



Agenda

CITY CLERK'S OFFICE

DATE 12/12/14 TIME 10:50am

PREPARED BY

Alicia Harting

SPECIAL CITY COUNCIL MEETING

MONDAY, DECEMBER 15, 2014

5:00 P.M.

CITY HALL, CITY COUNCIL CHAMBERS

200 LINCOLN AVENUE

1. CALL TO ORDER
2. ROLL CALL
3. APPROVAL OF AGENDA
4. Request for Approval of a Lease Agreement Pursuant to §19-7-55 NMSA 1978 and 19.2.9 NMAC, Between the City of Santa Fe and the Commissioner of Public Lands for Approximately 30.55 Acres of State Trust Lands Lying within Section 36, Township 17 North, Range 8 East, N.M.P.M., Located Southwest of the South Meadows Road/NM 599 Interchange. (Matthew O'Reilly)
6. Adjourn

Persons with Disabilities in Need of Accommodations, Contact the City Clerk's Office at 955-6521, Five (5) Days Prior to Meeting Date.

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SPECIAL MEETING OF THE
GOVERNING BODY
December 15, 2014

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REQUEST FOR APPROVAL OF A LEASE AGREEMENT PURSUANT TO §19-7-55 NMSA 1978 AND 19.2.9 NMAC, BETWEEN THE CITY OF SANTA FE AND THE COMMISSIONER OF PUBLIC LANDS FOR APPROXIMATELY 30.55 ACRES OF STATE TRUST LANDS LYING WITHIN SECTION 36, TOWNSHIP 17 NORTH, RANGE 8 EAST, N.M.P.M., LOCATED SOUTHWEST OF THE SOUTH MEADOWS ROAD/NM 599 INTERCHANGE	Approved [amended]	2-12
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**MINUTES OF THE
SPECIAL MEETING OF THE
GOVERNING BODY
Santa Fe, New Mexico
December 15, 2014**

1. CALL TO ORDER

A special meeting of the Governing Body of the City of Santa Fe, New Mexico, was called to order by Mayor Pro-Tem Peter N. Ives, on December 15, 2014, at approximately 5:00 p.m., in the City Hall Council Chambers.

2. ROLL CALL

Roll call indicated the presence of a quorum, as follows:

Members Present

Councilor Peter N. Ives, Mayor Pro-Tem
Councilor Bill Dimas
Councilor Carmichael A. Dominguez
Councilor Joseph M. Maestas
Councilor Christopher M. Rivera
Councilor Ronald S. Trujillo

Members Excused

Mayor Javier M. Gonzales
Councilor Patti J. Bushee
Councilor Signe I. Lindell

Others Attending

Brian K. Snyder, City Manager
Kelley Brennan, City Attorney
Yolanda Y. Vigil, City Clