising cost)	\$ 9,000.00
3. First Year Rent Deposit	\$ 5,997.21
Total Qualification Deposit:	\$ 15,497.21

- C. Application and Deposit Submittal: To qualify to bid on lease ES-0168, a completed Bid Application and Qualification Form (Exhibit 4), and total qualification deposit must be received at the New Mexico State Land Office (P.O Box 1148, Santa Fe, NM, 87504;

310 Old Santa Fe Trail, Santa Fe, NM, 87501; or in the drop-box on the front of the State Land Office Building at 310 Old Santa Fe Trail) Attn: Commissioner of Public Lands, **no later than 3:00 p.m. (MST) on Tuesday, September 3, 2024.**

V. PUBLIC AUCTION.

- A. Notice: Notice of the auction of the Lease has been published as required by law in *Santa Fe New Mexican*, *Valencia County News Bulletin*, and the *Newsline for the Blind*. A copy of the public notice is attached hereto as Exhibit 2: Notice of Public Auction. The public notice is also posted on the NMSLO website, www.nmstatelands.org. Bid packets may be obtained by contacting the Office of Renewable Energy at (505) 827-5724, emailing ORE@slo.state.nm.us, or online at www.nmstatelands.org.
- B. Sealed Bid Process: The auction will be in the form of a sealed bid. Only bidders who submit a complete Bid Application and Qualification Form (see Exhibit 4) may submit a sealed bid. The minimum bonus bid amount is ten thousand dollars (\$10,000.00) with additional amounts in increments of five thousand dollars (\$5,000.00) each. The bonus bid amount should be indicated on the Sealed Bid Form and sealed in a separate envelope. The envelope containing the Sealed Bid must be plainly marked “**ES-0168 AUCTION-SEALED BID, not to be opened until September 11, 2024 at 9:30 am.**” Sealed bids may be submitted, by mail, express delivery, personal delivery during regular business, or in the drop-box on the front of the State Land Office Building at 310 Old Santa Fe Trail, to the Commissioner of Public Lands and must be received **no later than 3:00 p.m. (MST) on Tuesday, September 3, 2024.** All bids submitted will be opened at the date, time and place set forth below.
- C. Sealed Bid Opening:

Date:	Wednesday, September 11, 2024
Time:	9:30 am (MST)
Place:	New Mexico State Land Office 310 Old Santa Fe Trail, Santa Fe, NM 87501
- D. Deposit of Bonus Bids; Clearing of Deposits: The successful bidder must deliver to the Commissioner any bonus bid within five (5) business days of the auction. The Lease must be executed within thirty (30) days of the sealed bid opening except that the Commissioner may in their sole discretion extend this deadline to a maximum of one-hundred and twenty (120) days after the auction.

VI. RESERVATIONS; ADDITIONAL TERMS AND CONDITIONS.

- A. Reservation of Commissioner’s Right to Authorize Other Land Uses: The successful Lessee will have exclusive use of the Land for wind energy development purposes for the term of the Lease. The Lease reserves the Commissioner’s right to grant additional land uses for the Land, including granting rights-of-way and easements, licenses and permits over, upon, or across the Land for any purposes whatsoever, provided that such uses are compatible with wind energy development, including, but not limited to recreation, public

highways, railroads, tramways, telephone, telegraph, and power lines, irrigation works, conservation, environmental or remediation studies or work, water or sewer lines, drainage ditches, mining, or logging, but excluding easements to third parties for wind energy development. The Commissioner shall not permit any other such uses to unreasonably interfere with Lessee's construction of improvements on or under the Land and/or Lessee's business operations on the Land. The Lease also includes provisions regarding assignment and subleasing, leasehold mortgages and protections of lenders, relinquishment, default, insurance, indemnification, and compliance with laws and NMSLO rules, including but not limited to 19.2.9.1-19.2.9.21 NMAC.

- B. Lease Changes: The Commissioner may consider proposed reasonable changes to the Lease, prior to or after execution, but will not reduce the rent or deviate from any provision required under the statutory, constitutional, or other legal obligations of the Commissioner or the Lessee. Among other things, the Commissioner may agree to reasonable changes to the Lease to improve finance ability of the project, or to amend or change the scope of the project. The Commissioner reserves the right to impose reasonable additional rents or fees in consideration for any such amendments.
- C. Disqualification of Bidder; Selection of Alternate Qualified Bidder: The Commissioner may disqualify a bidder and declare the next highest qualified bidder to be the successful bidder, or declare that no bid was successful, if: a) the bidder withdraws its bid within ten (10) days of being selected as the successful bidder; or, b) the bidder fails to submit the consent to dual use within thirty (30) days of the auction; or, c) bidder fails to deposit bid amount within five (5) days of auction d) if the Commissioner and the bidder for any reason do not agree on the final terms of a written Lease and fail to execute such an agreement within thirty (30) days of the auction (unless otherwise extended up to 120 days at the sole discretion of the Commissioner). If the Commissioner disqualifies the initial highest qualified bidder and declares a new successful bidder, the new successful bidder must pay all deposit monies as provided in Paragraph IV(B) and (C) within ten (10) days.
- D. Additional Inquiries: The bid packet (including the proposed Lease) contains detailed information regarding the Lease and the auction, and it should be the primary source of information for prospective bidders and other interested persons. If you would like additional information not clearly addressed by the bid packet, all inquiries must be submitted in writing (by mail, express delivery or email) to the Office of Renewable Energy, ORE@slo.state.nm.us , 310 Old Santa Fe Trail, Santa Fe, NM, 87501 or P.O. Box 1148, Santa Fe, NM 87504. Inquiries must include the inquirer's name, institutional affiliation (if any), and contact information. All inquiries and official responses thereto will be provided to all persons or entities that have requested bid packets, and will also be posted on the New Mexico State Land Office website, www.nmstatelands.org.



**Stephanie Garcia Richard, Commissioner of Public Lands
State of New Mexico**

**EXHIBIT 2: NOTICE OF PUBLIC AUCTION
Long-Term Solar Energy Lease Number ES-0168
Valencia County, New Mexico**

The New Mexico Commissioner of Public Lands (the “Commissioner”) will accept sealed bids seeking the highest bid for the following long term solar energy lease (the “Lease”) for renewable energy (solar power) facilities.

This prospective Lease will be offered at auction on September 11, 2024. Additional information is available in the bid packet for this prospective Lease, available at <http://www.nmstatelands.org> or upon request as detailed below. The entire bid packet is incorporated with this notice by reference and should be reviewed before submitting a bid.

Description of the Land: The land for this lease is offered as a single parcel only, located in the State of New Mexico N.M.P.M., and is described in the table below (the “Land”):

Township, Range, Section	Subdivision	Acreage
07N03E32	SW4SW4, Pt. SE4SW4 (39.7707 ± ac.), Pt. SW4SE4 (0.1921 ± ac.)	79.9628 acres
Total Acreage:		79.9628 acres

- 1) Summary of Basic Provisions of the Lease: The land identified above for the prospective Lease is offered to be leased pursuant to State Land Office Rule 9 (19.2.9 NMAC) for the purpose of operating renewable energy (solar power) facilities, and is subject to the terms and conditions authorized in the prospective Lease. The term of the prospective Lease is for up to fifty (50) years. Per Section 4 of the prospective Lease, the prospective lessee (“Lessee”) shall pay to the Commissioner (“Lessor”) as rent for the Land and for the rights and privileges granted in the lease:

First Year’s Base Rent is \$75.00 per acre. For the proposed Lease area of 79.9628 acres, first year’s rent amount for lease ES-0168 is \$5,997.21.

Operations Base Rent for the prospective Lease begins when the solar power facility starts generating energy. The rent for operations phase base year, year one (1) will be \$7,000.00 per megawatt (MW) of installed capacity. The Lease contains additional fees, including a ground

disturbance charge in the amount of \$79.96 (Section 4.2.1) and a Solar Power Device Installation Charge in the amount of \$2,000.00 per megawatt of Installed Capacity (Section 4.2.2). Additional Operation Base Rent parameters, including Percent Rent, are referenced in Section 4.1.2 of the Lease.

Decommissioning Phase Rent for the prospective Lease: Lessee shall pay Lessor a one-time Decommissioning Phase Rent of \$3.00 per acre, payable upon commencement of decommissioning activities on the leased Land, as described in Section 4.1.5 of the Lease.

- 2) **Requirements and Qualification of Bidders & Required Deposits:** Only qualified bidders may submit a sealed bid. In order to qualify to submit a sealed bid, prospective bidders must first submit the following, for the Lease: a) a completed application meeting the statement of minimum qualifications- Exhibit 4, b) an application fee of \$500.00; c) an advertising deposit and d) the first year's rent, for a Total Qualification Deposit which is listed in the table below. If no person or entity qualifies to bid or submits a bid, the applicant nominating the land to be auctioned and leased will be responsible for payment of all advertising costs. This Total Qualification Deposit is payable to "Commissioner of Public Lands."

Lease Number	Application Fee	Advertising Deposit	First Year's Rent	Total Qualification Deposit
ES-0168	\$500.00	\$9,000.00	\$5,997.21	\$15,497.21

- 3) **Application and Deposit Submittal:** The application and qualification deposit must be received at the New Mexico State Land Office, P.O Box 1148, Santa Fe, NM, 87504 (USPS postal mail) or 310 Old Santa Fe Trail, Santa Fe, NM, 87501 (courier service or hand delivery), Attn: Commissioner of Public Lands, **no later than 3:00 p.m. (MST) on September 3, 2024.** Deposits may be in the form of a certified or cashier's check or bank money order, made payable to the Commissioner of Public Lands. Deposits may also be sent via ACH. Please contact the SLO Accounting Dept. at (505) 827-5785 for ACH instructions.
- 4) **Sealed Bid Auction:** The auction will be conducted via sealed bid. Only bidders who have submitted a complete application and met the qualification requirements may submit a sealed bid. The minimum bonus bid is \$10,000.00, with additional amounts in increments of \$5,000.00.
- a. The bonus bid amount should be entered on the bid form and sealed in a separate envelope. The envelope containing the sealed bid must be plainly marked with specific lease number and **"AUCTION-SEALED BID, not to be opened until September 11, 2024 at 9:30 am."** Sealed bids may be submitted by mail, express delivery, or in person to the Commissioner of Public Lands and must be received **no later than 3:00 p.m. (MST) on Tuesday September 3, 2024.** All bids submitted for the prospective Lease will be opened at the date, time and place of the auction as set forth below. The Bonus Bid may be paid in the form of a certified or cashier's check or bank money order, made payable to the Commissioner of Public Lands. Deposits may also be sent via ACH. Please contact the SLO Accounting Dept. at (505) 827-5785 for ACH instructions.

Date: Wednesday, September 11, 2024
Time: 9:30 am (MST)
Place: New Mexico State Land Office
310 Old Santa Fe Trail, Santa Fe, NM 87501

- 5) Selection of the Winning Bidder: The Lease, if any, will be awarded to the bidder making the highest bid, taking into consideration the bonus bid, total bid value and other factors. If two or more sealed bids by qualified bidders are equal in amount and exceed the amount of any and all other sealed bids by qualified bidders, the Commissioner may exercise her discretion to request oral bids at the bid opening or cancel the lease auction. In the event that the bid opening is cancelled, all qualified bidders will be notified by mail at the address provided in the submitted application. The Commissioner reserves the right to reject all bids or to cancel this auction, and to reinstate the process of offering the Land for long-term lease, sale or exchange on the same or different terms. The successful bidder must deposit with the Commissioner the bonus bid amount no later than five (5) business days after auction. If the bonus bid is not timely submitted, the Commissioner may disqualify the bidder and declare the next highest qualified bidder to be the successful bidder, or declare that no bid was successful.
- 6) How to Get Additional Information: Additional information is available in the bid packet for the Lease. The bid packet is incorporated in this notice by reference and should be reviewed in detail before attempting to qualify to bid. To obtain more information about this Lease or a copy of the bid packet, please go to <http://www.nmstatelands.org> or contact:

Office of Renewable Energy
Commercial Resources Division
NM State Land Office
310 Old Santa Fe Trail
Santa Fe, NM 87501
(505) 827-5724
Email: ORE@slo.state.nm.us

Disabled individuals who require aid to participate in the Lease auction may call (505) 827-5760; Fax (505) 827-5766 and /or TTY (800) 659-8331.

Stephanie Garcia Richard
Commissioner of Public Lands



**Stephanie Garcia Richard
Commissioner of Public Lands
State of New Mexico**

Exhibit 3: SOLAR ENERGY LEASE

Lease No. ES-0168

**Commissioner of Public Lands
NEW MEXICO STATE LAND OFFICE
310 Old Santa Fe Trail
P.O. Box 1148
Santa Fe, New Mexico 87504-1148**

This Lease (this “**Lease**”) is entered into between the New Mexico Commissioner of Public Lands, the acting trustee for the Enabling Act Trust, established in the Act of June 20, 1910, 36 Statute 557, Ch. 310, (“**Lessor**”) and _____ (“**Lessee**”) (Lessor and Lessee are each a “**Party**” and together they are the “**Parties**”) and is effective as of the __ day of _____, 2024 (the “**Effective Date**”). In consideration of the payments and performance by the Parties of each of the provisions set forth herein, the Parties agree as follows:

1. DEFINITIONS. Definitions set forth in State Land Office Rule 9 (19.2.9.7 NMAC) are incorporated herein by reference, unless otherwise modified or defined below, and should be referred to when reading this Lease. In the event of any conflict between State Land Office Rule 9, as enacted as of the Effective Date and the definitions below, this lease shall control. Certain other terms are defined in context in the body of this Lease. All defined terms include terms in conjugative form (e.g., “Convert” also defines “Converting”, “Converted”, “Conversion”, etc.).

1.1. Affiliate. Affiliate shall mean: (a) any corporation or limited liability company which, directly or indirectly, through one or more intermediaries, is under the Ownership and Control of Lessee; (b) any corporation or limited liability company which, directly or indirectly, through one or more intermediaries, Owns or Controls Lessee; or (c) any corporation or limited liability company which is under common Ownership or Control with Lessee. For purposes of defining Affiliate, “Ownership and Control” means the capacity of an entity to control, directly or indirectly, the decision-making, business and affairs of another entity.

1.2. Approval. Express written consent given by Lessor or an authorized representative, on forms prescribed by Lessor which approval will not be unreasonably withheld, conditioned, or delayed.

1.3. Assignee. Any person or entity to whom a full or partial assignment of this Lease is made.

1.4. Collateral Assignment/Leasehold Mortgage. A collateral assignment, security interest or mortgage of Lessee's interest, in this Lease or Improvements (or any portion thereof), granted to a Lender as security for a debt, as more fully described in Section 8.

1.5. Collector-System Transmission Facilities. Overhead and underground electric transmission, distribution and collection lines (including towers, wires, and cables), roads and interconnection and switching facilities, constructed by Lessee to transport electricity from Solar Power Devices to one or more substations, whether on or off the Land, or provided by the local utility provider for back-feed or substation power.

1.6. Commencement of Construction. The day Lessee begins installation of the first Improvement.

1.7. Convert. The Solar Power Devices' conversion of potential solar energy in the atmosphere from a potential solar resource into electricity.

1.8. Decommissioning Surety. Lessee's bond or other surety for completing the Decommissioning Plan, as more fully described in Section 5.5.1.

1.9. Decommissioning Phase. The portion of the Lease Term during which Lessee will undertake the decommissioning activities described in Section 3.3.2.1.3 and Section 3.3.2.1.4.

1.10. Decommissioning Costs. All costs, solely at Lessee's expense, to implement and complete the Decommissioning Plan, as more fully described in Section 5.5.

1.11. Decommissioning Plan. As more fully described in Section 5.5, a comprehensive plan for the removal of all Improvements and equipment associated with Solar Power Facilities, and for Restoration of the Land, which plan will include a schedule for completion of such decommissioning activities and a performance standard in connection with the Power Production on the Land. Such Plan shall be completed by Lessee at Lessee's sole expense, and shall be approved by the Lessor pursuant to Section 3.2.

1.12. Delivery. The delivery of electricity from the Solar Power Facilities to the transmission grid and end users through Transmission Facilities.

1.13. Environmental Incentives. Any and all credits, benefits, emissions reductions, offsets and allowances of any kind, howsoever entitled, attributable to the Project or the electric energy, capacity or other solar energy generation-based products produced therefrom, including: (a) any avoided emissions of pollutants to the air, soil or water, such as sulfur oxides, nitrogen oxides and carbon monoxide, and any rights related thereto; (b) any avoided emissions of methane, carbon dioxide and other "greenhouse gases" that have been determined by the United Nations

Intergovernmental Panel on Climate Change or any other governmental, quasigovernmental or nongovernmental agency or body to contribute to the actual or potential threat of altering the earth's climate by trapping heat in the atmosphere, and any rights related thereto; (c) green pricing programs, green tags, renewable energy credit trading programs; (d) environmental air quality credits, emission credits, greenhouse gas reduction credits, environmental set-offs and similar benefits; and (e) any reporting rights relating to the reduction of "greenhouse gases" under Section 1605(b) of the National Energy Policy Act of 1992 or under any other federal, state, local or foreign law, rule or regulation related to the reduction of air pollutants or "greenhouse gases" or the trading of emissions or emissions credits, including so-called "green tags" or "green certificates."

1.14. Extension Term. That term of five (5) years following the Operations Phase, should Lessee exercise its right to extend this Lease as provided in Section 3.1.1.

1.15. Force Majeure. Fire, earthquake, flood, or other casualty or accident; war, civil strife or other violence; any law, order, proclamation, regulation, ordinance, action, demand or other requirement of any governmental agency or utility that could not be reasonably anticipated as of the Effective Date; or any other act or condition beyond the reasonable control of a Party that renders that Party's performance impossible or impracticable.

1.16. Foreclosure. Any action or proceeding, judicial or non-judicial, to transfer Lessee's interest in this Lease as a result of or in connection with the enforcement, or threatened enforcement, of the rights of a Lender.

1.17. Government Approvals. Any authorization, approval, consent, waiver, exception, license, registration, ruling, permit, tariff, certification, exemption, and any other action or requirement by or with a governmental authority relating to Lessee's activities pursuant to this Lease, including but not limited to, the construction, use, operation, placement, replacement, removal or discontinuance of the Solar Power Facilities and other Improvements or Lessee's execution, delivery, or performance of this Lease.

1.18. Governmental Authority. Any New Mexico County, municipal, state, federal, or other, governmental entity with regulatory authority over the Land or the activities under this Lease.

1.19. Grid Interconnection Transmission Facilities. Substations, electric transmission lines (including towers, wires, and cables), roads, and interconnection and switching facilities that transmit or distribute electricity, which may cross the Land pursuant to a separate agreement and are situated on the "grid side" of any Solar Power Facilities constructed under this Lease, and that interconnect to a utility transmission system.

1.20. Gross Revenues. All revenues actually received by Lessee from the sale of electricity generated by Solar Power Devices installed on the Land, including the sale for cash of Environmental Incentives of any kind to any purchaser, and payments received from any purchaser that are based on curtailed energy rather than energy sold. "Gross Revenues" does not include: (a) the value of any Tax Credits or similar incentives not sold for cash; (b) payments under equipment warranties; and (c) any insurance payments other than that paying for the loss of cash revenue that would have been received for the sale of electricity generated on the Land. If Lessee sells the

production, energy, electricity or capacity from the Solar Power Facilities located on the Land to an Affiliate or other person or entity in any way related to Lessee, then “Gross Revenues” means all consideration paid for said production, energy, electricity or capacity, regardless of time or place of receipt, under the first contract which is an arms’ length bona fide transaction. In the event that electrical energy produced from Solar Power Devices located on the Land is commingled with electrical energy produced from Solar Power Devices located on other lands, then Lessee shall, using such methods, calculations, procedures and/or formulae as Lessee may in good faith adopt, allocate to the Land a portion of the Gross Revenues received from such commingled electrical energy.

1.21. Hazardous Material. Oil, petroleum products, explosives, inflammables, PCBs, asbestos, formaldehyde, radioactive materials or waste, or other hazardous, toxic, or contaminated materials, substances, pollutants or wastes, including, without limitation, any substance, waste, or material which is defined or listed as a “hazardous substance,” “hazardous waste,” “hazardous material,” “toxic substance,” “medical waste,” “regulated substance,” or which is otherwise controlled or regulated because of its toxicity, infectiousness, radioactivity, explosiveness, ignitability, corrosiveness or reactivity, under any federal, state, or local statute, regulations, or ordinances relating to landfills, medical waste, industrial hygiene, environmental protection (including the protection of ground or surface water) or the manufacture, use, generation, presence, analysis, transportation, handling, storage, treatment or disposal of any such material, substance, or waste.

1.22. Improvement. Any non-mobile item of tangible property developed, placed, created or constructed on the Land by Lessee, including but not limited to private buildings, structures, roadways, infrastructure, permanent equipment, fixtures, and Solar Power Facilities.

1.23. Initial Phase. The initial portion of the Term, not greater than five (5) years in duration, commencing on the Effective Date and expiring on the Operations Date or earlier Termination. The Initial Phase may be extended for a maximum of two (2) years, to extend the Initial Phase to a maximum of seven (7) years total, upon Lessor’s approval, if Lessee can demonstrate that best efforts have been made to move towards the Operations Phase.

1.24. Installed Capacity. The aggregate Manufacturer’s Nameplate Capacity of the Solar Power Devices installed by Lessee on the Land.

1.25. Land. All that certain real property owned by Lessor and located in Valencia County, New Mexico, as more particularly described on the attached **Exhibit A** and incorporated herein by this reference. The Land and any portion thereof may also be referred to in this Lease as the “**Leased Premises.**”

1.26. Land Office. The New Mexico State Land Office, which is the state agency, established in NMSA 1978, Section 19-1-1, through which Lessor manages the Trust.

1.27. Land Office Rules. All of Title 19 Chapter 2 NMAC, as amended from time to time; NMSA 1978, Chapter 19; the Enabling Act for New Mexico (Act of June 20, 1910, 36 Stat. 557, Ch. 310); all current and future constitutional provisions, statutes, rules and amendments thereto governing the Land.

1.28. Lease Anniversary. Any anniversary of the Effective Date.

1.29. Lease Term. That period of 50 years, commencing on the Effective Date and expiring on the 50th anniversary thereof (unless terminated earlier as provided in this Lease or extended by the Extension Term), and which may consist of the Initial Phase, the Operations Phase, the Decommissioning Phase, and if any, the Extension Term.

1.30. Lease Year. Each twelve (12) month period of this Lease, commencing on the Effective Date and every Lease Anniversary thereafter.

1.31. Lender; Affiliate of Lender. Any financial institution or other person or entity that from time to time takes a Collateral Assignment/Leasehold Mortgage. The term “Lender” includes any affiliate of Lender; and an “affiliate of Lender” means an entity that has or acquires control, is or becomes controlled by, or is or comes under control of Lender.

1.32. Lessor-Related Person. Any person or entity: (a) claiming a right to use the Land or any constituent parts of the Land, including minerals, oil and gas, who claims such right by, through or under Lessor; or (b) that is an employee, contractor, representative or invitee of Lessor.

1.33. Manufacturer’s Nameplate Capacity. The direct current (DC) megawatt capacity of any Solar Power Devices, as determined by the manufacturer.

1.34. Minor Deviations. Minor Deviations shall mean (a) relocation of Solar Power Facilities from the locations shown on the Project Plans, so long as such relocation is within the areas designated in the Project Plans as potential sites for such Solar Power Facilities; or (b) a reduction in the Solar Power Devices originally shown on the Project Plans due to topographical, geologic or other factors not known at the time of the preparation of the Project Plans.

1.35. Operations Date. The date on which any Solar Power Facilities installed by Lessee on any portion of the Land, begin Power Production and Deliver and sell electricity to a purchaser. The generation of Test Energy shall not trigger the Operations Date.

1.36. Operations Phase. The portion of the Lease Term commencing on the Operations Date and continuing up until the Decommissioning Phase, and allowing for the activities described in Section 33.3.2.

1.37. Intentionally Left Blank.

1.38. Power Production. The generation of electricity using the Solar Power Facilities.

1.39. Project Plans. Plans that set out the use and development of the Land to construct, operate and decommission the Project, which shall include: (a) a list and general description of proposed Improvements to be installed and constructed on the Land; (b) a proposed site plan; (c) boundary and topographic surveys for the Land; (d) a plan for complying with any land use requirements imposed by Governmental Authority for the construction and operation of the Project; (e) all other required Government Approvals, or a plan for obtaining same; (f) a cultural properties survey; (g) a biological assessment; (h) a Phase I Environmental Assessment; (i) a Hazardous Material storage and handling plan, if one is so required by Governmental Authority;

(j) evidence that a Power Purchase Agreement has been secured or is being negotiated, if applicable; and (k) a Decommissioning Plan, as detailed in Section 5.5.

1.40. Qualified Assignee. An assignee of Lessee that is: (a) any person or entity (i) having a net worth of at least the amount required in the Bid Application and Qualification Form for this Lease, (ii) having at least five (5) consecutive years of experience managing or operating a similar generating facility either through direct experience of it or its Affiliates or through a manager contracted to manage the Project, and (iii) a commitment and the ability to fully comply with all other duties and obligations of Lessee under this Lease; or (b) a Lender who meets the qualification of (a)(i) and (a)(iii) and has engaged a manager meeting the qualifications of (a)(ii).

1.41. Relinquishment. Lessee's voluntary cession of this Lease, pursuant to 19.2.9.19 NMAC and the terms of this Lease, Approval of which shall not be unreasonably withheld by the Lessor.

1.42. Repower. To expand or change a Solar Power Facility in a manner that results in a change in the Installed Capacity.

1.43. Restoration. The process of returning the surface of the Land to as near the same condition as the Land was on the Effective Date as is practicable, damage from reasonable wear and tear and casualty excepted, including: (a) returning the Land to the same grade and casting seed to achieve a similar vegetative state; (b) complying with any remediation of Hazardous Material, as required and directed by any local, state or federal regulatory agency; (c) complying with all Lessor's policies, rules and directives regarding reclamation, remediation, restoration, and removal of improvements; and (d) completing all activities described in the Decommissioning Plan.

1.44. Solar Energy Development. Solar resource evaluation (including any testing, assessments, or surveys to be delivered as part of the Project Plans or as required for Governmental Approvals and as permitted by Section 3.3.1.2); development, operation, use, maintenance, repair, repowering, restoration and removal of Solar Power Facilities; conversion of solar energy into electrical energy; agreements and work to promote the construction of and secure access to Grid Interconnection Transmission Facilities; and collection, distribution, transmission, and Delivery of the electrical energy (whether such electricity is produced on or off the Land) so Converted through the operation of the Solar Energy Project.

1.45. Solar Energy Project or Project. Any and all Improvements (that is, all Solar Power Devices, Collector-System Transmission Facilities, Grid Interconnection Transmission Facilities, Solar Power Facilities, structures, equipment, machinery, wires, conduits, fibers, cables, poles, materials and property of every kind and character constructed, installed and/or placed on, above or below the Land) that are constructed, developed or operated on the Land by Lessee or Lessee's designees, assigns, or sublessees, as an integrated system to generate, via the sun, and collect, transmit deliver electrical power.

1.46. Solar Monitoring Stations. Solar measurement equipment of common industry size and character.

1.47. Solar Power Facilities. Solar Power Devices, Grid Interconnection Transmission Facilities, Collector-System Transmission Facilities, energy storage facilities, telecommunications equipment, overhead transmission line(s), and power generation facilities to be operated in conjunction with large solar power installations, roads, solar measurement, monitoring and recording equipment and facilities, control buildings, maintenance yards, and related facilities and equipment that are necessary for Solar Energy Development on the Land.

1.48. Solar Power Devices. The physical hardware, including but not limited to photovoltaic panels, mirrors, lenses, concentrators, control technology, fluids, tubing, engines, motors, directly related equipment and other hardware installed to utilize the sun's energy to directly or indirectly produce electricity.

1.49. Tax Credits and Incentives. Federal, state and local production tax credits (including credits under Section 45 of the Internal Revenue Code, 26 U.S. Code § 45), production incentive payments and other renewable energy tax credits arising out of the electrical energy generated by the Project and the sale, transportation and distribution of such energy.

1.50. Termination. The cessation of this Lease and the rights granted to Lessee, herein due to the natural expiration of the Term, Lessee's Relinquishment, Lessee's uncured Payment Default, or other termination event as described in this Lease.

1.51. Test Energy. Energy produced by any Solar Power Facilities installed in the Project in order to test the initial performance of the Project.

1.52. Trust. The trust established and confirmed by the Enabling Act, Act of June 20, 1910, 36 Stat. 557, Ch. 310.

2. LEASED PREMISES.

2.1. Land. For and in consideration of and subject to the terms, conditions, covenants and reservations contained herein, Lessor hereby leases the Land to Lessee. The rights to enter, occupy and use the Land for Solar Energy Development are exclusive to Lessee.

2.2. Purpose; Permitted Uses. Lessee agrees and covenants to Lessor that it will enter, occupy and use the Land solely and exclusively for Solar Energy Development, and for transmission of electricity whether such electricity is produced on or off the Land.

2.3. Ingress/Egress. Lessee has rights of vehicular and pedestrian access, ingress to and egress from the Solar Power Facilities on the Land, in and over the Land, at such locations as Lessee shall determine, for purposes related to or associated with the Lease Phases and the Project. In addition, Lessee may use and improve any existing roads and access routes from time to time located on or providing access to the Land pursuant to the Project Plans, provided however that this does not grant any rights to roads and access routes on land that is not under the control of Lessor. Lessee's ingress and egress uses are subject to the rights of any pre-existing leases or other encumbrances as enumerated in **Exhibit B.**

2.4. Soil Testing. Lessee has the non-exclusive right to extract soil samples, perform geotechnical tests, and conduct such other tests, studies, inspections and analyses of or on the Land

as Lessee deems necessary, useful, or appropriate. At Lessor's request, Lessee shall share the results of all such tests with Lessor.

2.5. Improvements; Approval and Authorized Improvements. Lessee may install Improvements on the Land in accordance with the terms of this Lease and the Project Plans approved by Lessor, as provided in Section 3.2 and pursuant to 19.2.9.16(B) NMAC. Improvements approved by Lessor will be deemed Authorized Improvements. Lessor hereby preapproves for placement on the Land the "Improvements," as defined in Section 1.22, and such Improvements are hereby deemed "Authorized Improvements" subject only to Lessor's approval of Project Plans in compliance with Section 3.2. Lessee shall clearly designate in its Project Plans any Improvements that Lessee considers to be Grid Interconnection Transmission Facilities. No other Improvements may be placed on the Land without the prior Approval of Lessor. If, during the course of construction, Minor Deviations from the Project Plans are necessary to implement the Project, Lessee shall not be required to seek approval for Minor Deviations, however, in the event Lessee must make changes or additions to the Project Plans that are not Minor Deviations, then Lessee shall seek the approval of such revised deviations by submitting to Lessor an amendment to the Project Plans. Any such proposed amendment shall be submitted to Lessor not fewer than thirty (30) days before commencement of installation of construction of such revised deviation; Lessor shall not unreasonably withhold approval of such amendment. At the conclusion of construction Lessee will submit an as-built drawing showing final placement of Improvements. If Lessee installs or places unauthorized improvements on the Land Lessor may, after reasonable written Notice to Lessee and an opportunity to meet and confer regarding the equipment or improvement, declare title to such improvements in Lessor without payment of compensation to Lessee, order the removal of such improvements and the Restoration at Lessee's expense of the Land to their condition existing prior to the placement of said improvements, or require such other action as the Parties mutually agree.

2.6. Ownership of Improvements. Any Authorized Improvements, on the Leased Premises, are hereby severed by agreement and intention of the parties and shall remain severed from the Leased Premises, and shall be considered with respect to the interests of the Parties hereto as the property of Lessee or a Lender designated by Lessee, subject to Lessor's lien in accordance with Section 19-7-34 NMSA 1978, and, even though attached or affixed to or installed upon the Premises, shall not be considered to be fixtures or a part of the Leased Premises and shall not be or become subject to the lien of any mortgage or deed of trust heretofore or hereafter placed on the Leased Premises by Lessor. The Solar Power Facility and other Authorized Improvements shall at all times retain the legal status of personal property as defined under New Mexico law and in no way shall Lessor have an ownership interest or any other interest in any part thereof.

3. LEASE TERM, PROJECT PLANS AND PHASES.

3.1. Lease Term. Unless this Lease is Terminated during the Initial Phase, upon the Operations Date this Lease will automatically be extended for the Operations Phase, which shall continue until the earlier of: (a) completion of the Decommissioning Phase; (b) Relinquishment; or (c) any earlier Termination of this Lease, provided that the Lease will not terminate until the

Decommissioning Phase activities have been completed by Lessee, except as otherwise provided by the terms of this Lease.

3.1.1. Provided Lessee is not in default hereunder, Lessee shall have the option to apply to renew this Lease upon the end of the Operations Phase for one (1) Extension Term of five (5) years. If either Party desires to exercise such option, it shall give written notice to the other Party not later than ninety (90) days prior to the end of the Operations Phase.

3.2. Project Plans.

3.2.1. Submission of Proposed Preliminary Project Plans. At least six (6) months before the Lessee reasonably anticipates the Commencement of Construction, Lessee shall deliver to Lessor Proposed Preliminary Project Plans, including an outline of the items that are required to be included in Project Plans, about which Lessee and Lessor shall meet and confer on an informal basis. Lessor and Lessee shall discuss the Proposed Preliminary Project Plans with the intention of facilitating Lessee's submission of Project Plans pursuant to Section 3.2.3 which may be approved by the Lessor.

3.2.2. Lessee shall develop Project Plans and locate the Solar Power Facilities in such locations on the Land as are reasonably satisfactory to both Lessor and Lessee, based on both: (a) Lessor's constitutional mandate to facilitate productive use of state trust Land while ensuring that the Land are protected and maintained for future generations; and (b) Lessee's expertise with respect to solar project development and siting. All Improvements will be located to avoid interference with wildlife corridors, environmentally sensitive areas, and cultural properties. Unless Lessee can demonstrate that compliance is impracticable, Lessee's Project Plans shall be drafted in accordance with the New Mexico State Land Office Best Management Practices ("**BMPs**"), attached hereto as Exhibit C, or, in the alternative, Lessee shall demonstrate, to Lessor's reasonable satisfaction, why compliance with one or more of the BMPs is impracticable and any applicable mitigation measures that Lessee shall undertake to address such noncompliance. For the avoidance of doubt, Lessor's consideration of the Project Plans shall not involve Lessor's review and/or satisfaction with the Project's economics or profitability.

3.2.3. Delivery of Project Plans. As soon as Lessee has completed the Project Plans, but no later than ninety (90) days before Lessee reasonably anticipates the Commencement of Construction, Lessee shall deliver to Lessor the Project Plans, which shall include all of the elements listed in the definition of Project Plans at Section 1.39. If Lessee elects to develop and construct the Project in phases, the Project Plans must identify a proposed phasing plan and the timeframes estimated for the development of each phase. Lessee may opt to clearly mark any portion of each set of Project Plans that contains bona fide trade secrets or information that is otherwise treated as confidential under New Mexico law as "CONFIDENTIAL" in which case Lessor will treat it as confidential information required to be submitted under this Lease, pursuant to NMSA 1978, Section 19-1-2.1.

3.2.4. Completeness of Project Plans. Project Plans shall be considered administratively complete if such plans include all of the elements listed in the definition of Project Plans at Section 1.39 and are accepted by Lessor. Lessor shall provide Lessee with written notification within sixty (60) days of the submission of the Project Plans either: (a) confirming that the Project

Plans are administratively complete; or (b) identifying any deficient element(s) of the Project Plans.

3.2.5. Project Plan Conference. Lessee and Lessor shall confer regarding the Project Plans within thirty (30) days after: (a) issuance of written notification indicating the Project Plans are complete; or Lessee's correction or supplementation of all deficient element(s) of the Project Plans as described in Section 3.2.4. This conference will provide Lessee an opportunity to present its Project Plans to Lessor, explain how the Project Plans comply with Section 3.2.2, and address any Lessor questions related to the Project Plans. If practicable, Lessee and Lessor shall meet in person and conduct a site visit to facilitate Project Plan consultation.

3.2.6. Project Plan Approval. Lessor shall endeavor to provide Lessee with written confirmation of Approval of the Project Plans within thirty (30) days after: (a) the Project Plan conference described in Section 3.2.5; or (b) such time after Lessee has resolved any remaining deficiencies in the Project Plans identified in connection with the Project Plan conference described in Section 3.2.5. Lessor's final Approval of the Project Plans, which shall not be unreasonably withheld, is required prior to Lessee's Commencement of Construction.

3.2.7. Changes to Project Plans. If, at any point following submission of Project Plans but before Commencement of Construction, Lessee makes changes to the Project Plans that result in changes that are not Minor Deviations, Lessee shall re-submit those Project Plans to Lessor. Within thirty (30) days of such re-submission, at Lessor's discretion depending on the nature of the proposed changes: (a) Lessee and Lessor will confer regarding the resubmitted Project Plans, consistent with Section 3.2.4; or (b) Lessor will provide Lessee with updated written confirmation of Approval of the Project Plans.

3.3. Lease Phases; Permitted Uses; Project Plans.

3.3.1. Initial Phase – Duration. The Initial Phase will commence on the Effective Date. If the requirement to deliver Project Plans for Lessor's review and the Parties' conferral, as set forth in Section 3.2 above, is not satisfied by the fifth (5th) Lease Anniversary, the Initial Phase will expire and this Lease may be terminated pursuant to Section 5.4 below. Lessee shall provide summary annual reports to Lessor listing all improvements and activities of the land. If, however, Lessee satisfies the requirement to deliver Project Plans for Lessor's review as set forth in Section 3.2, then the Initial Phase will expire upon the Operations Date.

3.3.1.1. Initial Phase - Permitted Uses and Delivery of Project Plans.

3.3.1.2. Permitted Uses. The Initial Phase includes both due diligence and construction of the Project. During the Initial Phase, Lessee may use and occupy the Land to determine the feasibility of Conversion and other power generation on the Land by: (a) installing, operating, maintaining, repairing and removing Solar Monitoring Stations; (b) undertaking geotechnical reviews, environmental, biological and cultural assessments, surveying, title examination, site engineering, soil sampling and other activities for determining the suitability of the Land for a Solar Energy Project and in further evaluating the site to ensure it is viable for moving into construction and other activity necessary for generating the Project Plans; (c) obtaining all required Government Approvals for the present and any subsequent phases of the

Project; (d) working with and seeking access and other types of agreements with third parties for the development and construction of Grid Interconnection Transmission Facilities; and (e) construction of Solar Power Facilities on the Land.

3.3.2. Operations Phase. The Operations Phase will commence on the Operations Date (Lessee will notify Lessor of the Operations Date in writing) and shall continue for the remainder of the Lease Term, which shall include any unused portion of the Initial Phase and the Extension Term, if applicable. During the Operations Phase, Lessee may complete construction of Solar Power Facilities on any portion of the Land, if not completed during the Initial Phase; begin Power Production; and Convert and Deliver through the operation of Solar Power Facilities constructed on the Land and in connection with Solar Power Facilities on adjacent property or elsewhere. Lessee shall provide summary annual reports to Lessor listing all improvements and activities of the land. Lessee may also maintain, repair, operate, replace, relocate, or remove the Solar Power Facilities and may repower pursuant to the terms of this Lease.

3.3.2.1. Decommissioning Phase.

3.3.2.1.1. Commencement and Duration of the Decommissioning Phase. The Decommissioning Phase will commence, in accordance with a Decommissioning Plan approved by Lessor and consistent with Section 5.5, upon the earlier to occur of: (a) fifteen percent (15%) or more of Lessee's Installed Capacity has not been in operation for a continuous period of at least six (6) months; or (b) no fewer than eighteen (18) months before the natural expiration of this Lease. The Decommissioning Phase will continue until the earlier of: (a) completion of the activities in the Decommissioning Plan; or (b) Termination. Decommissioning must be completed within eighteen (18) months of the commencement of activities in the Decommissioning Plan approved by Lessor but not later than the natural expiration of this Lease; provided, however, this eighteen (18) month period may be reasonably extended in the event of Force Majeure.

3.3.2.1.2. Decommissioning Phase; Permitted Activities. During the Decommissioning Phase, Lessee shall undertake activities, whether accomplished by Lessee or a third party authorized by Lessee to act on its behalf, for the Restoration of the Land as required by the terms of this Lease pursuant to the Decommissioning Plan.

3.3.2.1.3. Decommissioning Activities. During the Decommissioning Phase, Lessee shall remove all above-ground Solar Power Facilities from the Land to a depth of thirty-six (36) inches below grade, exclusive of any continuing right established pursuant to this Lease to survive the Term, and restore the soil surface to a condition reasonably similar to its original condition. If Lessee fails to remove such Solar Power Facilities as of the date this Lease expires, Lessor may sue for specific performance, and/or call upon Lessee's Reclamation and Restoration Bond to complete decommissioning.

3.3.2.1.4. Decommissioning Activities Will Include Grid Interconnection Transmission Facilities by Future Agreement. Lessor and Lessee hereby expressly agree that, if there are Solar Power Devices and Collector-System Transmission Facilities on the Land that are integral to or part of Grid Interconnection Transmission Facilities, Lessee's Decommissioning obligations will not automatically extend to those facilities, and Lessor and Lessee shall negotiate in good faith to agree on Decommissioning obligations with respect to those facilities. This does

not relieve Lessee of the obligation to seek a separate agreement with Lessor for any Grid Interconnection Transmission Facilities to be constructed on the Land.

3.4. Holding Over. Nothing herein grants Lessee the right to hold over or otherwise enter the Land for any purpose after Termination without the prior written Approval of Lessor. In the event Lessee holds over after the Termination, without the express written consent of Lessor, such tenancy will be month-to-month only, and will not constitute a renewal hereof or an extension for any further term, and in such case the applicable Rent, on a monthly basis, will be two hundred percent (200%) of the highest Rent paid during the most recent phase prorated for each month thereof. Such Rent will be prorated and payable monthly and such month-to-month tenancy will be subject to every other applicable term, covenant and agreement contained herein.

4. CONSIDERATION FOR LEASE.

4.1. Rent. Throughout the Term, in consideration of the rights granted hereunder, Lessee shall pay Lessor the Rental Payments provided herein without notice or demand.

4.1.1. Initial Phase Rent. Lessee shall pay Lessor rent during the Initial Phase annually in advance beginning within thirty (30) days of the Effective Date and continuing up to and including the Lease Year during which the Operations Date occurs, as follows (the “**Initial Phase Rent**”):

Initial Phase Year	Rural (<5000) Per Acre
1	\$75.00
2	\$100.00
3	\$150.00
4	\$350.00
5	\$700.00
6 (optional)	\$1,000.00
7 (optional)	\$1,500.00

4.1.2. Operations Phase Rent. Operations Phase Rent shall include Operations Phase Base Rent.

4.1.3. Operations Phase Base Rent. Within thirty (30) days after the Operations Date, and on or before the first of each Lease Year thereafter, preceding the Decommissioning Phase, Lessee shall pay annually in advance an “**Operations Phase Base Rent Payment**” for the forthcoming twelve (12) month period of \$7,000.00/megawatts alternating current Installed Capacity. A three percent (3%) annual increase will commence on the second Operations Phase Base Rent payment and continue annually through the remainder of the Operations Phase. Operations Phase Base Rent Payments for partial 12-month-periods shall be prorated. In no event shall the Operations Phase Base Rent be less than highest Initial Phase Rent paid by Lessee, regardless of how many acres of land are under lease after any relinquishment of leased acres.

4.1.4. Intentionally Left Blank.

4.1.5. Decommissioning Phase Rent. Lessee shall pay Lessor Decommissioning Phase Rent of three dollars (\$3.00) per acre payable upon commencement of the Decommissioning Phase as described in Section 3.3.2.1 of this Lease. Any Operations Phase Base Rent Payment made for any period in which the Decommissioning Phase begins will be prorated.

4.1.6. Rental Interest and Late Fee. Interest on delinquent Rental Payments due will accrue at the rate of 1.0 percent (1.0 %) per calendar month or any fraction thereof, from thirty (30) days past due and after all applicable notice and cure periods, until received by Lessor in full (the “**Lease Interest Rate**”). In addition, Lessee shall pay a late payment processing fee equal to five hundred dollars (\$500.00). All interest and late fees that become due under this Lease shall be considered additional Rent under this Lease.

4.2. Installation Charges.

4.2.1. Ground Disturbance Charge. Lessee shall pay a one-time ground disturbance fee of one dollar (\$1.00) per acre of Land (the “**Ground Disturbance Charge**”). The Ground Disturbance Charge must be paid to Lessor prior to the Commencement of Construction of the Project.

4.2.2. Solar Power Device Installation Charge. In addition to the Ground Disturbance Charge described in Section 4.2.1 above, Lessee shall pay a one-time installation charge of two thousand dollars (\$2,000.00) per megawatt of Installed Capacity constructed on the Land in any lease phase, including upon Repowering of any existing Solar Power Devices. Lessee shall pay the Solar Power Device Installation Charge prior to the Commencement of Construction on such Solar Power Devices.

4.3. Intentionally Left Blank.

4.4. No Representation. Notwithstanding Lessee’s Rent obligations, this Lease will not be construed as imposing upon Lessee a good faith obligation to commence or continue generating electricity or derive receipts therefrom at any time. Other than those representations and warranties set forth in Section 5 below, Lessee has neither made, nor makes, any representations or warranties, verbally, in any written estimates of production, in this Lease or otherwise, concerning the likelihood that Lessee will install Solar Power Facilities on the Land or that any Solar Power Facilities installed on the Land will generate electricity during any period of time. Lessor acknowledges that the operation of any Solar Power Facilities installed on the Land is subject to adverse weather, equipment failures and other events beyond the control of Lessee which may interrupt or prevent electricity generation.

4.5. Credits. Lessee shall be exclusively entitled to apply for, collect, receive, and obtain the benefit of all Tax Credits and Environmental Incentives arising out of the electrical energy generated by the Project and the sale, transportation and distribution of such energy (collectively, “**Credits**”). Lessor shall reasonably assist Lessee in applying for and receiving such Credits.

5. COVENANTS, CONDITIONS, RESTRICTIONS, AND RESERVATIONS.

5.1. Lessee Relinquishment. Pursuant to 19.2.9.19 NMAC, the Lessor preapproves relinquishment without penalty to Lessee at any time during the Initial Phase, but subject to Lessee's Land Restoration and Decommissioning Plan obligations (if any) as to any land so Relinquished. If Lessee wishes to relinquish all or any part of the Lease during the Operations Phase, Lessee may obtain Lessor's Approval in good faith providing that the Lease is in good standing, the land is returned in compliance with Section 1.43 within a reasonable time. Any Relinquishment during the Operations Phase shall not impair the value, utility, beneficial value, use or merchantability of any relinquished property. Lessor's Approval shall not be unreasonably withheld. At any time, Lessee may fully or partially relinquish this Lease upon three (3) months' advance written notice ("Notice of Termination") to Lessor and delivery of the relinquishment form. Lessee shall not be entitled to any refund of rent already paid nor any reduction in the scheduled Initial Phase Rent. The portion of the Land remaining after any partial relinquishment of this Lease shall thereafter be the "Land" for purposes of this Lease and all payment amounts based on acreage shall be adjusted accordingly.

5.2. Requested Relinquishments. Following the Initial Phase, Lessor may deliver to Lessee a written request that Lessee Relinquish any portions of the Land not needed by Lessee to realize Installed Capacity, to host the Solar Power Facilities and properly operate, protect and maintain the Project as it exists on those phases already in operation or under active construction or to construct and operate future phases of the Project consistent with Lessee's submitted Project Plans ("**Required Areas**"). Within forty-five (45) days after any such written request, (a) if Lessee agrees with such Relinquishment request, Lessee will deliver to Lessor all documents required by Lessor to effect such Relinquishment; or (b) Lessee will deliver to Lessor written evidence that such portions of the Land constitute Required Areas. If Lessee Relinquishes any portion of the Land as requested by Lessor under this Section 5.2, such Relinquishment will be without fee or penalty, and Lessee's rent shall be reduced in proportion to the percent of Land relinquished.

5.3. Delivery of Land Upon Relinquishment. At the Relinquishment of all or any portion of the Land, Lessee shall immediately deliver possession of the relinquished portions of Land to Lessor, subject to Lessee's Land Restoration and Decommissioning Plan obligations.

5.4. Lessor's Right to Terminate Prior to Commencement of Construction. Lessor may, in Lessor's sole discretion, terminate this Lease without penalty or further obligation to Lessee if: (a) Lessee fails to timely comply with all requirements of Section 3.2 or Lessor has not approved the Project Plans in accordance with Section 3.2.6. Lessee will not be entitled to any refunds, damages or compensation of any type that may result, directly or indirectly, from such cancellation. Lessor will send Lessee notice of Lessee's failure to submit Project Plans, and Lessee will have thirty (30) days to cure such failure.

5.5. Decommissioning and Restoration. The Decommissioning Plan shall include the removal of all Project Improvements to a depth of thirty-six (36) inches and Restoration of the surface of the land, and shall include an estimate of cost to complete the Decommissioning Plan. The Decommissioning Plan shall be prepared by, and bear the seal and signature of, a licensed New Mexico professional engineer pursuant to and prepared in compliance with the New Mexico Engineering and Surveying Practice Act, NMSA 1978, Sections 61-23-1 through 61-23-33, and the rules promulgated under that authority, or another similarly qualified New Mexico professional approved in advance by Lessor. The Decommissioning Plan will be based upon such information

as is known to Lessee at the time and upon such assumptions as are reasonable at the time. Every tenth Lease Anniversary following the Effective Date, Lessee shall update the Decommissioning Plan (including the cost estimate for Decommissioning Costs), and shall re-submit the plan and costs to Lessor for Lessor's Approval, not to be unreasonably withheld.

5.5.1. Decommissioning Bond or Surety. Lessee shall file the Decommissioning Bond or Surety (in the initial amount described below) with Lessor prior to beginning construction of the Solar Power Facilities. The amount of the Decommissioning Bond or Surety shall be based upon the findings of an independent engineer engaged in the business of decommissioning wind power facilities (the "**Independent Engineer**"), such Independent Engineer to be selected by the Lessee with the reasonable Approval of the Lessor. The Independent Engineer shall consider, among other things, the cost to remove the Improvements, the cost to perform reclamation and restoration activities, and the disposal costs and scrap or reuse value of the Improvements (the "**IE Determined Decommissioning Costs**"). Lessor shall have the right to review the findings of the Independent Engineer to confirm the calculation of the amount of the IE Determined Decommissioning Costs. The Lessee's Decommissioning Bond or Surety shall remain in force until the completion of the Decommissioning Phase and all aspects of the Decommissioning Plan. Upon written request, Lessor may request Lessee provide Lessor with information and documentation to confirm the existence and maintenance of such Decommissioning Bond or Surety in favor of Lessor. Lessor shall not release the Decommissioning Bond or Surety until Lessor has approved completion of all elements of the Decommissioning Plan. The Lessee shall be required to obtain the Decommissioning Bond or Surety in the amount of twenty (20) percent of the IE Determined Decommissioning Costs prior to performing any surface disturbance or construction. Lessee shall increase the amount of the Decommissioning Bond or Surety every five (5) years in the amount of twenty (20) percent of the IE Determined Decommissioning Costs as set forth below:

Years One through Five. Lessee shall obtain and maintain a Decommissioning Bond or Surety in the amount of twenty percent (20.0%) of the IE Determined Decommissioning Costs, as determined by the Independent Engineer.

Years Five through Ten. Lessee shall increase and maintain the Decommissioning Bond or Surety by an additional twenty percent (20.0%) of the IE Determined Decommissioning Costs, so that the Decommissioning Bond or Surety shall equal forty percent (40.0%) of the IE Determined Decommissioning Costs, as determined by the Independent Engineer.

Years Ten through Fifteen. Lessee shall increase and maintain the Decommissioning Bond or Surety by an additional twenty percent (20.0%) of the IE Determined Decommissioning Costs so that the Decommissioning Bond or Surety shall equal sixty percent (60.0%) of the IE Determined Decommissioning Costs, as determined by the Independent Engineer.

Years Fifteen through Twenty. Lessee shall increase and maintain the Decommissioning Bond or Surety by an additional twenty percent (20.0%) of the IE Determined Decommissioning Costs so that the Decommissioning Bond or

Surety shall equal eighty percent (80.0%) of the IE Determined Decommissioning Costs, as determined by the Independent Engineer.

Years Twenty through End of Term. Lessee shall increase and maintain the Decommissioning Bond or Surety by an additional twenty percent (20.0%) of the IE Determined Decommissioning Costs so that the Decommissioning Bond or Surety shall equal one hundred percent (100.0%) of the IE Determined Decommissioning Costs, as determined by the Independent Engineer, and shall maintain said Decommissioning Surety until the Lease term has expired.

Every tenth (10th) Lease Year, Lessee shall submit a redetermination of the IE Determined Decommissioning Cost by the Independent Engineer, and upon such re-determination by the Independent Engineer, the amount of the Decommissioning Bond or Surety will be adjusted accordingly (and if within the first twenty (20) years, in accordance with the applicable percentages set forth above).

5.6. Condition of Land. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, LESSEE IS LEASING THE LAND “AS IS” BASED ON LESSEE’S OWN INSPECTION AND INVESTIGATION OF AND JUDGMENT REGARDING THE LAND. LESSOR MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND OR NATURE WITH REGARD TO THE LAND OR WITH REGARD TO THIS TRANSACTION. Lessee acknowledges that Lessee is responsible for performing its own due diligence and for becoming fully familiar with the condition of the Land and any applicable restrictions, uses, or other conditions that might affect its development or use for a particular purpose.

5.7. Hazardous Material. Lessee agrees it will not use, store, dispose of or release any Hazardous Material on the Land and Lessor will not cause or permit to exist or be used, stored, disposed of or released on the Land any Hazardous Material, except in such quantities as may be required in agricultural use of the Land and only if such use is not harmful to Lessee or its employees, contractors, guests, invitees, licensees, permittees, agents, and assigns, and is in full compliance with all applicable Laws. Lessee shall have no liability for any violation (past, present or future) by Lessor or Lessor’s agents or contractors of, any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any substance, material or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state or local laws or regulations, on or under the Land. Lessee covenants and agrees that: (a) Lessee shall not use, store, dispose of or release on the Land; and (b) Lessee will not cause or permit to exist or be used, stored, disposed of or released on the Land as a result of Lessee’s operations, any Hazardous Material, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Lessor or its employees, or other lessees of the Land, and is in full compliance with all applicable laws.

5.8. Fire Prevention and Emergency Response. Upon Lessee becoming aware of any needed repair to any Improvement, Lessee shall follow prudent utility and industry practice to promptly repair such Improvement; provided, however, if such repair is of a downed wire or other condition which poses an immediate threat of harm to persons, livestock, or wildlife or a threat

of fire (each, an “Emergency”) on the Land, Lessee will respond as soon as safely possible to remedy such condition, and notify Lessor in writing immediately of such Emergency. Lessee shall indemnify, protect and hold harmless Lessor against any claim of liability or loss from personal injury or property damage in connection with such needed repair or downed wire or other condition constituting a risk of an Emergency caused by such condition, to the extent such loss was caused by Lessee or its contractors, agents, employees, or representatives. All brush and undergrowth near, under or adjacent to any power generation, transmission equipment or any other improvement shall be removed before and during construction and installation and regularly during the Lease term.

5.9. Responsible Use of the Land. All uses of the Land will be planned with due diligence to accomplish the Project in accordance with this Lease, and all other reasonable requirements of the Governmental Authority which are reasonably required by Lessor to protect the Trust. Lessor, as a State of New Mexico government entity, is not subject to Governmental Authority ordinances. Lessee shall nevertheless conform its Project Plans and amendments to applicable reasonable Governmental Authority requirements as if the Project were occurring on private land unless otherwise required by Lessor.

5.10. Cooperation with Existing Lessees. Lessee shall obtain consent from the holder of any agricultural lease of the Land before this Lease goes into full effect, if such consent has not already been granted by the terms of the agricultural lease. Lessor shall provide information as may be reasonably necessary to assist Lessee in communicating with the holder of any agricultural lease regarding the potential impact of this Lease and any consent that may be required.

5.11. Sewage; Disposal of Waste. Disposal of sewage, liquid or solid waste on the Land by Lessee, unless approved by Lessor in the Project Plans or otherwise during the Term, is strictly prohibited.

5.12. No Unreasonable Interference. Neither Lessor nor any Lessor Related Person shall unreasonably interfere with or impair: (a) the free, unobstructed capture of solar light or energy (whether by constructing buildings or other structures, or otherwise); or (b) the lateral or subjacent support for the Improvements. This restriction will extend to any improvements or obstructions that may reduce, reflect or divert solar light or energy in any location within the boundaries of the Land; provided, however, that trees, structures and improvements located on the Land as of the Effective Date shall remain, and they may be maintained, repaired or replaced so long as they do not exceed the size or materially deviate from their location as of the Effective Date. Notwithstanding the foregoing, and consistent with the BMPs attached hereto as **Exhibit C**, Lessee may, as reasonably necessary, trim, prune, top or otherwise control the growth of any shrub, plant or other vegetation; dismantle, demolish, and remove any improvement, structure, embankment, impediment, berm, wall, fence or other object, on or that intrudes (or could intrude) into the Land that could obstruct, interfere with or impair the Solar Power Facilities, the unobstructed flow of solar energy or the use of the Land by Lessee hereunder. For purposes of this Section 5.12, Lessor or any Lessor Related Person shall be deemed to have unreasonably interfered or impaired the foregoing if any such interference or impairment reduces or restricts the Solar Power Facilities’ ability to generate electricity.

5.13. Emergency Exception. In case of explosion, fire, flood or other emergency, whether of the same or different nature, Lessee or Lessor may enter the Land and may take such steps and incur such expenses as in its reasonable opinion are required to deal with the emergency to safeguard life and property. In the event the emergency is discovered by Lessee first, the Lessee, as promptly as possible, shall report the emergency to the Lessor.

5.14. Existing Encumbrances. This Lease is subject to all valid and existing leases, easements, restrictions, reservations, and other encumbrances. Lessee has conducted its own due diligence search of Land Office, County and other pertinent records to determine all existing encumbrances on the Land. Without warranting accuracy, an informal search of Land Office records reveals the existence of the easements, rights of way, reservations, and encumbrances in the attached **Exhibit B**. Lessee may seek to obtain non-disturbance, subordination and other title curative agreements from any person with an encumbrance, lease or other exception to Lessor's fee title to the Land to the extent necessary to eliminate any actual or potential interference by any such person with any rights granted to Lessee under this Lease.

5.15. Reservations. To facilitate the purposes of this Lease, Lessor will provide Lessee with reasonable notice and opportunity for input before Lessor issues new leases for Subsurface Interests (defined in Section 5.15.1), explores or utilizes the Pore Space Rights (defined in Section 5.15.3), explores or utilizes the geothermal rights or other rights described in this Section 5.15, or issues a new grant to a third party of such rights (collectively "Reserved Land Development Rights"). Lessee and Lessor shall work together to ensure any Reserved Land Development Rights are exercised in a manner that does not adversely affect the rights granted in this Lease. Any Reserved Land Development Rights utilized by Lessor or granted by Lessor during the Lease Term will be located to avoid unreasonable interference with Lessee's use of the Land as provided for in this Lease, including any uses depicted in any preliminary versions or drafts of the Project Plans, to the extent that Lessee has made such known and available to Lessor prior to the granting or utilization of any such Reserved Land Development Rights. For purposes of this Section 5.15, the term "unreasonable interference" shall be deemed to include any interference that reduces or restricts the Solar Power Facilities' ability to generate electricity.

5.15.1. Subject to Section 5.15, all minerals of whatsoever kind in, under or upon the Land, including but not limited to (and all of which shall be collectively referred to as "**Subsurface Interests**"): oil and natural gas, helium, carbon dioxide, coal and lignite, uranium, brine, salt, copper, iron, lead, talc, barite, gold and silver, precious and semi-precious stones and jewels, caliche, building stones, shale, clay, sand, gravel, and all commercially valuable rock; all of the foregoing whether or not now known to exist or to have value, of whatever form or type, at whatever depth, in whatever nature of deposit, whether solid, semi-solid, liquid, or gaseous, whether similar or dissimilar to any of those minerals enumerated, and regardless of the method of extraction, whether by wells (including input wells), mining (including by subterranean, open-pit, or strip mines), surface or subsurface leaching or dissolution, or any other means now or hereafter known or employed;

5.15.2. Subject to Section 5.15, all geothermal resources in, under or upon the Land;

5.15.3. Subject to Section 5.15 above, all rights to use present and future underground spaces in all strata under the Land, whether in caverns, fissures, pores, on the surface of formation rocks or otherwise, for any commercially valuable purpose whatever, including but not limited to storage and/or permanent sequestration of fluids and gases and/or injecting fluids and gases to explore for and produce reserved geothermal resources and minerals (hereinafter, “**Pore Space Rights**”); Subject to Section 5.15 above: (a) all rights of access and surface use necessary for or reasonably incident to exploration for and extraction, injection, and removal of the reserved geothermal resources and minerals or the development and use of reserved Pore Space Rights; (b) the right to execute leases, permits and other agreements for geothermal resource and mineral exploration, development, and operation, and the use of reserved Pore Space Rights; (c) the right to sell or dispose of the geothermal resources, minerals or reserved Pore Space Rights; (d) the right to grant rights-of-way or entry and easements for geothermal, mineral and reserved Pore Space Rights purposes; (e) the right to prospect for, mine, produce, and remove geothermal resources and minerals, the right to prospect for and use reserved Pore Space Rights; and (f) the right to perform any and all acts necessary in connection with the foregoing reserved minerals, geothermal resources, and reserved Pore Space Rights;

5.15.4. Subject to Section 5.15 above, the right to grant rights-of-way and easements, licenses and permits over, upon, or across the Land for any purposes whatsoever, provided that such uses are compatible with Solar Energy Development, including, but not limited to recreation, public highways, railroads, tramways, telephone, telegraph, and power lines, irrigation works, conservation, environmental or remediation studies or work, water or sewer lines, drainage ditches, mining, or logging, but excluding easements to third parties for Solar Energy Development. To facilitate the purposes of this Lease, Lessor will provide Lessee with reasonable notice and opportunity for input before making such grant, except for easements or permits relating to hunting and fishing or recreational access. Rights-of-way and easements granted by Lessor during the Lease Term will be located to avoid unreasonable interference with Lessee’s use of the Land as provided for in this Lease, including any uses depicted in any preliminary versions or drafts of the Project Plans, to the extent that Lessee has made such known and available to Lessor prior to the granting of any right-of-way or easement. Lessee agrees to consider in good faith any request by Lessor that Lessee: (a) allow collection of transmission lines on Lessee Developed Solar Power Devices, Collector-System Transmission Facilities; and (b) allow usage of any excess capacity within Lessee Developed Solar Power Devices and Collector-System Transmission Facilities by other of Lessor’s lessees pursuant to reasonable terms negotiated under separate agreement, but whether Lessee agrees to allow such collection or usage of excess capacity will be in Lessee’s sole determination. Upon final review of Project Plans by the Lessor and the Governmental Authority, any rights-of-way and easements granted thereafter by Lessor shall be located to avoid unreasonable interference with the Solar Energy Project as described in the approved Project Plans. Lessor shall retain the right to access to the Land for administrative and field inspection purposes. When practical, Lessor shall give prior notice to Lessee’s onsite Project manager; provided, however, on active construction sites Lessor shall give at least forty-eight (48) hours prior notice of such entry (or as much advance notice as possible in the case of an emergency), and Lessee’s representative shall have the right to accompany such persons and be present for any inspections on construction sites. Lessee shall limit its construction, operation, and maintenance activities to include only those portions of the Land and those time periods necessary for actual construction, operation, and maintenance and

any associated staging for the Project or for individual phases. Lessee shall post notices of an appropriate size, number and location to give the public adequate notice of and to warn against trespass;

5.15.5. This Lease does not affect any rights that any surface lessees who are not parties to this Lease may otherwise have under applicable statutes and regulations. Lessor shall act in compliance with 19.2.8 NMAC with respect to all surface lessees. Lessee hereby agrees to carefully avoid destruction or injury to wildlife, natural resources, improvements or livestock lawfully upon the Land described herein, to close all gates immediately upon passing through same, and to pay promptly the reasonable and just damages for any injury or destruction arising from activities that are authorized by this Lease.

5.15.6. Lessor reserves all right, title and interest in or to the Land not expressly leased to Lessee under this Lease; and

5.15.7. Lessee may request a land use restriction agreement and/or a negative mineral easement to restrict the reserved rights identified in Section 5.15. Lessor may but is not required to issue such land use restriction agreement and/or negative mineral easement.

5.16. Water Wells; Water Rights. Lessee will not use, place, or develop water rights, and will not drill, complete, rework, re-drill, or recomplete any water wells on the Land without the express, written consent of Lessor, and without obtaining a water easement from Lessor, if required by Lessor. All water appropriated must be pursuant to applicable state law and regulations. Any water rights developed or placed on the Land are herein and hereby deemed to belong to Lessor, and all such rights must be developed in the name of Lessor. Lessee agrees to execute any documents necessary to effectuate the intent of this provision.

6. ASSIGNMENTS.

6.1. Assignments made in violation of this Section 6 or 19.2.9.14 NMAC will be null and void as to Lessor, will be deemed a breach of this Lease by Lessee, and will entitle Lessor to seek any remedies at law or in equity for third-party trespass or such other actual damages as may derive from such acts.

6.2. Pursuant to and subject to the requirements of 19.2.9.14(A) NMAC and 19.2.9.15(A) NMAC, Lessor hereby pre-approves any partial or complete assignment to an entity bound by the terms of this Lease provided that the assignment is made on the forms approved in advance by Lessor attached hereto as Exhibit D, and:

6.2.1. The assignment is to a Qualified Assignee; or the assignment is integral to an industrial revenue bond transaction; or,

6.2.2. The assignment of this Lease in whole or in part is to a tax equity investor, a subsidiary or Affiliate of Lessee; or,

6.2.3. The assignment is a Collateral Assignment/Leasehold Mortgage to a Lender or investor, as more particularly set forth in Section 8 below; or

6.2.4. The Assignee is a public utility regulated by the New Mexico Public Regulation Commission or its successor entity with such regulatory authority.

6.3. The assignee of an assignment made in conformity with the requirements of 19.2.9.14 NMAC and this Section 6 will, to the extent of the assignment, assume the subsequent rights and obligations of Lessee upon such assignment, and Lessee will be relieved from liabilities occurring subsequent to the date of assignment, but Lessee shall remain liable for all liabilities and unfilled obligations existing at the time of the assignment.

7. SUBLEASING.

7.1. Pursuant to and subject to the requirements of 19.2.9.14 NMAC, Lessee may sublease the Land with the prior written Approval of Lessor, which may be based on whether the proposed sublease will have an adverse effect on the utility of the Land and will not be unreasonably withheld. Approval or denial will be provided within 30 days.

7.2. All sub-lessees will be bound by the terms of this Lease, including but not limited to, all rent provisions, and no sublease shall extend beyond the Term of this Lease. Lessee will provide exact copies of all subleases to Lessor.

7.3. Lessee shall remain primarily liable, and any sub-lessee will be secondarily liable, for all sub-lessee performance under this Lease as well as for all acts or omissions of any sub-lessee. Lessee hereby agrees to indemnify Lessor for all claims or damages arising from or in connection with a sub-lessee's presence or activities on the Land.

8. COLLATERAL ASSIGNMENTS/LEASEHOLD MORTGAGES; PROTECTION OF LENDERS.

8.1. Collateral Assignments/Leasehold Mortgages. Lessee may not, at any time during the Term, mortgage, assign, pledge or encumber, to any Lender or investor, including a tax equity investor, all or any portion of Lessee or Lessee's rights and interests under this Lease, without first obtaining Lessor's Approval as to the form of any Collateral Assignment/Leasehold Mortgage, which Approval shall not be unreasonably withheld, conditioned, or delayed. Any such Collateral Assignment/Leasehold Mortgage shall be in compliance with the requirements of 19.2.9.15 NMAC. This Section 8.1 is prior approval as contemplated under 19.2.9.15 NMAC. Such a Lender, collateral assignee, or mortgagee, shall have a lien on Lessee's interest in this Lease, as well as any Improvements covered by the Collateral Assignment/Leasehold Mortgage, but will not have a lien on Lessor's interest in (i) the Land, (ii) this Lease, (iii) Improvements, if any, or (iv) in Lessor's reversionary interest in the real and personal property subject to this Lease. Any attempt to collaterally assign or mortgage Lessor's interest in this Lease, the Land, or any Improvements, not in accordance with the terms of this Section 8.1 is void and will not vest the purported Lender with any right, title, interest, claim or privilege with respect to Lessor's interest in this Lease, the Land, or Improvements. Lessor shall withhold enforcement of the lien arising

under NMSA 1978, Section 19-7-34, or any successor statute (as permitted by 19.2.9.12E(3) NMAC) until the expiration or earlier termination of this Lease, if at any time during the Lease Term Lessee or an approved collateral assignee or mortgagee deposits in an account in the name of Lessor as security, an amount reasonably estimated to equal the sum that would be paid by Lessee in that year under this Lease and maintains such amount promptly upon Lessor drawing on such amount for payment of rent hereunder. Lessor's Approval of a Collateral Assignment/Leasehold Mortgage of Improvements does not change the status of any Improvements as authorized, unauthorized, removable or permanent, unless otherwise agreed by Lessor in writing.

8.2. Terms and Conditions of Collateral Assignments/Leasehold Mortgages. A Lender shall take its interest subject to the following terms and conditions, and Lessee is required to give notice of such terms and conditions to its Lender upon making a Collateral Assignment/Leasehold Mortgage:

8.2.1. Parties stipulate and agree that any and all proceedings, judicial or non-judicial, to enforce or foreclose an Approved Collateral Assignment/Leasehold Mortgage shall be governed by the laws of the State of New Mexico and be filed exclusively in New Mexico state district court, First Judicial District in Santa Fe, New Mexico. Parties shall provide one another with prompt notice of any such action.

8.2.2. Lender shall provide notice to Lessor of any release or satisfaction by Lessee of a Collateral Assignment/Leasehold Mortgage within thirty (30) days after such release or satisfaction, which notice can be in the form of a copy of a release recorded in the real property records of the county where the Land is located.

8.2.3. Any successor in interest to Lessee's interest in this Lease, or in any Improvements, that acquires an interest in such property as the result of the enforcement or foreclosure of a Collateral Assignment/Leasehold Mortgage, or an assignment or conveyance in lieu of such enforcement or foreclosure, will be deemed to be an Assignee under Section 19.2.9.14 NMAC, and will be subject to the Approval of Lessor; provided that if the assignee is a Qualified Assignee, the assignment is deemed approved upon providing notice to Lessor of meeting the qualifications of a Qualified Assignee. If the successor would not qualify as a Qualified Assignee, then such successor shall thereafter either sell or convey the Land to a Qualified Assignee or engage a management company satisfying the requirements set forth in the definition of "**Qualified Assignee**" to manage and operate the Land. Except as specifically set forth in Section 8.3, no successor in interest will be approved by Lessor unless all sums due under the terms of this Lease have been paid in full, and all other pending duties discharged, or unless arrangements satisfactory to Lessor are made to fully pay such sums or discharge such duties.

8.3. Lender Protections.

8.3.1. If Lessor gives written notice to Lessee of a default under this Lease by Lessee, Lessor shall also give written notice of the Default to any Lenders. Such notice will be sent by certified mail to the most current name and address of the Lender provided to Lessor and no proof of receipt of such notice by the Lender will be required. A Lender will have the right to cure

Lessee's breach within the time periods provided to Lessee under this Lease plus forty-five (45) days, except to the extent Lender is prevented from curing a nonmonetary breach because Lender does not have possession of the Land, in which case Lender will have a reasonable amount of time to cure, so long as Lender is using commercially reasonable efforts to gain possession of the Land.

8.3.2. A Lender may succeed to the rights and duties of Lessee under such conditions as are provided in the agreement between Lessee and the Lender and the terms of this Lease.

8.3.3. Lenders will be permitted to go upon the Land, from time to time at the discretion of Lessee and under Lessee's supervision.

8.3.4. So long as an approved Collateral Assignment or Leasehold Mortgage is in force, no relinquishment, assignment, modification or amendment of this Lease, or portions thereof embraced under such Collateral Assignment/ Leasehold Mortgage, will be accepted or approved by Lessor without approval by Lender or release by Lender of its Collateral Assignment/Leasehold Mortgage. Lessor and Lessee will not terminate, suspend, amend or modify or take any action causing, consenting to, acquiescing in, or accepting the termination, suspension, amendment or modification if this Lease, if such amendment or modification would reduce the rights or remedies of any Lender hereunder or impair or reduce the security for any lien held by such Lender, without Lender's consent. Notwithstanding the provisions of this Section 8.3.4, Lessor retains all rights to terminate this Lease for default pursuant to Section 10.

8.3.5. So long as any Collateral Assignment/Leasehold Mortgage is in existence, unless this Lease has otherwise been terminated in accordance with its terms, the title to the Land and the leasehold estate of Lessee, therein created by this Lease, will not merge but must remain separate and distinct, notwithstanding the acquisition of said title and said leasehold estate by Lessor or by Lessee or by a third party, by purchase or otherwise.

8.3.6. Lessor shall, at Lessee's or a Lender's reasonable request, provide to Lessee and such Lender: (a) confirmation that such Lender is a "Lender" for purposes of this Lease; and (b) a memorandum of lease, which Lessee or a collateral assignee may record at their own expense, acknowledging the Lender's mortgage or other lien or encumbrance, and confirming the continuing effectiveness of this Lease, identifying any modifications hereto and any breaches or defaults hereunder. Lessor shall duly execute and return same to Lessee and/or Lender within 30 business days of Lessee's or Lender's request therefore.

8.3.7. Lessor acknowledges that Lessee's right to grant Collateral Assignments/Leasehold Mortgages, as permitted pursuant to Section 8.1 hereinabove, is a valuable and important right to Lessee. Lessor further acknowledges that Collateral Assignment/Leasehold Mortgages may require reasonable and customary amendments to certain terms and provisions of this Lease, certain additional customary terms and provisions required to protect the Lender's interests, and/or Lessor's execution of one or more additional customary documents or agreements, and Approval of such will not be unreasonably withheld provided such documents or agreements are prepared in accordance with New Mexico laws and Land Offices Rules.

8.3.8. Lender will not be liable for any duties, obligations, actions or inactions of Lessee under this Lease prior to the date on which Lender takes possession of the Leased Premises. Upon taking possession, Lender shall be liable for all obligations of the Lessee under the Lease, subject to the provisions of Section 8.3.1, and in any event the Lender's liability under this Lease is limited to its interest in the Leased Premises.

9. ADDITIONAL LESSOR/LESSEE CONTRACTUAL RIGHTS AND OBLIGATIONS.

9.1. Indemnification. Lessee shall hold harmless, indemnify and defend the State of New Mexico, Lessor and Lessor's employees, agents, and contractors, in both their official and individual capacities, from any and all liabilities, claims, losses, damages, suit or expenses, including but not limited to reasonable attorneys' fees, penalties, and other costs for, Lessee's or Lessee's employees, agents, contractors, or invitees negligent acts or omissions or willful misconduct in connection with construction, operation or removal of improvements on the Land. Lessee shall not be required to indemnify Lessor for the negligence or willful misconduct of Lessor's own agents, employees, representatives, invitees, licensees or permittees. In the event that any action, suit or proceeding is brought against Lessee or Lessor relating to the Land or this Lease Agreement, Lessee shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of Lessor and the Risk Management Division of the New Mexico General Services Department by certified mail. This Section 9.1 shall survive the termination, cancellation or relinquishment of this Lease as to claims which accrued during the Lease Term.

9.2. Insurance. Lessee shall, at Lessee's cost and expense, obtain and maintain the following forms of insurance coverage with limits not less than those set forth below at all times during the Lease Term. All policies shall be issued by insurers authorized to do business in the State of New Mexico and name the Lessor ("New Mexico State Land Office") as the insured or as an additional insured. All policies of insurance required to be maintained by Lessee pursuant to this Section 9.2 shall be reasonably satisfactory to Lessor and shall: (a) provide for the benefit of Lessor that thirty (30) days prior written notice of suspension, cancellation, termination, modification, non-renewal or lapse or material change of coverage shall be given to all insured parties and that such insurance shall not be invalidated by any act or neglect of Lessor, nor by any foreclosure or other proceedings or notices thereof relating to the Land, leasehold or improvements, nor by occupation of the Land for purposes more hazardous than are permitted by such policy; (b) not contain a provision relieving the insurer thereunder of liability for any loss by reason of the existence of other policies of insurance covering the Land, leasehold or improvements against the peril involved, whether collectable or not; and (c) include a contractual liability endorsement evidencing coverage of Lessee's obligation to indemnify Lessor pursuant to Section 9.1. Lessee shall provide a copy of the insurance policy. Lessor shall have no liability for premiums charged for such coverage, and inclusion of Lessor as an insured party is not intended to and shall not make Lessor a partner or joint venturer with Lessee in its operations.

9.2.1. Commercial General Liability insurance in the broadest form then available in New Mexico with limits of at least one million dollars (\$1,000,000.00) per occurrence, two million dollars (\$2,000,000.00) aggregate, and two million dollars (\$2,000,000.00) excess liability or umbrella coverage, protecting Lessee and Lessor, their employees and agents against

all claims for bodily injury, personal injury, death and property damage. Higher coverage may be reasonably required by the Lessor from time to time, including but not limited to increases needed to provide complete coverage for Lessor's maximum liability under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 et seq. Insofar as the above-described insurance provides protection against liability for damages to third parties for personal injury, death, and property damage, Lessor shall be included as an additional insured, provided such liability insurance coverage shall also extend to damage, destruction and injury to Lessor-owned or Lessor-leased property and Lessor personnel, and caused by or resulting from work, acts operations or omissions of Lessee.

9.2.2. Property Insurance covering all insurable improvements on the Land in an amount not less than necessary to cover the full replacement cost of such improvements.

9.2.3. Worker's Compensation coverage meeting all statutory requirements.

9.2.4. Within ten (10) days after the execution of this Lease by Lessor and delivery to Lessee and annually thereafter, Lessee shall deliver to Lessor original or duplicate certificates of insurance evidencing all the insurance which is required to be maintained under this Lease by Lessee certifying that all requirements set forth herein have been complied with, and within ten (10) days prior to the expiration of any such insurance, other original or duplicate certificates evidencing the renewal of such insurance. Upon Lessor's request, Lessee shall promptly deliver to Lessor all insurance policy documents, including declarations, endorsements, and exclusions. A certificate, policy, endorsement or rider which states that failure to give Lessor notice imposes no liability or obligation on the insurer shall not be in compliance with this Lease. For example, certificates or policies stating that the insurer shall "endeavor to notify" and that "failure to give such notice imposes no obligation" on the insurer are unacceptable to Lessor. Failure to comply with the insurance specifications in this Lease is a material breach of the Lease. Different types of required insurance may be written in one or more policies.

9.3. Lessee Duty to Report. During the Term, Lessee shall deliver to Lessor an annual report regarding the status of the Project or at such other intervals as Lessor may reasonably require from time to time, but in no event more often than annually. Each report shall include: (a) a short description of the status of the Project including as applicable status of Project interconnection to the electricity grid, and status of obtaining agreements to sell power; (b) satisfactory proof of the continuation of insurance coverage or any material changes thereto; (c) during the Initial Phase, progress toward construction and operations since the prior report; (d) during the Operations Phase, a Power Production statement including verification of Installed Capacity; and (e) during the Decommissioning Phase, the reclamation and decommissioning efforts Lessee is undertaking on the Land. In addition, Lessee shall immediately inform Lessor of any upcoming meetings of any applicable local Governmental Authority regarding the Project or events of significance to the Project, as Lessee becomes aware of such meetings or events. Lessee shall provide Lessor with written notice of any notice of violation, warning letter, or consent order issued by any governmental entity against Lessee or any related entity, or with respect to Lessee's or any related entity's operations on New Mexico state trust land; or any lawsuit, settlement, or judgment concerning Lessee's or any related entity's operations on New Mexico state trust land within 30 days of such event, and upon Lessor's request, shall promptly

provide a copy of the operative notice, letter, order, lawsuit, or other document. The lessee agrees to provide the SLO with copies of reports submitted to other regulatory agencies including a report verifying the megawatts alternative current of installed capacity upon request.

9.4. Lessee Duty to Comply with Laws; Duty to Protect against Waste and Trespass. Lessee shall fully comply with all applicable laws, whether statutory or court-made, regulations, rules, ordinances, and requirements, including but not limited to, the Cultural Properties Act, NMSA 1978, Sections 18-6-1 et seq., those addressed to environmental and species protection, and all Land Office Rules. Lessee's compliance will be at its own expense and will not be an offset against the Rent. Lessee will not discriminate against any independent contractor, agent, employee, sub lessee or applicant because of race, color, religion, sex, sexual orientation, pregnancy, gender, gender identity, national origin, age, ancestry, disability, physical or mental impairment, genetic information, marital status, spousal affiliation, status with regard to public assistance, veteran status, or any other legally-protected status. Lessee shall protect the Land and Improvements from waste and trespass.

9.5. Taxes. The Parties acknowledge that Lessor is a governmental agency and the Land is not subject to the requirement to pay property taxes. In the event Lessor sells or exchanges the Land and therefore ownership of the Land, subject to this Lease vests in a private party, Lessee shall pay any personal property taxes on its Improvements, and Lessor's successor in interest would then pay all other ad valorem or real property taxes and assessments levied against the Land. However, Lessee shall pay for any increase in the ad valorem taxes levied against the Land that are assessed for the period from and after the date of this Lease until the end of the Lease Term to the extent that such increase is caused solely by Lessee's operations; provided, however, such obligation will not include any recaptured taxes attributable to any period prior to the date of this Lease or any interest or penalties thereon or to any increases in taxes due to reassessment upon a transfer of the fee interest in the Land by Lessor, and Lessee shall have the right, at its own expense, to appeal or contest any such increases and to compromise and settle the same and Lessor shall execute such petitions and agreements and otherwise cooperate with Lessee to the extent reasonably necessary for Lessee to do so.

9.6. Timeframe for Lessor Approvals. For all Approvals under the terms of this Lease or related to Lessee's operations under this Lease, whether by State Land Office rule or specifically provided for in this Lease, upon Lessee providing all information requested by Lessor, Lessor shall provide a decision on such Approval within forty-five (45) days after request, unless otherwise specified by another term of this Lease.

10. DEFAULT

10.1. Default Definition. Any of the following shall constitute a Default for purposes of this Lease: any violation by either Party of any term of this Lease, including but not limited to, any failure to pay sums when due or any violation of any condition or covenant, any failure by Lessee to observe or comply with the Project Plans as approved by Lessor, or the failure to observe any other obligation under this Lease or of any applicable law.

10.2. Cure. In the event of any alleged Default or failure to perform any obligation under this Lease, the non-defaulting Party shall give the alleged defaulting Party written notice thereof, which notice will include the acts required to cure the same with reasonable specificity. Subject to the terms of Section 8, if Lessee fails to make any monetary payment when due, Lessee will have a period of thirty (30) days after such notice is given within which to cure such default. Subject to the terms of Section 8, in the event of any other Default, the defaulting Party will have a period of sixty (60) days within which to cure such Default, which period will be extended to the extent reasonably necessary, to complete such cure so long as the cure was commenced within sixty (60) days after such notice is given and thereafter prosecuted with due diligence.

10.3. Remedies; Limitation on Consequential Damages. Each Party shall have the right to recover its damages as a result of any default under this Lease which is not cured within the applicable cure period. Each Party waives its right to recover consequential damages as a result of any default under this Lease. Actual damages shall be stipulated and deemed to include lost rents and revenues from the sale of power production and any reclamation or remediation costs. Lessee for purposes of adjudication and enforcement of all remedies claimed pursuant to this Lease agrees to subject itself to the law of New Mexico and jurisdiction of the courts of the State of New Mexico and to the venue of the First Judicial District Court of the State of New Mexico. Lessee shall at all times during the Lease Term have an agent for service of process physically located within the State of New Mexico and shall at all times during the Lease Term keep Lessor apprised of said agent for service of process' name and physical address. Upon any Default and failure to cure by Lessee or by Lender, Lessor has all the remedies available at law or in equity in New Mexico, and as provided in this Lease, including, without limitation, terminating the lease, retaking possession of the Land with or without termination of this Lease, and proceeding to recover any damages, including damages for any unpaid or unperformed obligations of Lessee. Without waiving any defenses or immunity of Lessor, upon any Default and failure to cure by Lessor, Lessee has all the remedies available at law or in equity in New Mexico, and as provided in this Lease, including without limitation, the right to seek specific performance of the terms of this Lease, terminating the lease, and proceeding to recover any damages. Lessee's remedies are subject to Section 11.14 requiring the exhaustion of administrative remedies. Notwithstanding the other provisions of this Lease that may be to the contrary, but without waiving or modifying either party's right to seek direct damage for any breach of this Lease, each party agrees that in no event shall either party be liable under this Lease for exemplary or punitive damages, except for reckless conduct, willful misconduct or malicious wrongdoing.

11. GENERAL PROVISIONS.

The following General Provisions apply to this Lease:

11.1. Condemnation. The Land is not normally subject to condemnation, but in the event of a condemnation the following provisions will apply.

11.2. Complete Taking. If title to the whole or substantially all of the Land is taken or condemned by any competent authority for any public or quasi-public use, this Lease shall cease and terminate, all Rent and other obligations payable or to be performed by Lessee as provided in this Lease will be prorated as of the date of vesting title in the condemning authority. As

damages, Lessor shall be entitled to claim the full market value of the Land, the value of Lessor's rights under this Lease, and any rights reserved to Lessor under this Lease that are taken or condemned; and Lessee shall be entitled to claim the value of this Lease and its interest hereunder, including the value of its Improvements. Lessor and Lessee shall pursue and protect their various claims separately and solely against the condemning authority.

11.3. Partial Taking. If title to less than the whole or substantially all of the Land is taken or condemned by any competent authority for any public or quasi-public use, this Lease will not terminate, and the Rent and the other obligations payable and performable by Lessee as provided in this Lease for the remainder of the Lease Term will be reasonably and proportionately reduced by Lessor as of the next Lease Anniversary. Notwithstanding the foregoing, if the Partial Taking prevents the continued business of Lessee in the remainder of the Land in such a manner that Lessee, in Lessee's reasonable opinion, cannot earn a fair and reasonable proportionate net return from the continued business, Lessee will have the option to surrender and terminate this Lease by giving written notice of the election to Lessor within fifteen (15) days after the date of vesting of title in the condemnation action. If Lessee exercises the option of Lessee to surrender and terminate this Lease in accordance with this Section 11.3, the Parties will estimate the balance of Rent and other obligations payable or to be performed by Lessee to facilitate the calculation of the condemnation award. As damages for a partial taking, Lessor shall be entitled to claim the full market value of the taken portion of the Land, the value of Lessor's rights under this Lease, and any rights reserved to Lessor under this Lease that are taken or condemned; and Lessee shall be entitled to claim damages equal to the injury caused to the leasehold estate by the partial taking. Lessor and Lessee shall pursue their various claims separately and solely against the condemning authority.

11.4. No Waiver. No employee or agent of Lessor or Lessee has the power, right, or authority to orally waive any conditions, covenants or agreements of this Lease, and no waiver of them will be effective unless in writing and executed. Any waiver of a breach or default of any condition, covenant or agreement hereof will not constitute or be construed as a waiver of any other or subsequent breach or default. The failure of either Party to enforce at any time any condition, covenant, or agreement of this Lease, or to exercise any option herein provided, or to require at any time performance of any condition, covenant, or agreement of this Lease will not constitute or construed to be a waiver of such condition, covenant, or agreements, nor will it affect the validity of this Lease or any part thereof, or the right to thereafter enforce each and every such condition, covenant or agreement. Lessor's Approval of any Assignment, Collateral Assignment/Leasehold Mortgage or sublease will not be construed as a waiver of its right, in its sole discretion, to refuse to give Approval to any other Assignment, Collateral Assignment/Leasehold Mortgage or sublease.

11.5. Scope of Agreement. This Lease incorporates all of the agreements, covenants and understandings between Lessor and Lessee concerning the subject matter hereof and such agreements, covenants, and understandings are merged into this Lease. No prior agreement or understanding between Lessor and Lessee is valid or enforceable unless expressly embodied in this Lease.

11.6. Amendment. This Lease will not be altered, changed or amended except by written instrument executed by both Lessor and Lessee.

11.7. Applicable Law and Venue. The laws of the State of New Mexico govern this Lease and any assignments or indebtedness placed thereon, without giving effect to the conflict of law provisions of the State of New Mexico. Lessee consents to venue and jurisdiction in the First Judicial District Court in and for the County of Santa Fe, and to service of process under the laws of New Mexico, in any action relating to this Lease, assignments thereof, any indebtedness or their subject matter.

11.8. Successors in Interest. All terms, conditions and covenants of this Lease and all amendments thereto will extend to and bind the permitted heirs, successors and assigns of Lessee and Lessor.

11.9. Memorandum; Documents Affecting Title and Interest. Lessor and Lessee have signed, acknowledged and delivered contemporaneously with the signing of this Lease, or may sign, acknowledge and deliver at any time in the future, a Memorandum of this Lease in such form as Lessor may approve which either Lessor or Lessee may record in the records of the Governmental Authority and the Land Office. Lessee will make no Collateral Assignment or allow any lien that may encumber the interest or title of Lessor in and to the Land, except in accordance with the provisions of this Lease.

11.10. Severability. In the event that any provision of this Lease is held invalid or unenforceable under applicable law, such provision will be deemed severed from this Lease, and this Lease will remain in full force and effect unless its essential purpose is frustrated by such severance.

11.11. No Joint Venture. Lessor is not and will not be construed or held to be a partner, joint venturer, or associate of Lessee in the conduct of the business of Lessee. Lessor will not be liable for any debts incurred by Lessee in the conduct of Lessee's business. The relationship between Lessor and Lessee is, and remains, solely that of Lessor and Lessee.

11.12. Counterparts. This Lease may be executed by the Parties in multiple counterparts, each of which will constitute an original, but all of which together will constitute a single binding agreement between the Parties. Digital signatures shall have the same force and effect as manual signatures.

11.13. No Lessor Personal Liability. In the event of a court action, Lessee shall not seek damages from Lessor or any employee of the Land Office or the State of New Mexico in their individual capacity.

11.14. Exhaustion of Administrative Remedies. In the event Lessee is aggrieved by a decision of Lessor to terminate this Lease, or any other agency determination, as defined in Land Office Rule 15 (19.2.15 NMAC), Lessee may file a contest pursuant to NMSA 1978, Section 19-7-64 and Land Office Rule 15 (19.2.15 NMAC). Lessee agrees that no declaratory judgment action shall be initiated by court action. Lessee shall initiate no court action regarding an agency

determination, except to appeal a final decision of the Commissioner of Public Land rendered pursuant to such a contest proceeding, and as provided by NMSA 1978, Section 19-7-64.

11.15. Notices. Notice requirements, unless otherwise stated, will refer to written notice by registered or certified U.S. Postal Service, return receipt requested, or delivered by reputable overnight courier, return receipt of tracking system, to the addresses of the Party hereunder will constitute sufficient notice to comply with the terms of this Lease. Notice will be deemed effective upon delivery. Either Lessor or Lessee may change its respective address as provided in this Section 11.15 effective three (3) business days after giving written notice of the change to the other as provided in this Lease. The Addresses for notice are:

Notice to Lessor:

Attn: Office of Renewable Energy
New Mexico State Land Office
310 Old Santa Fe Trail
Santa Fe, NM 87501

and

Attn: Office of the General Counsel
New Mexico State Land Office
310 Old Santa Fe Trail
Santa Fe, NM 87501

The addresses listed above indicate the physical location of the State Land Office for use in personal or courier deliveries. For United States Postal Service deliveries use: Post Office Box 1148, Santa Fe, NM 87504-1148.

Notice to Lessee:

[Insert Lessee's contact information]

11.16. Calculation of Time. Any time period herein calculated by reference to "days" means calendar days unless expressly otherwise stated; provided, however, that if the last day for a given act falls on a Saturday, Sunday, or a holiday as observed by the State of New Mexico, the day for such act will be first day following that is not a Saturday, Sunday, or such observed holiday.

11.17. Authority. If either Party is other than a natural person, the individual(s) signing this Lease on behalf of such Party represents and warrants that he or she has the power and authority to bind such Party, and that no further action, resolution, or approval from such Party is necessary to enter into a binding contract.

11.18. Status of Parties. Lessor is a state governmental entity who holds and manages the Land pursuant to the terms and obligations of the Trust. Lessee is a private entity with

authority to conduct business in New Mexico that is, and shall at all times remain, in good standing with the New Mexico Secretary of State.

11.19. Incorporated Law and Regulations. The Enabling Act (Act of June 20, 1910, 36 Stat. 557, Ch. 310), all current and future constitutional provisions, statutes, regulations and rules governing or pertaining to the Land, including those set out at 19.2 NMAC, are incorporated into, and made a part of, this Lease by this reference. In the event of a conflict between this Lease and 19.2.9.7 NMAC (as it exists on the Effective Date), the lease provision controls.

11.20. Lessee Due Diligence. Lessee is responsible for performing its own due diligence, including verifying all or any valid rights or reservations of record affecting the Land.

11.21. Survival of Terms, Conditions, Restrictions, Reservations, and Covenants. Any term, condition, restriction, reservation or covenant that gives rise to any rights or claims of Lessor against Lessee, including but not limited to any payment requirement and completion of the decommissioning activities set forth in the Decommissioning Plan, will survive the Termination, Relinquishment, or abandonment of this Lease.

11.22. Joint Signatories or Multiple Lessees. If more than one person or entity is a signatory denominated as Lessee, all such persons or entities will be jointly and severally liable under this Lease.

11.23. Force Majeure. In the event that Lessor or Lessee are delayed or prevented from performing any of their respective obligations under this Lease because of Force Majeure, then the period of such delays will be deemed added to the time herein provided for the performance of any such obligation and the defaulting Party shall not be liable for losses or damages caused by such delays. Lessee must provide notice of intent to invoke this provision as a basis for relieving or forbearing enforcement on a contract within 30 days of the event purported to be the force majeure or said right is waived. Rent shall still be due but construction timelines and revenue sharing may be extended as Lessor's discretion, which agreement shall not be unreasonably withheld. The time for completion of construction may be extended for the period of any reasonable delay which is due exclusively to causes beyond the control and without the fault of Lessee as specified herein. Upon completion of the event of Force Majeure the Party affected must as soon as reasonably practicable recommence the performance of its obligations under this Lease.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Lease as of the date set forth above.

LESSOR:

New Mexico Commissioner of Public Lands

Stephanie Garcia Richard

LESSEE:

[Insert Lessee's Name]

By: _____

Printed Name: _____

Title: _____

ACKNOWLEDGMENT
FOR A PERSON SIGNING IN A REPRESENTATIVE CAPACITY

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____,
by _____ (name), _____ (title) as Authorized
Signatory of _____ (name of party on behalf of whom instrument
is executed).

Notary Public

My Commission Expires: _____



**Stephanie Garcia Richard
Commissioner of Public Lands
State of New Mexico**

ASSIGNMENT OF STATE BUSINESS LEASE

KNOW ALL PERSONS BY THESE PRESENTS:

That _____, hereinafter called the Assignor for good and valuable consideration of the sum of _____, in hand paid, the receipt of which is hereby acknowledged, do hereby sell, assign, transfer and set over unto _____,

(Name)

_____, _____, _____,

(Address)

(City, State, Zip Code)

(Phone Number) hereinafter

called the Assignee, that certain Business Lease No. BL-_____ made and executed by the State of New Mexico, through its Commissioner of Public Lands as Lessor, unto _____ as Lessee. This Assignment will become effective _____ ("Effective Date"). The same affects the following described lands:

☐ Base Short-Term Lease (\$200.00 Application Fee)

☐ Base Long-Term Lease (\$500.00 Application Fee)

The Assignee agrees to assume all obligations of the Assignor to the State of New Mexico insofar as said described lands are concerned and to pay such rentals and to perform such acts as are required by said lease, to the same extent and in the same manner as if the terms and provisions of said lease were fully set out herein. It is further agreed that the Assignee shall succeed to all rights, benefits and privileges granted the Lessee by the terms of said lease.

The Assignor further states and affirms that the consideration recited about is the true and sole consideration paid or promised for the purchase of the improvements on the lands hereinabove described and for the execution of this assignment. It is further understood and agreed that in case it is found that the consideration recited above is not the true and sole consideration or that a false statement has been made in the procurement and approval of this assignment, the master lease or the portion thereof sought to be assigned, shall be subject to cancellation at the option of the Commissioner

Cultural Resource Protection:

Cultural Resource Protection: []
[gu' P q']

Digital Files:

Digital information of your project's location is required. Acceptable formats: shapefiles (preferred), gps coordinates, kml/kmz files or georeferenced AutoCAD files.

Yes

No

Digital Files Custodian-Name if other than the applicant:

Email:

Phone Number:

IN WITNESS WHEREOF, the Assignor has hereunto executed this assignment this _____ day of _____, 20____.

Assignor

STATE OF _____

COUNTY OF _____ (ss)

SUBSCRIBED AND SWORN TO BEFORE ME this _____ day of _____, 20____, by
_____.

(SEAL) _____

My Commission Expires: Notary Public

PROVED THIS _____ DAY OF _____, 20____.

Assignee

STATE OF _____)
_____) ss.
COUNTY OF _____)

SUBSCRIBED AND SWORN TO BEFORE ME this _____ day of _____, 20____, by
_____.

(SEAL) _____
Notary Public

My Commission Expires:

Stephanie Garcia Richard
Commissioner of Public Lands

Date

\$200.00 or \$500.00 NON-REFUNDABLE APPLICATION FEE*

* Please make checks payable to "Commissioner of Public Lands". When you provide a check as payment, you authorize the State of New Mexico to either use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.

New Mexico State Land Office Best Management Practices for Surface Users

- 1. Design.** To ensure public safety and the protection of trust resources, projects should be designed to minimize new surface disturbance and should be in compliance with New Mexico State Land Office (NMSLO) best management practices for surface users. The Commissioner of Public Lands may review design plans, and may determine whether professional engineering design or construction oversight is necessary. The Commissioner may waive or include any additional specific best management practices as necessary in the best interest of the trust.

a. Design.

- i. No new surface disturbance will be permitted in riparian areas, wetlands, playas or floodplains. There will be a 150-foot setback from the outer wet edges (normal high water mark) of wetlands and playas, and a 50-foot setback from the 100-year flood stage of the floodplain associated with riparian areas. Boring under water features may be allowed if designs are approved.
- ii. All efforts shall be made to minimize new surface disturbance: new construction shall be located in pre-existing disturbed areas, including existing roadbeds, rights-of-way, or in pre-existing or dedicated development areas and corridors.
- iii. No new surface disturbance will be permitted within 50-feet of the normal high water mark of ephemeral drainages, floodways, arroyos or other short duration flow channels, except when crossing these channels and drainages. Drainage crossings will be perpendicular to flow, and will be built to accommodate flood events and to control erosion.
- iv. Design plans shall:
 1. Include a cadastral survey;
 2. Minimize new surface disturbance by locating in pre-existing disturbance areas, or designated development areas or corridors, and designing for minimum necessary area of impact according to expected purpose and use;
 3. Avoid wetlands, known critical habitat and protected areas;
 4. Avoid steep slopes (>12%); grades from 4-10% are preferred for managing drainage; roads and rights-of-way are best placed at the toe of slopes where cross slope is between 5% and 40%;
 5. Preserve as much natural vegetation and living root structure as possible. Use blading only where not to do so would create an unsafe work environment. Mow, or cut and shred vegetation, rather than blading whenever possible. Grubbing is less destructive than blading, and may be used as an alternative where mowing is not possible; in mowing or grubbing, if mesquite or other colonizing non-desirable vegetation is involved, include an herbicide treatment to inhibit spread that may be caused by mowing or

- grubbing;
6. Avoid alteration of natural drainage patterns;
 7. Provide adequate surface drainage; as grade steepens drainage features, such as water bars, must be closer together; drainage features on fine grained soils should be closer together;
 8. Reduce impervious surfaces by limiting area of impact;
 9. Account for specific site topography, soil type, drainage and hydrology, i.e. fit construction to the natural terrain by conforming to the ground, rolling the grade, minimizing cuts and fills, and managing for erosion; medium to coarse textured soils (sand-sized particles and larger) are best suited to low-standard rural roads;
 10. Account for cultural resources at least in accordance with minimum standards set forth in NMSLO policy;
 11. Account for biological resources at least in accordance with minimum standards set forth in NMSLO Policy;
 12. Include a spill containment and prevention plan where hazardous materials are involved, including requirements for berms and lining where necessary;
 13. Include a storm water pollution and prevention plan where hazardous materials are involved and the site falls within a 100-year flood plain of any major drainage;
 14. Include an erosion control plan for drainage crossings, head-cuts, gullies and rills, including soil stabilization structures, ditches, water-bars, and the size and location of culverts and bridges;
 15. Include a reclamation plan detailing the removal of improvements, soil stabilization and the re-vegetation process;
 16. Include an access control plan;
 17. Use only native weed-free certified seed for reclamation;
 18. Use only certified freshwater (<140 ppm chloride, certified safe drinking water) for reclamation;
 19. Use local materials where possible;
 20. Include a noxious weed prevention plan;
 21. Include a dust abatement plan;
 22. Address clearing, grading, and cut and fill processes;
 23. Address crown, inslope, outslope and shoulder design (roads);
 24. Address trenching and boring design, including depth, casing, core sampling, valve location and access management (pipelines);
 25. Include professional engineer plans and specifications for bores, bridges, or other major construction elements that present a potential hazard to the public or environment;
 26. Address span and pole design (powerlines);
 27. Define use, location and size of temporary work space, temporary storage and turnouts;
 28. Address logistics of construction;
 29. Address all pertinent state and federal regulations.

2. **Construction.** Construction involves all aspects of implementation of the design.

a. Construction Practices: During construction the lessee shall:

- i. Control access to the construction site;
- ii. Control unauthorized use of space adjacent to permitted rights-of-way, easements and lease use areas;
- iii. Maintain temporary erosion control structures, such as silt fencing to prevent sediment flow during construction;
- iv. Implement dust abatement plan and use only certified freshwater (<140 ppm chloride, certified safe drinking water) on areas that will be revegetated;
- v. When requested by the Commissioner, engage a compliance inspection officer to monitor quality control and compliance with NMSLO best management practices;
- vi. Sample, test and monitor to ensure construction materials meet design specifications;
- vii. Dispose of unsuitable or excess construction or excavation material in approved locations to minimize adverse impacts to water quality or other resources; construction waste and debris will not be buried on state trust land without express permission from the Commissioner

3. **Maintenance.** Roads should be maintained routinely during active use and after major storm events to ensure that road surfaces are intact and serviceable and drainage structures are functioning properly. Pipeline, transmission line and other exclusive rights-of-way should be monitored routinely and maintained when necessary to ensure that public access is closed, drainage is functioning properly, and that reclamation efforts are successful. Operational equipment, work spaces, facilities, and structures shall be maintained routinely during use to function properly and to minimize adverse impacts to the public or the environment. Reclaimed areas, including temporary work spaces, yards, pads, pits, roads, pipelines, transmission lines or other lease areas, should be monitored for at least two years and retreated where necessary to manage erosion, noxious weeds and seeding success. Lessees sharing a right-of-way will be held jointly and severally responsible for maintenance of the right-of-way. The NMSLO encourages holders of shared rights-of-way to develop maintenance agreements.

a. Maintenance Practices: At all times, lessees must stay within the length and width of the permitted right-of-way. If maintenance requires work outside the boundaries of the right-of-way, the lessee must seek an amendment to the right-of-way or a right-of-entry for reclamation or maintenance:

- i. Grade and shape roadway surfaces to maintain distinct inslope, outslope or crown shape to move water effectively off the road surface;
- ii. Compact graded roadway surfaces to preserve hard driving surface;

- replace surface material when needed; implement dust abatement plans;
- iii. Fill ruts and potholes with gravel or compacted fill or remove ruts through rolling dips and water bars; reshape structures to maintain proper function;
- iv. Clean ditches and reshape when necessary to allow adequate flow capacity;
- v. Remove debris from the entrance of culverts to prevent plugging and overtopping; check for signs of damage;
- vi. Replace or repair rock armor, erosion control structures, or vegetation used for slope protection, scour protection or energy dissipation;
- vii. Inspect and repair fencing, gates, cattle-guards and other access control structures;
- viii. Inspect facilities, structures, equipment and operations for leaks, hazardous material releases, hazardous conditions, and proper functioning condition;
- ix. Inspect reclamation, revegetation and noxious weed treatments and re-treat as necessary to maintain proper functioning of erosion control and establishment of native vegetation.

4. Reclamation. See Attachment A for Sample NMSLO Surface Reclamation Plan.

- a. **Reclamation Objectives:** To reduce and prevent erosion, remove contaminants and contaminated materials, restore clean soils, restore native plant diversity and abundance, restore and maintain hydrological regime, and restore and maintain productive habitat for livestock and wildlife;
- b. **Applicability:** These Reclamation Requirements are applicable to all reclamation activities on state trust lands including: hazardous materials spills/releases, site closure for oil and gas, mineral and business leases, plug and abandon site reclamation, mine site reclamation, pit, pad, or pond reclamation, illegal dump reclamation, road and pipeline reclamation, dairy farm or other agricultural impact reclamation, and any other clean up or reclamation activity on state trust land;
- c. **Access:** If the spill/release or reclamation project extends beyond the lease boundary or permitted right of way, the responsible party shall contact the NMSLO Rights Of Way Division and **obtain a remediation right-of-entry**;
- d. **Compliance:** Before commencing any new ground disturbing activity, the responsible party shall:
 - i. Conduct an archaeological survey of the impacted area, or verify that the area has already been surveyed and that no cultural properties will be impacted by ground disturbing activities;

- ii. **Immediately stop all ground disturbing activities and contact NMSLO for further direction, if cultural properties have been impacted by a spill/release or reclamation project;**
 - iii. Verify compliance with NMSLO biological and cultural resource policies for the area to be reclaimed; conduct surveys where necessary;
 - iv. Verify compliance with all state and federal regulations, including but not limited to storm water pollution and prevention, air quality control, and hazardous materials disposal;
- e. **Hazardous Material Spill/Releases:**
 - i. Oil and Gas Activity:
 - Upon discovery of any oil and gas related hazardous material spill or release, either current or historic, the responsible party shall:
 - immediately notify OCD and NMSLO;
 - File C-141 form with OCD;
 - ii. Other Spill/Releases:
 - Upon discovery of any non-oil and gas related hazardous material release, including mine waste, either current or historic, the responsible party shall:
 - immediately notify NMED and NMSLO;
- f. **Delineation:** Upon discovery of contaminated soils, the responsible party shall delineate the horizontal and vertical extent of the contamination; submit a delineation plan for approval by the NMSLO; for oil and gas related contamination, the NMOCD must also approve the delineation plan; the NMSLO may review NMOCD approved plans for adequacy of sampling related to restoration of surface conditions; for non-oil and gas related contamination, the NMED may require delineation and monitoring related to surface and ground water impacts; the NMSLO may require any necessary sampling or reclamation related to the restoration of surface conditions;
- g. **Reclamation Plan:** A reclamation plan shall be submitted with all lease applications involving surface disturbance. In the event of a spill or hazardous materials release, the responsible party shall submit a reclamation plan for approval by the NMSLO within 30 days of completion of delineation. In all other situations, the responsible party must submit a reclamation plan to the NMSLO within 30 days of receiving a notice to reclaim. The reclamation plan shall address each of the matters cited below; these best management practices shall constitute minimum requirements for reclamation plans submitted under the following rules: leasing for general mining 19.2.2.24, leases and permits for caliche, gypsum, clay, sand, gravel, stone, shale, perlite, volcanic deposits and borrow dirt 19.2.5.9(B); unless otherwise permitted by the NMSLO, the reclamation plan and all earthworks required for reclamation must be approved and completed within 6

months of completion of construction for any right of way lease, or improvement under an agricultural lease, or within 6 months of closure or final use of any business lease, mineral lease, or oil and gas lease;

- h. **Removal/Containment:** The responsible party will remove and replace any contaminated soils, including contaminated caliche or base course. Contaminated soils and caliche shall be disposed of only in state permitted disposal locations such as land farms or hazardous disposal sites, and in accordance with state and federal regulations. Contaminated soils shall be removed at least to the rooting zone. Removal shall be based on site delineation, but in areas of deep saturation and deep soils this depth is typically four feet; removal depth may be less in shallow soils. If any contaminated soil remains at the site the reclamation plan must address containment, including the potential for the contaminant to wick upward into the rooting zone or downward toward groundwater. If complete removal is impossible, the responsible party may apply to the NMSLO for a variance to stabilize and contain the hazardous material that cannot be removed. If the NMSLO agrees, a stabilization and containment plan may replace or supplement the removal and replacement plan. In addition to the removal of contaminated soils, the responsible party will remove all uncontaminated caliche or base course.
- i. **Soil Replacement:** The responsible party will replace contaminated soils, caliche or base course, and uncontaminated caliche or base course, with certified clean top soil; replacement soils should have comparable structure and chemistry to healthy, native undisturbed soils in the vicinity.
- j. **Trash and Debris:** Unless equipment is to be re-used onsite, the responsible party shall remove any trash, debris, garbage, rubbish, junk, scrap, or broken or contaminated equipment, such as pipelines, plastic lining, surface flowlines, tanks, scrap materials of any kind, or other equipment and shall dispose of all such trash and debris in accordance with state and federal regulations within 30 days of final use or completion of construction; no hazardous substances, trash or litter will be buried or placed in pits on state trust land without express written permission of the Commissioner.
- k. **Surface Preparation:** The responsible party will contour the ground surface to blend in with the surrounding topography to allow the natural hydrology of the basin to function without impediment or impact; no major depressions or pits will be left that will trap water or cause ponding except where the project involves a mining pit where there is no possible outlet, slopes will not exceed 3:1 (run to rise).
- l. **Erosion Control:** Where active transportation of sediment through gullying, headcutting, slumping or deep or excessive rills (greater than 3 inches deep)

occurs within the lease area or within the adjacent area of impact, the responsible party will install erosion control structures to repair and control gullies, head-cuts, rills, and other forms of sediment movement;

- i. Erosion control structures shall be designed to restore natural hydrological function and flood regime, and to the extent possible should use local rock or bio-degradable materials and low-energy, minimum-necessary designs;
 - ii. Erosion control structures may include, but are not limited to, one rock dams, rock mulch rundowns, zuni bowls, media lunas, swales, berms, terraces, wattles, rock or log mats, hay mulch, gabions, bales or other stabilizing enhancements to control erosion;
- m. **Drainage Control:** Where ephemeral, intermittent or permanent water flow-ways or drainages cross, intersect or bisect a lease, the responsible party shall install drainage control structures to manage water flow, especially across roads, pipeline rights of way, or other structures that may interfere with natural drainage;
 - i. Drainage control structures shall be designed to mimic natural hydrological function and flood regime as much as possible so as not to increase the erosional impact of hydrologic flows to the structure or to the upstream or downstream landscape; drainage control designs shall be engineered or built in consultation with the NRCS and approved by the NMSLO;
 - ii. Drainage control structures may include but are not limited to road bars, culverts, water bars, parallel and lateral ditches, drains, and low water crossings;
- n. **Seedbed Preparation:** All disturbed soils within the lease area will be revegetated. The responsible party will prepare the seedbed in consultation with the NMSLO to maximize potential for success. This may include, but is not limited to, a combination of watering with certified fresh water (<140 ppm chloride), mechanical packing to consolidate loose soils, disking or ripping to loosen compacted soils (up to 18 inch depth with furrow spacing of 2 feet), crimping hay mulch into the soil (2 tons/acre), furrowing or imprint rolling to create microhabitats, scarifying (minimum 4 inch depth), adding soil amendments, contouring and/or importing top soil. Note: Caliche is not top soil and should not be mixed or flipped into the top soil.
- o. **Revegetation:** The responsible party will seed the prepared seedbed with a drill seeder or hydraulic seeder with different sized seed boxes; unless otherwise authorized by the NMSLO, hydro-seeding will be used on 3:1 slopes or greater; all disturbed areas will be seeded with the seed mixture(s) provided or approved by the NMSLO; the seed mixture will be planted in the amounts specified in pounds of pure live seed per acre; the seed will contain no primary or secondary noxious weeds; commercial seed will be either certified or registered seed; the seed drill will be equipped with a depth regulator, and seed will be planted at the depth prescribed by the NMSLO; the seed mixture will be evenly and uniformly planted over the disturbed area; seed mixes should be provided in bags separating

seed types into size categories, to ensure that the appropriate seed drill box is used for each species; broadcast seeding will only be allowed when no other option is available; where broadcast seeding, the area should be disked with a tandem, double-disk harrow, one day prior to broadcast seeding and the lbs/acre are to be doubled; seeding will be conducted no more than two weeks following completion of final seedbed preparation; seeding should take place at the beginning of the growing season prior to the monsoon season unless otherwise directed; seeding will be repeated until a satisfactory stand is established as determined by the NMSLO; evaluation of growth will not be made before completion of at least one full growing season after seeding; seeding will be repeated until a satisfactory stand is established.

- p. **Noxious Weeds.** The responsible party will prepare a noxious weed plan in consultation with the NMSLO and noxious weeds will be monitored and treated on an annual basis until controlled.
- q. **Access Control.** Unless otherwise authorized by the NMSLO, the responsible party will close all reclamation areas to public access; private access points will be gated, fenced and signed; unauthorized or trespass access points will be permanently closed and signed;
 - i. **Gate and Fencing Specifications:** Unless otherwise directed by the NMSLO, a locked metal gate with 4-inch H-braces and a permanent fence extending at least 100 feet from either side of the gate, or to the next adjacent gate, will be installed to block public access to all closed reclamation sites; fence will be constructed with steel T-posts on 16-foot spacing, with stays every 8 feet and 4 strands of barbed wire; the top wire should be set at 42 inches above the ground surface; inline braces will be used at intervals not to exceed 660 feet; corners will be braced and set in concrete; fence wire will be attached on the outside of the T-posts with wire ties;
 - ii. **Permanent Closure Specifications:** Dirt berms, permanent hard barriers or rock barricades will be installed to block unauthorized access points to reclamation sites; berms and barriers will be at least 3 feet high and will extend the width of the access point; berms will be hard packed; barriers and barricades may be constructed of metal pipe rail, concrete, or rock and may be used in combination with berm work to ensure closure of an access point;
 - iii. **Signage:** Signs should be noticeably visible and should clearly state that public access is not authorized.
- r. **Monitoring.** The responsible party will monitor the reclamation site annually until relinquished by the NMSLO; prior to relinquishment, the NMSLO may require supplemental clean up, maintenance of erosion control structures, additional reseeding efforts, or noxious weed treatments to ensure success of reclamation; the NMSLO may request detailed annual monitoring reports

depending on the severity of the situation.

- s. **Reporting.** The NMSLO may require weekly updates during the course of the initial reclamation work; weekly updates will include a brief narrative statement of work completed with photo documentation; upon completion of the initial reclamation work, the responsible party will notify the NMSLO that the site is ready for inspection; annual monitoring reports may be required depending on the severity of the situation.
- t. **Relinquishment:** The NMSLO will inspect the initial reclamation work upon completion and will provide the responsible party with a statement indicating that the initial work has been completed as required and detailing any follow up work that may be necessary prior to relinquishment; notice of relinquishment will be provided upon complete satisfaction of all NMSLO reclamation requirements.

5. Resources.

Reducing Erosion from Unpaved Rural Roads in New Mexico, A Guide to Road Construction and Maintenance Practices; State of New Mexico Natural Resources Department Soil and Water Conservation Division, November 1983.

The Gold Book, Surface Operating Standards and Guidelines for Oil and Gas Exploration and Development; Bureau of Land Management, Fourth Edition—Revised 2007.

New Mexico Forest Practices Guidelines; Energy, Minerals and Natural Resources Department, Forestry Division.

Low-Volume Roads Engineering BMPs; https://www.fs.fed.us/t-d/programs/forest_mgmt/projects/lowvolroads/ch4.pdf

Water Harvesting from Low-Standard Rural Roads; Bill Zeedyk, A Joint Publication of The Quivira Coalition, Zeedyk Ecological Consulting, LLC, The Rio Puerco Management Committee—Watershed Initiative, and the New Mexico Environment Department—Surface Water Quality bureau, April 2006.
http://altarvalleyconservation.org/wp-content/uploads/pdf/1597-A_Good_Road_Lies_Easy_on_the_Land.pdf

Revegetation Guidelines Handbook for Southeastern New Mexico, New Mexico State Land Office, July 2018.

6. Authorities.

ROW Rule: (19.2.10 NMAC)

A ROW lessee shall file an affidavit of completion within 60 days of completion. 19.2.10.21 NMAC

ROWs may be used only for authorized uses as granted (e.g. a pipeline or powerline ROW may not be used as a public road). 19.2.10.22 NMAC

The CPL may terminate any ROW for failure to comply with any term or condition of the grant. 19.2.10.26 NMAC

Anyone constructing a ROW, in consultation with the CPL, must take all steps necessary to preserve and protect the natural environmental conditions of the land including reclamation and re-vegetation. 19.2.10.28 NMAC.

Road Rule: (19.2.20 NMAC)

All roads constructed on state trust lands shall be constructed in accordance with the minimum requirements described in 19.2.20.10 NMAC and maintained in accordance with the standards described in 19.2.20.11 NMAC. 19.2.20.9(A) NMAC.

Construction and maintenance of these roads will be done in a manner that insures that authorized traffic remains within the right-of-way and erosion damage is mitigated. 19.2.20.9(C) NMAC.

Road Construction Standards: (19.2.20.10 NMAC)

Width. 14' single lane, 20' double lane, maximum grade 10% without engineered design. 19.2.20.10(A) NMAC.

Drainage. Drainage control shall be ensured through the use of dips, turnouts, and culverts etc. Drainages will be constructed in such frequency necessary to prevent headcuts or other forms of accelerated erosion or damage on adjacent areas. 19.2.20.10(A) NMAC.

Culverts. Culverts shall be used on grades in excess of 10% and all major drainages and on roads when dips are not feasible.

Road Surfacing: Roadbeds should be surfaced where all weather access is needed. Roadbeds should be reasonably smooth, free of ruts, chuckholes, rocks, slides, washboards, dust pockets, soft spots or other driving hazards.

Fencing: 4-strand barbed wire, 12-inch spacing.

Road Maintenance Standards: (19.2.20.11 NMAC)

Lessees shall be responsible for preventative and/or corrective road maintenance, including roadbeds, shoulders, ditches, culverts and drainages, fences, gates and cattle guards, ford and low water crossings. 19.2.20.11 NMAC.

Reclamation: (19.2.20.12 NMAC)

The seedbed will be prepared and the roadbed reseeded. 19.2.20.12 NMAC.

Oil and Gas Rule: (19.2.100 NMAC)

Site Development: All access roads shall be built, maintained and reclaimed in accordance with 19.2.20 NMAC.

Review and Inspection: State land office personnel or oil conservation division personnel may, from time to time, recommend actions necessary to comply with reasonable use of the surface and prudent operator standards. (19.2.100.66(D) (1) NMAC).



**Stephanie Garcia Richard, Commissioner of Public Lands
State of New Mexico**

EXHIBIT 4: BID APPLICATION AND QUALIFICATION FORM

Long-Term Solar Energy Lease Number ES-0168
Valencia County, New Mexico

This completed bid application packet must be received at the address below **no later than 3:00 p.m. (MST) on Tuesday September 3, 2024.**

To: New Mexico State Land Office
Attn: Office of Renewable Energy
Mail Address: P.O. Box 1148, Santa Fe, NM 87504
Street Address: 310 Old Santa Fe Trail, Santa Fe, NM 87501

Date of submission of this bid application packet: _____.
Attach a separate sheet with the following information, as necessary.

APPLICANT:

Name and Title of the Authorized Signatory*: _____

(or if applying as an individual, the personal name): _____

Company Name (if not an individual): _____

State of Incorporation or Registration (if not an individual): _____

Name of Parent Corporation(s), if any: _____

Project Manager Name: _____

Title: _____

Street Address: _____

Mailing Address: _____

City: _____

State: _____ Zip Code: _____ Phone: _____

Mobile Phone: _____ Email: _____

*NOTE: If this Bid Application and Qualification Form is submitted by other than an individual, it must be signed by an authorized signatory of the entity submitting the Application who is authorized to offer a binding bid at the lease auction and to enter into a binding agreement for the proposed transaction.

PROJECT AND APPLICANT INFORMATION

Applicant may opt to clearly mark any materials that contains bona fide trade secrets or information that is otherwise legitimately treated as confidential under New Mexico law as “CONFIDENTIAL” in which case Lessor will treat it as confidential information required to be submitted under this Bid Application and Qualification Form, pursuant to NMSA 1978, Section 19-1-2.1.

Note: Answers to the questions below will be used to establish the list of qualified bidders. If the parent company will guarantee the “affiliated group” or “single purpose entity” performance of financial and other obligations in the lease, then the State Land Office will allow the “affiliated group” or “single purpose entity” to bid if the parent company meets the minimum qualifications. To be considered a qualified bidder, applicants must submit a complete application.

1. Minimum Qualifications

Do you meet the following applicant qualifications?

Yes No

- | | | |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Selected by the PRC to participate in PNM’s Community Solar Project |
| <input type="checkbox"/> | <input type="checkbox"/> | Experience developing at least 5 megawatts of solar power projects. |
| <input type="checkbox"/> | <input type="checkbox"/> | Experience applying for federal, state and local permits pertaining to solar power project development. |
| <input type="checkbox"/> | <input type="checkbox"/> | A net worth of at least three million dollars (\$3,000,000.00). |
| <input type="checkbox"/> | <input type="checkbox"/> | Commitment and the ability to fully comply with all other duties and obligations of Lessee under this Lease. |
| <input type="checkbox"/> | <input type="checkbox"/> | Authorization to do business in New Mexico. |

If any of the above five answers are “No”:

- | | | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | A parent company meeting the qualifications above will guarantee the Applicant’s performance of financial and other obligations in the Lease. |
|--------------------------|--------------------------|---|

Additional Question:

- | | | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Has your company or parent company ever defaulted on a lease agreement? If yes, please explain. |
|--------------------------|--------------------------|---|

2. Statement of Interest and Qualifications (**Please attach exhibits if you need more space.**)
- a. Project Experience with NMSLO – Please list at least two active projects with the NMSLO. *If you do not have any active projects you may list any past or present renewable energy projects the Applicant constructed or manages.*
 - b. Executive Summary – Outline the major reasons why the Applicant, together with any joint venture parties or parent company, is qualified to carry out the project to be developed on the state trust lands subject to the Lease.
 - c. Organizational Information for Bidding Entity – Identify the bidding entity and provide copies of organizational documents (e.g. Articles of Incorporation and Bylaws, Articles of Organization). *If a parent company is guaranteeing the Applicant's financial and other lease obligations, provide parent company's organizational documents.*
 - d. Financial Resources – Provide the previous two years of audited financial statements of corporation, partnership, or parent company as well as the names, addresses and telephone numbers of at least two (2) credit references for the applicant, together with letters addressed to each credit reference authorizing releases of information to the Commissioner and her agents. *Failure to provide such information or a reasonable substitute for this information, as determined by the Commissioner, may preclude an interested applicant from being deemed a qualified bidder.*

3. Proposed Project

- a. Briefly describe the proposed project.
- b. Attach a list of improvements (all components of the proposed solar power project) and map showing their proposed placement on state trust land.
- c. Estimate the dates (month and year) for the following project milestones:
 - Completion of feasibility studies:
 - Commencement of construction:
 - Commencement of operations date:
- d. Estimate the percentage of your project's total investment or capacity on federal land, state land, and private land:
 - Federal land _____ (%)
 - State land _____ (%)
 - Private land _____ (%)

4. Community Impact and Economic Benefits of the Proposed Project

- a. Explain state/regional benefits, including but not limited to the economic impact on the local community, temporary and permanent jobs created, cooperation providing job training and certification, as well as any partnerships or agreements executed in these areas.
- b. Describe your efforts to utilize local, New Mexico suppliers and contractors in the development of the project.

- c. Please describe your anticipated outreach efforts, including public meetings, to maximize the number of New Mexicans positively impacted by the economic development aspect of this project.
- d. Have you conducted public information meetings? If so, please describe.

If not, would you be willing to participate in such meetings with the NMSLO if requested?

Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	Town hall public meetings
<input type="checkbox"/>	<input type="checkbox"/>	County government meetings
<input type="checkbox"/>	<input type="checkbox"/>	City government meetings
<input type="checkbox"/>	<input type="checkbox"/>	Adjacent land owner meetings
<input type="checkbox"/>	<input type="checkbox"/>	Tribal Government outreach
<input type="checkbox"/>	<input type="checkbox"/>	Military & FAA meetings
<input type="checkbox"/>	<input type="checkbox"/>	Ribbon-cutting or other public event

ACKNOWLEDGEMENT

I, _____ (“Applicant”) affirm that I am over the age of eighteen years; or, if a business entity, I am the authorized signatory of a corporation or other business entity authorized, and in good standing, to do business in New Mexico, and I have full authority to submit this bid application form.

I hereby apply to bid on business lease ES-0168. I have read or otherwise familiarized myself with the bid packet prepared by the New Mexico State Land Office relating to the Land, the terms of which are incorporated into this Bid Application Form. I understand and agree that:

1. This bid application form, and any transaction that may result are subject to the terms of the bid packet.
2. I am fully and solely responsible for conducting my own due diligence.

3. I am including with this bid application form cash, certified or cashier's checks, or bank money order in the Total Qualification Deposit in the amount of \$15,497.21 made payable to the Commissioner of Public Lands. The Qualification Deposit represents the following:

a. Application Fee (non-refundable)	\$ 500.00
b. Transaction Deposit (estimated advertising cost)	\$ 9,000.00
c. First Year Rent Deposit	<u>\$ 5,997.21</u>
Total Qualification Deposit:	\$ 15,497.21

4. If I do not win the bid at the public auction my deposit, with the exception of the application fee, will be refunded. The application fee will be applied to processing and application review costs and is non-refundable, whether or not the Lease is awarded.
5. If I am the winning bidder, I am responsible for payment of all advertising costs. If the Transaction Deposit is less than actual advertising costs, I will be required to pay the difference within 10 days. If the Transaction Deposit is greater than actual advertising costs, at the Commissioner's discretion the difference may be credited toward the next rent payment due, or a refund will be issued. If no person or entity qualifies to bid or submits a bid, the applicant nominating the land to be auctioned and leased may be responsible for payment of all advertising costs.
6. I represent that:
- (a) I am, or the business entity I represent is, willing and able to comply with the applicable lease auction requirements;
 - (b) I am able to document that I am, or the business entity I represent is, creditworthy, and such documents are attached;
 - (c) I am able to document that I am, or the business entity I represent is, authorized to do business in New Mexico, and documents establishing this are attached; and
 - (d) I am, or the business entity I represent is, willing and able to comply with all lease terms contained in the Business Lease ES-0168.

I, _____, the above applicant
(if applicant is an individual) or on behalf of the above applicant (if applicant is an entity),
do solemnly swear or affirm that each and every statement made in this application to
qualify to bid is true and correct to the best of my knowledge and belief.

Signature

Date

Print or Type Name

Title (if acting in a representative capacity)

ACKNOWLEDGMENT
FOR A PERSON SIGNING IN AN INDIVIDUAL CAPACITY

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
20__, by _____.

(Name or names of person or persons acknowledging)

Notary Public

My Commission Expires: _____

ACKNOWLEDGMENT
FOR A PERSON SIGNING IN A REPRESENTATIVE CAPACITY

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
20__, by _____ (name), _____ (title) as

Authorized Signatory of _____ (name of party on behalf
of whom instrument is executed).

Notary Public

My Commission Expires: _____



**Stephanie Garcia Richard, Commissioner of Public Lands
State of New Mexico**

EXHIBIT 5: ACTIVE ENCUMBRANCES ON STATE TRUST LANDS

Long-Term Solar Energy Lease Number ES-0168
Valencia County, New Mexico

NOTE: INTERESTED PERSONS ARE RESPONSIBLE FOR PERFORMING THEIR OWN DUE DILIGENCE. The State Land Office provides this list of encumbrances for informational purposes only. Interested persons are responsible for verifying encumbrances in the records of the New Mexico State Land Office and the effect thereof on the Land. No search has been made of any records other than those of the State Land Office. Interested persons are responsible for searching other records which might contain relevant information, including those relating to real property, personal property, tax records, Uniform Commercial Code filings, etc., in any relevant city, county, state, and federal agency's files.

Land Description:

TRS	Subdivision	State Acreage	County	Beneficiary Group Name
07N03E32	SW4SW4, Pt. SE4SW4 (39.7707 ± ac.), Pt. SW4SE4 (0.1921 ± ac.)	79.9628 acres	Valencia	Common Schools

Legend:
Λ = Partial
/ = Full

07N03E32 SW4SW4, Pt. SE4SW4, Pt. SW4SE4

SURFACE ENCUMBRANCES:

Purpose	Number	Asgn #	Issued Date	Name	Address	NE				NW				SW				SE				Acres	Expiration Date
						NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
Public Hwy (Manzano Expressway)	R23728		04/09/1991	VALENCIA COUNTY	LOS LUNAS NM					Λ			Λ	Λ			Λ		Λ	Λ		13.81	12/31/9999
Grazing	G00071		09/30/2020	CORDOVA RANCH	LOS LUNAS NM	/	/	/	/									/	Λ	Λ	/	280.00	09/30/2025
Exploratory renewable energy testing	ES0138		06/24/2022	Affordable Solar Group, LLC	Albuquerque NM											Λ	Λ			Λ		40.8039	06/23/2027

MINERAL ENCUMBRANCES:**NONE****OIL & GAS ENCUMBRANCES:****NONE****Notes:**

- Reservation to the U.S. for right-of-way for ditches or canals constructed by the authority of the United States
- Expiration date of 12/31/9999 means the easement was issued in perpetuity or for so long as used for stated purpose

EXHIBIT 6: NMSLO RULE 9 (19.2.9 NMAC) - BUSINESS LEASING

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 2 STATE TRUST LANDS
PART 9 BUSINESS LEASING

19291 ISSUING AGENCY: Commissioner of Public Lands - New Mexico State Land Office - 310 Old Santa Fe Trail - P. O. Box 1148 - Santa Fe, New Mexico 87501.
 [19.2.9.1 NMAC - N, 5/15/2001]

19292 SCOPE: Pursuant to Article XIII, Section 2, of the New Mexico State Constitution, the commissioner has jurisdiction over all lands and related resources that the United States granted and confirmed to New Mexico under the New Mexico Enabling Act. This rule, 19.2.9 NMAC, governs the granting of business leases for commercial and business leasehold uses, as well as surface uses that are not otherwise provided for under other state land office rules, on those lands within the commissioner's constitutional jurisdiction.
 [19.2.9.2 NMAC - N, 5/15/2001]

19293 STATUTORY AUTHORITY: N.M. Const. Art. XIII; Section 19-1-1 *et seq.* NMSA 1978; Section 19-7-1 *et seq.* NMSA 1978.
 [19.2.9.3 NMAC - N, 5/15/2001]

19294 DURATION: Permanent.
 [19.2.9.4 NMAC - N, 5/15/2001]

19295 EFFECTIVE DATE: May 15, 2001, unless a later date is cited at the end of a section.
 [19.2.9.5 NMAC - N, 5/15/2001; A, 6/30/2016]

19296 OBJECTIVE: The objectives of 19.2.9 NMAC are to obtain revenues from business leasing; to assure protection and maintenance of trust lands; to provide standard lease terms and conditions; and to provide an efficient process for business leasing.
 [19.2.9.6 NMAC - N, 5/15/2001]

19297 DEFINITIONS: As used in 19.2.9 NMAC, the following terms have the meaning set forth in this section. A business lease may add detail to a definition to accommodate lease specific issues.

A. "Approval" means written approval and includes only that which has been expressly approved and nothing further which might be implied.

B. "Assignment" means any direct or indirect transfer of a lessee's interest in a business lease or improvements, including, but not limited to, any conditional transfer or transfer by operation of law.

C. "Authorized improvements" means improvements which have the approval of the commissioner prior to being placed, developed, created, or constructed on, or obtained or developed for the benefit of, or made appurtenant to trust lands, or which have subsequently received that approval.

D. "Bid lease" means a business lease entered into by the commissioner after the public advertisement and public auction required by the Enabling Act.

E. "Business lease" means a written lease of trust lands issued under this rule, 19.2.9 NMAC, for business, commercial, residential, industrial, or real estate planning and development purposes, or for surface uses that are not otherwise provided for under other state land office rules. The commissioner, in the commissioner's discretion, shall resolve any uncertainty about whether a lease is a business lease.

F. "Collateral assignment" means the conditional assignment to a creditor as security for a debt of a lessee's personal property interest in a business lease or improvements.

G. "Commissioner" means the commissioner of public lands. The commissioner is the executive officer of the state land office and may delegate to state land office staff the performance of duties required of the commissioner under this rule.

H. "Improvements" means any of the following:

(1) any item of tangible property developed, placed, created or constructed on trust lands including, but not limited to, buildings, roadways, equipment and fixtures;

(2) water rights appurtenant to trust lands, including without limitation any water rights developed or used on trust land for the benefit of the trust land; and,

(3) any tangible or intangible property, rights, approvals or privileges obtained or developed for the benefit of, or made appurtenant to, trust lands that are designated as improvements in a business lease.

I. “Improvement value credit” means a credit granted by the commissioner for permanent improvements which entitles the holder of the credit to certain rights upon the subsequent lease or sale of trust lands as provided in this rule and in a business lease.

J. “Lessee” means the party of record at the state land office, who leases trust land from the commissioner under a business lease.

K. “Mortgage” means the mortgage to a creditor as security for a debt of a lessee’s personal property interest in a business lease or improvements.

L. “Non-bid lease” means a business lease entered into by the commissioner without public advertisement and public auction for a term not to exceed five years, or for a term not to exceed twenty-five years pursuant to Section 19-7-54 or 19-7-55 NMSA 1978.

M. “Permanent improvements” means those authorized improvements that a business lease specifies shall not be removed upon the termination of the lease. “Permanent improvements” shall include water rights appurtenant to trust land and equipment and fixtures necessary for the development of the water.

N. “Removable improvements” means authorized improvements that are not permanent improvements.

O. “Rent” means the total of estimated rent payments, including all periodic rents with applicable rent adjustments, percentage rents, initial or periodic fees, or any other incentive payment due during the lease term, and any other payments identified as rent in a business lease.

P. “Rent adjustment” means a periodic increase of any rent amount.

Q. “Schedule of fees” means a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.

R. “State land office” means the New Mexico state land office.

S. “Sublease” means a transaction or arrangement whereby a business lessee transfers to another either the use or possession of all or part of leased trust land, or the management and control of all or part of the improvements located on leased trust land.

T. “Termination” means the end of a business lease whether by cancellation, relinquishment or the expiration of the lease term.

U. “Trust” means the land trust established by the Enabling Act (Act of June 20, 1910, 36 Statutes at Large 557, Chapter 310), and that trust’s assets, which are administered through the state land office by the commissioner.

V. “Trust land” means all land owned by the trust.

W. “Unauthorized improvements” means improvements that have not received the commissioner’s approval.

[19.2.9.7 NMAC - N, 5/15/2001; A, 6/30/2016; A, 6/11/2019]

19298 LEASING STANDARDS:

A. The surface estate of any trust land may be leased under a business lease at the discretion of the commissioner. A business lease may include more than one use, and may encompass more than one parcel of trust land. For lands already under any surface lease, the applicant shall comply with the procedures in 19.2.9.21 NMAC.

B. After receipt of an application as provided in 19.2.9.9 NMAC, the commissioner may request additional information from the applicant, as provided in 19.2.9.10 NMAC, and may enter into negotiations for a non-bid lease.

C. After receipt of an application as provided in 19.2.9.9 NMAC, or on the commissioner’s own initiative, the commissioner may offer to lease trust land under a bid lease as provided in 19.2.9.11 NMAC.

D. Any applicant may withdraw an application for a business lease at any time.

E. Notwithstanding any other provision of 19.2.9 NMAC, and at any time before the execution of a business lease, the commissioner may, at the commissioner's discretion, reject any application or bid submitted under 19.2.9 NMAC and may withhold from business leasing any trust land subject to the commissioner's jurisdiction.

[19.2.9.8 NMAC - N, 5/15/2001; A, 6/11/2019]

19299 APPLICATION TO LEASE: Any person may propose that the commissioner enter into a business lease by submitting an application on forms prescribed by the commissioner.

A. The application shall, at minimum, be made under oath and shall identify the applicant, the trust land proposed for leasing and the proposed uses of the trust land, including any proposed improvements.

B. The application shall include a written appraisal of the trust land proposed for lease made under oath by a disinterested and credible person. All statements contained in such appraisements, except as to the true value of the land appraised, must be based upon personal knowledge and not upon information and belief. No such appraisal shall be conclusive upon the commissioner.

C. The application shall include a nonrefundable application fee in the amount established in the schedule of fees.

[19.2.9.9 NMAC - N, 5/15/2001]

1929.10 SUPPLEMENTAL INFORMATION: After review of an application and before entering into a business lease, the commissioner may require additional information and documentation from an applicant, including, but not limited to, an appraisal of the trust land proposed for lease, a survey of the land, a detailed development plan of the land, environmental analyses of the land, and cultural or biological resource investigations of the land.

[19.2.9.10 NMAC - N, 5/15/2001]

1929.11 BID LEASE: The commissioner may, under the following procedures, offer a bid lease to the highest and best bidder at a public auction held at the county seat of the county where the offered trust land, or the major portion of the offered land, is located.

A. Appraisal. After a preliminary determination that a bid lease might be advantageous to the trust, the commissioner will cause an appraisal to be made. The appraisal will cover the trust land proposed for lease and any permanent improvements on, appurtenant to, or obtained or developed for the benefit of, the land. Thereafter, if the commissioner determines to offer the land for bid lease, a copy of the appraisal will be furnished to the applicant, if any, and to the holder of the improvement value credit as well as to any other interested parties. Prior to the advertisement of the lease sale, the commissioner shall determine that the terms of the bid lease being offered provide a return to the trust over the duration of the bid lease that is a fair rental value based on the appraisal.

B. Advertisement. A notice of the lease sale shall be published once each week for ten (10) consecutive weeks in a newspaper of general circulation published in Santa Fe, and in a newspaper of general circulation published nearest the offered land.

C. Notice. The notice of lease sale shall contain:

- (1) The date, time and place of the auction;
- (2) A description of the trust land offered for lease, and any limitations on the uses of the land including any local land use restrictions, covenants, master plans or any restrictions established by the commissioner;
- (3) A summary of the basic provisions of the bid lease, including the term (and any extension periods), the rent (if fixed and not based on the highest bid) and the allowable uses of the trust land offered for lease;
- (4) Any requirements or qualifications for bidders;
- (5) The amounts that a bidder must deposit to pay the costs of the lease sale, the first rental payment and any improvement value credits;
- (6) A brief description of how the commissioner will determine the highest and best bidder; and
- (7) The name of a person to contact at the state land office for additional information on the auction and the trust land offered for lease.

D. Deposit. To qualify as a bidder, the prospective bidder shall deposit with the commissioner before the auction or at such other time provided in the notice of lease sale, the following amounts which shall be listed in the notice:

(1) The costs of the lease sale. The successful bidder shall pay the reasonable costs and expenses related to the lease sale, whether incurred by the state land office or by another entity at the request of the state land office. Such costs and expenses may include, but are not limited to, the costs of appraisals, surveys, advertising, land use planning and brokerage or other real estate fees;

(2) The first rental payment under the bid lease; and

(3) If the offered trust land includes permanent improvements, either a sum equal to the improvement value credit attributable to the permanent improvements or a bill of sale or a waiver of payment signed by the holder of the improvement value credit or a bond sufficient to cover the value of the improvements if an appeal of the appraised value is to be taken, unless the prospective bidder is the holder of the improvement value credit. The improvement value credit shall be calculated and paid as provided in 19.2.9.18 NMAC. Upon completion of the lease sale, the commissioner shall return any deposits from unsuccessful bidders.

E. Qualification of bidders. The commissioner may establish additional qualifications for bidders based on the nature of the bid lease and the proposed uses of the offered trust land.

F. Due diligence. All bidders must undertake their own due diligence in preparation for the lease sale, including, but not limited to, inspecting the offered trust land and reviewing pertinent records and files of the state land office and other public agencies. A prospective bidder must obtain the approval of the commissioner before entering on trust land. The notice of lease sale may provide that additional information concerning the offered trust land is available at the state land office for viewing by any interested parties. The additional information may include, without limitation, a draft bid lease or a summary of bid lease provisions.

G. Auction. The auction may be conducted by oral auction or by the acceptance of sealed bids or proposals at the time of the auction. If awarded at all, the bid lease shall be awarded to the highest and best bidder.

H. Highest and best bidder. In determining the highest and best bidder, the commissioner shall establish criteria that will be described in the notice of lease sale. The criteria shall enable the commissioner to select the bid that is in the best interests of the trust considering the requirements of the bid lease and the proposed uses of the offered trust land. In addition to any offered bonus or rental amounts, the commissioner may, as appropriate, consider the qualifications of the bidders to develop the land or to construct the improvements contemplated by the proposed bid lease, and to provide the trust with sustainable long-term returns. The commissioner may divide the bid process into stages, and review the qualifications of bidders prior to, or in addition to, reviewing any financial proposals.

I. Execution of bid lease. The successful bidder must deposit with the commissioner all amounts due for the lease sale, including any bonus bid, no later than five business days after the auction, and shall, within thirty days after the auction, enter into the bid lease. The commissioner may extend the period for entering into a bid lease to no greater than one hundred twenty days after the auction. The final bid lease shall not contain any provisions that vary from those described in the notice of lease sale. If the successful bidder does not deposit with the commissioner any amounts due, or enter into the bid lease offered by the commissioner, within the prescribed time periods, the commissioner may reject the bid and either declare another bidder to be the highest and best, or terminate the lease sale.

[19.2.9.11 NMAC - N, 5/15/2001]

1929.12 BUSINESS LEASE:

A. Prerequisites. Before taking possession of the leased trust land, the lessee must provide the commissioner with a legal description and a survey plat showing the exact location of the land.

(1) A legal description must be given in aliquot parts of at least forty (40) acres, or in some other form as may be required by the commissioner such as survey metes and bounds. The description shall include a reference to all encumbrances, easements, or other servitudes burdening or benefiting the trust land.

(2) The commissioner may provide specific instructions on the requirements for a survey plat.

B. Leases. All business leases shall be in a form and contain such provisions as may be prescribed by the commissioner from time to time, which provisions shall be deemed to include all pertinent

statutes and state land office rules in effect at the time of lease issuance.

C. Conditions. The commissioner shall establish conditions in a business lease necessary for providing a secure return to the trust, managing the trust land in a commercially reasonable manner and protecting the trust land and any natural and cultural resources on the trust land from waste. Each lessee under a business lease shall have an affirmative duty to diligently prevent and protect against trespass and waste on trust land.

D. Uses. A business lease shall designate the allowable uses of the leased trust land. A business lease may be issued for any use of the surface estate not otherwise provided for under other state land office rules.

(1) The commissioner may establish restrictions on the uses of the trust land, including restrictions contained in local land use rules, covenants or land use plans.

(2) A business lease may be issued to authorize the planning of trust land or the development of trust land pursuant to an approved plan. The lease may require that the lessee obtain local government approvals of the land use plan prior to development. The lease may provide for development to occur in phases, which phases may require further leases or sales of trust land.

E. Rent. Unless otherwise provided in a lease, rent shall be paid in advance in annual installments.

(1) If a business lease has a term of more than five years, the lease shall provide for a rent adjustment of any fixed periodic rent to occur no less often than every five years.

(2) As provided in Section 19-7-34 NMSA 1978, the commissioner shall have a first lien on any improvements on the leased trust land, prior and superior to any other lien or encumbrance, whether created with or without notice of the lien, for rental due or to become due. When any rental is due and unpaid the commissioner may attach all improvements or a portion of the improvements sufficient to pay the unpaid rental together with all costs incurred in the enforcement of the lien.

(3) The commissioner may, upon request and upon provision of adequate security as determined by the commissioner, agree to withhold enforcement of the rental lien. Adequate security may include prepayment of lease rent or some other acceptable form of financial assurance.

F. Mineral reservation. Each business lease shall reserve the mineral estate of the trust land to the commissioner and shall reserve the right to lease the mineral estate, or any portion of the mineral estate, for exploration, development, conservation and production of the mineral resources, including oil and natural gas. The reservation shall include all rights of access over, through or across trust lands necessary for a mineral lease. The commissioner may, in a business lease, agree, upon payment of an additional annual rent, not to exercise the right to lease the trust's mineral rights during the term of the lease. The additional rent shall be sufficient to compensate the trust based on the commissioner's evaluation of the potential mineral value associated with the leased trust land.

G. Easements and right of way. Each business lease shall reserve to the commissioner the right to grant easements and right of way across trust land for any legal purpose. A business lease may provide that any easements or right of way granted across leased trust land shall be located to avoid unreasonable interference with the uses allowed under the lease. A business lease may require that the lessee acquire from the commissioner easements or right of way necessary for the development of the trust lands and may also require or allow the lessee to assign or dedicate its interest in easements or right of way to a public entity.

[19.2.9.12 NMAC - N, 5/15/2001]

1929.13 LEASE EXTENSION AND NEW LEASE:

A. Bid lease. The term of a bid lease may not be extended except as provided in the notice of lease sale and the original bid lease.

B. Non-bid lease. The term of a non-bid lease may not be extended. If, prior to the expiration of a non-bid lease, the lessee wants a new non-bid lease, for the same trust land and the same use, that will commence at the expiration of the current lease, and if the lessee has complied with all the terms of its lease, the lessee shall submit a sworn application, on such forms as the commissioner may require or provide, for a new lease. The commissioner may establish, in a business lease, additional requirements for applying for a new lease.

C. Discretion. Nothing in this rule shall limit the discretion of the commissioner, at the expiration of a business lease, to determine whether it is in the best interests of the trust to reject all applications to lease, or to offer a new non-bid lease on such terms as the commissioner determines or to sell or lease the trust land through a bid process.

[19.2.9.13 NMAC - N, 5/15/2001]

1929.14 SUBLEASE AND ASSIGNMENT:

A. Any assignment or sublease for use of trust lands is void without the approval of the commissioner. The commissioner's approval may be conditioned upon such terms or requirements as are deemed to be in the best interests of the trust. The commissioner may, in a lease, pre-approve certain assignments or subleases that the commissioner deems to be in the best interests of the trust.

(1) No assignment or sublease of trust lands under a business lease shall be approved unless the lessee is in compliance with the terms of the lease.

(2) The commissioner's approval of a sublease or assignment shall not relieve the lessee from any liability that may have arisen before the sublease or assignment. The commissioner's approval of a sublease shall not release the lessee from its continuing and primary liability for performance of all terms and obligations under the lease.

(3) The commissioner's approval of a sublease or assignment will not constitute approval of any subsequent sublease or assignment.

B. Applications to sublease or assign shall be made by the current lessee under oath, on forms prescribed by the commissioner, and shall be accompanied by the fees shown on the schedule of fees.

C. No assignment or sublease shall extend the term of a business lease and the lessee shall inform its sublessee or assignee of the terms and conditions of the lessee's business lease.

D. The termination of a business lease shall automatically, and without notice, terminate any sublease, unless otherwise agreed to in writing by the commissioner.

E. A lessee or sublessee may not transfer, change the purpose or use, or move the point of diversion of any water rights that are appurtenant to trust land without the prior approval of the commissioner.

[19.2.9.14 NMAC - N, 5/15/2001; A, 6/11/2019]

1929.15 COLLATERAL ASSIGNMENTS AND MORTGAGES:

A. Unless otherwise provided in a business lease, and subject to the prior approval of the commissioner, a lessee's interest in a business lease or improvements may be collaterally assigned or mortgaged by the lessee. An approved collateral assignee or mortgagee shall have a lien on the lessee's interest in the lease, as well as any improvements covered by the collateral assignment or mortgage, but shall not have a lien on the commissioner's interest in the lease and any improvements, or in the commissioner's reversionary interest in the real and personal property subject to the lease. Any attempt to collaterally assign or mortgage a lessee's interest in a business lease, or in any improvements, without the approval of the commissioner, shall be void and shall not vest the purported collateral assignee or mortgagee with any right, title, interest, claim or privilege with respect to such lease or improvements.

(1) A lessee shall apply to the commissioner to collaterally assign or mortgage the lessee's interest in a business lease or any improvements in writing, under oath, and on such form as may be prescribed by the commissioner. The lessee shall include a copy of the proposed collateral assignment agreement or mortgage and pay any applicable fees set out in the schedule of fees.

(2) The commissioner may approve the collateral assignment or mortgage subject to such terms and conditions which the commissioner deems to be in the best interests of the trust.

B. If the commissioner gives written notice to a business lessee of a breach of the lease by the lessee, the commissioner shall also give written notice of the breach to an approved collateral assignee or mortgagee of the business lessee. Such notice shall be sent by certified mail to the most current name and address of the collateral assignee or mortgagee provided to the commissioner and no proof of receipt of such notice by the collateral assignee or mortgagee shall be required.

C. An approved collateral assignee or mortgagee shall have the right to cure a lessee's breach within the time periods provided to the lessee under the lease. A business lease may provide that a collateral assignee or mortgagee may succeed to the rights and duties of the lessee of the business lease under such conditions as are provided in the lease. The commissioner's approval of a collateral assignment or mortgage of improvements does not change the status of any improvements as authorized, unauthorized, removable or permanent improvements.

D. A collateral assignee or mortgagee shall take its interest subject to the following terms and conditions, and the lessee is required to give notice of such terms and conditions to its collateral assignee or

mortgagee upon making a collateral assignment or mortgage.

(1) The commissioner is entitled to notice of all proceedings, judicial or non-judicial, to enforce or foreclose the collateral assignment or mortgage.

(2) Any successor in interest to a lessee's interest in a business lease, or in any improvements, that acquires an interest in such property as the result of the enforcement or foreclosure of a collateral assignment or mortgage, or an assignment or conveyance in lieu of such enforcement or foreclosure, shall be deemed to be an assignee under section 19.2.9.14 NMAC, and will be subject to the approval of the commissioner. Such approval will not be unreasonably withheld; but no successor in interest will be approved by the commissioner unless all sums due under the terms of the lease have been paid in full, and all other pending duties discharged, or unless arrangements satisfactory to the commissioner are made to fully pay such sums or discharge such duties.

[19.2.9.15 NMAC - N, 5/15/2001; A, 6/11/2019]

1929.16 APPROVAL OF IMPROVEMENTS: No improvements shall be placed, developed, created or constructed on trust land, or obtained or developed for the benefit of trust land, or made appurtenant to trust land without the prior approval of the commissioner. Such approval may be conditioned upon certain requirements imposed by the commissioner which may include, without limitation, the provision of a bond or other adequate security to assure proper removal of improvements from trust land and the restoration of trust land.

A. A request for the commissioner's approval shall be made in writing on such forms and in such manner as may be required by the commissioner, and shall be accompanied by the fee set forth in the schedule of fees. The commissioner shall not be obligated to approve any improvements.

B. A business lease may identify existing and proposed improvements that are approved by the commissioner when the commissioner determines it is in the best interests of the trust.

C. If the commissioner does not grant prior approval for improvements, the commissioner may, in the best interests of the trust, approve improvements after the improvements have been placed, developed, created or constructed on, obtained or developed for the benefit of, or made appurtenant to trust land.

[19.2.9.16 NMAC - N, 5/15/2001; A, 6/11/2019]

1929.17 REMOVAL OF IMPROVEMENTS:

A. Upon the termination of a business lease, all removable or unauthorized improvements shall be removed from the trust land unless otherwise provided in the lease or in writing by the commissioner.

(1) No improvement may be removed without the commissioner's approval if a lessee owes rent or any other sums to the commissioner or if any material duties required under the lease remain unperformed.

(2) The commissioner may require, in writing, that designated unauthorized improvements be left in place. Such improvements shall become the property of the commissioner and no person shall be entitled to any improvement value credit for such improvements.

(3) Any improvements left on trust lands without the commissioner's approval shall remain the property and liability of the lessee and shall constitute a nuisance until removed or abandoned. The commissioner may elect to either take any necessary action to abate such nuisance, with all costs and fees incurred in so doing to be additional rent due from the lessee under the lease, or to declare that the improvements are abandoned and have become the property of the commissioner.

B. In all cases where improvements are removed from trust land, the lessee shall be solely liable for the restoration of the trust land to its condition prior to the placement of such improvements. The lessee's obligation to remove improvements and to restore the trust land shall survive the termination of the lease.

C. All costs, fines and fees incurred by the commissioner as a result of improvements left on trust lands without the commissioner's approval, and all costs, fines and fees incurred as a result of damage or waste to trust lands and their improvements during the term of the lease, or arising from or in connection with the lessee's use and occupancy of the trust lands, shall remain the sole liability of the lessee and shall be deemed additional rent due at the time incurred.

[19.2.9.17 NMAC - N, 5/15/2001]

1929.18 IMPROVEMENT VALUE CREDIT:

A. Personal property. Unless otherwise provided in a business lease or in this rule, improvements shall be the property of the lessee. The interest of a lessee in a business lease and in the improvements is a personal property interest. Unless otherwise provided in a business lease, improvement value credit is only granted for permanent improvements and is not granted for removable or unauthorized improvements. Water rights that are appurtenant to trust land shall be developed and held in the name of the commissioner.

B. When payable. When trust lands are sold or leased to a person other than the holder of any improvement value credit, the successor in interest shall pay to the commissioner the amount of the improvement value credit, if any. The commissioner shall pay to the holder of the improvement value credit the amount paid by the successor in interest, less any rent, costs or damages owed to the commissioner.

(1) In lieu of such payment, a successor in interest may file with the commissioner a bill of sale or waiver of payment signed by the holder of the improvement value credit or, if an appeal of the appraised value is taken, a bond sufficient to cover the value of the improvements as determined by the commissioner.

(2) Except for the transfer of funds for improvement value credit paid by a successor in interest as provided in this subsection, the commissioner shall not be liable for the payment of any improvement value credits. The commissioner may require a release or indemnity from the party receiving payment of the improvement value credit.

(3) The holder of the improvement value credit must be identified in the records of the state land office. Unless otherwise provided in a lease or in an assignment, collateral assignment or mortgage of improvements approved by the commissioner and filed with the state land office, the commissioner shall treat the former lessee as the holder of the improvement value credit and the party entitled to payment of any improvement value credit.

C. Calculation of improvement value credit. Unless otherwise provided in a lease, the holder of the credit is entitled to all of the improvement value credit attributable to the permanent improvement.

(1) A business lease may provide that the commissioner shall receive a specified portion of the improvement value credit attributable to a permanent improvement.

(2) Unless otherwise provided in a lease or in a statute, the improvement value credit will be the amount, if any, which the permanent improvement adds to the value of the trust land. The added value shall be determined, at the expense of the lessee or the holder of the credit, by an appraisal conducted by a certified real estate appraiser. The appraisal shall be submitted to the commissioner for review and approval. The commissioner may obtain further appraisals to ascertain the improvement value. The commissioner may require a successor in interest to reimburse the costs of appraising the improvements.

(3) The commissioner shall determine the value of the improvements and the commissioner's determination shall be final unless the holder of the improvement value credit initiates a contest as provided under Section 19-7-64 NMSA 1978.

(4) A business lease may provide that an improvement value credit may be lost or depreciated if, after termination of the business lease, there is no successor in interest other than the commissioner.

[19.2.9.18 NMAC - N, 5/15/2001; A, 6/11/2019]

1929.19 RELINQUISHMENT:

A. A lessee may, with the approval of the commissioner, relinquish to the commissioner the lessee's interest in a business lease. The commissioner may, in a business lease, establish conditions pursuant to which the lessee may, at prescribed times, relinquish all or portions of the lease.

B. A lessee may request relinquishment of the lease on forms prescribed by the commissioner and upon payment of a relinquishment fee, provided that:

(1) the lessee is in compliance with the terms of the lease; and,

(2) all improvements made pursuant to the lease on, for, or appurtenant to the lands leased have been approved by the commissioner and arrangements satisfactory to the commissioner have been made for either the removal or the retention of the improvements.

C. A lessee shall not, by relinquishment, avoid or be released from any liability for known or unknown waste or damage to trust lands, including but not limited to environmental damage, arising from or connected with lessee's use or occupancy of trust lands.

D. A relinquishment shall not be valid or effective until approved by the commissioner. Any attempted relinquishment of the lease, without the commissioner's approval, shall be a breach of the lease.

E. Upon relinquishment, a lessee shall not be entitled to the refund of any rent previously paid; however, a lessee seeking relinquishment in response to a request by the commissioner shall not be charged a fee, and shall be entitled to a pro-rata refund of prepaid rent to be paid only by the successor lessee, purchaser or other successor in interest, if any.

[19.2.9.19 NMAC - N, 5/15/2001]

192920 DEFAULT; REMEDIES: Unless otherwise provided in a business lease, a lessee shall be in default under a business lease if a breach of the lease is not cured within thirty days after the commissioner gives written notice of the breach to the lessee. A breach of the lease may include, without limitation, a failure to pay any rent or other monetary obligation due under the lease, or a violation of any term, condition, or covenant of the lease, or the failure to perform or observe any other obligation of the lessee under the lease.

A. Notice. Written notice of a breach shall be sent to the lessee, and to the holder of any collateral assignment or mortgage, at their addresses of record at the state land office, by certified mail. The commissioner need only provide proof of mailing to establish satisfactory compliance with this notice requirement.

B. Remedies. On the default of a lessee, the commissioner shall have all the remedies available to the commissioner at law or in equity in New Mexico, and as provided in the business lease, including, without limitation, terminating the lease, retaking possession of the leased trust land with or without termination of the lease, and proceeding to recover any damages, including damages for any unpaid or unperformed obligations of the lessee.

[19.2.9.20 NMAC - N, 5/15/2001]

192921 EXISTING LEASES: Except as provided in this section, the commissioner may not lease under a business lease any trust land currently leased under an existing surface lease unless the existing lessee relinquishes the existing lessee's interest in the trust land or the commissioner exercises any right of withdrawal of land which the commissioner may have. Notwithstanding the foregoing, the commissioner may determine that a proposed business lease will not unreasonably interfere with the authorized uses under an existing lease, and may allow a new business lease in compliance with the following requirements.

A. The new business lease shall identify the existing lease, shall state that the new business lessee's rights and privileges are subject to the existing lessee's rights and privileges under the existing lease, unless waived or amended, and shall provide that the new business lessee will not interfere with the uses permitted under the existing lease.

B. The existing lessee must consent in writing to the new business lease.

[19.2.9.21 NMAC - N, 5/15/2001; A, 6/11/2019]

HISTORY of 19.2.9 NMAC:

Pre-NMAC History: Material in this part was derived from that previously filed with the State Records Center and Archives:

CPL 69-5, Rules and Regulations Concerning the Sale, Lease and other Disposition of State Trust Lands, 9/2/1969.

CPL 71-2, Rules and Regulations Concerning the Sale, Lease and other Disposition of State Trust Lands, 12/16/1971.

CPL 77-1, Rules and Regulations Concerning the Sale, Lease and other Disposition of NM Trust Lands, 1/7/1977.

Rule 9, Relating To Business Leases On State Lands, 3/11/1981

SLO Rule 9, Relating To Business Leases On State Lands, 1/20/1984

SLO Rule 9, Relating To Business Leases On State Lands, 6/24/1985.

History of Repealed Material:

SLO Rule 9, Relating To Business Leases On State Lands - Repealed, 5/15/2001.



**Stephanie Garcia Richard, Commissioner of Public Lands
State of New Mexico**

EXHIBIT 7: SEALED BID FORM

Long-Term Solar Energy Business Lease Number ES-0168
Valencia County, New Mexico

To: Commissioner of Public Lands
New Mexico State Land Office
310 Old Santa Fe Trail, Santa Fe, NM 87501
P.O. Box 1148, Santa Fe, NM 87504-1148

I/We, _____
(Name of individual, or entity)

whose address is: _____,

is qualified to do business in New Mexico (if an entity), or a citizen or lawful permanent resident of the United States (if an individual), at least eighteen years old, having made an application to lease and received notice of qualification to bid, hereby submits a sealed bid for a long-term business lease for solar energy development upon the following described land situated in Valencia County, State of New Mexico, to-wit:

Township, Range, Section	Subdivision	Acreage
07N03E32	SW4SW4, Pt. SE4SW4 (39.7707 ± ac.), Pt. SW4SE4 (0.1921 ± ac.)	79.9628
Total Acreage:		79.9628 acres, more or less

Tendered herewith as bonus is the sum of \$_____. (The minimum bid amount is \$10,000.00. Additional amounts may be added in increments of \$5,000.00.)

I/We have previously submitted the required Qualification Deposit in the amount of \$15,497.21.

Signature

Date

Print or Type Name

Title, if acting in a representative capacity

ACKNOWLEDGMENT
FOR A PERSON SIGNING IN AN INDIVIDUAL CAPACITY

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20 ____,
by _____.

(Name or names of person or persons acknowledging)

-

Notary Public

My Commission Expires: _____

ACKNOWLEDGMENT
FOR A PERSON SIGNING IN A REPRESENTATIVE CAPACITY

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20 ____, by
_____ (name), _____ (title) as Authorized Signatory of
_____ (name of party on behalf of whom instrument is executed).

Notary Public

My Commission Expires: _____

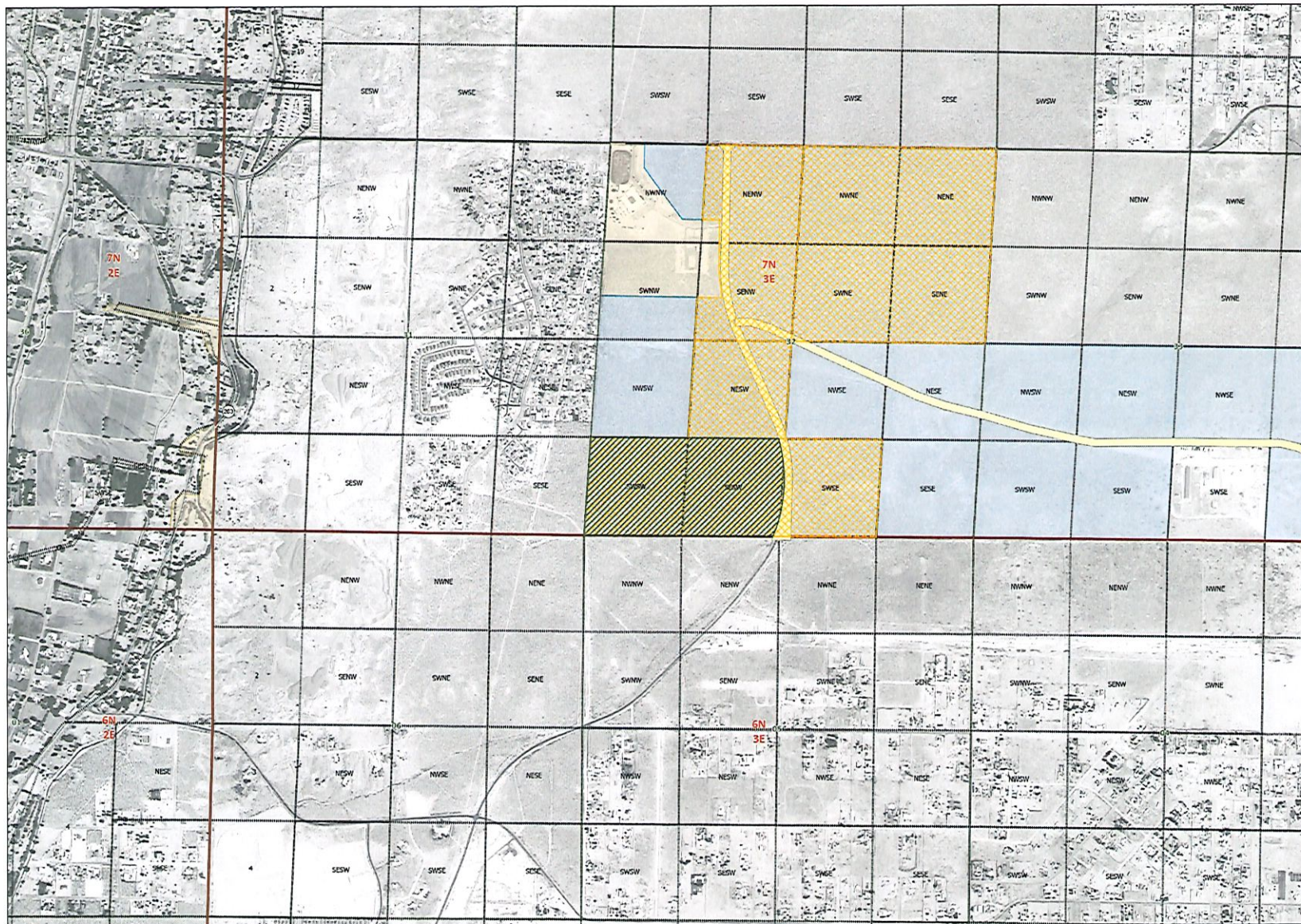
Exhibit 8 **Proposed ES-0168** **Valencia County**

- NM - PLSS**
- Townships
 - Sections
- NM Trust Lands - By Estate**
- Subsurface
 - Surface and Subsurface
- SLO Leases**
- Active Energy Leases
- NM Trust Lands - ROW's**
- Type
- Miscellaneous
 - Road
 - Proposed ES-0168

Total Acreage (79,9628 acres)



Stephanie Garcia Richard
 Commissioner of Public Lands
 505-527-5761
www.nmstatelands.org



The New Mexico State Land Office assumes no responsibility or liability for, or in connection with, the accuracy, reliability or use of the information provided herein, with respect to State Land Office data or data from other sources. Data pertaining to New Mexico State Trust Lands are provisional and subject to revision, and do not constitute an official record of title. Official records may be reviewed at the New Mexico State Land Office in Santa Fe, New Mexico. Compiled, edited and printed by the Land Office Geographic Information Center. V:\Commercial\RN\Map\ArcPro_P\Projects\Exhibit 8 ES-0168-zoomed out
 Save Date: March 27, 2024 Print Date: March 27, 2024 Created by: Rhessa Nolas

0 0.2 0.4 0.8
 Miles

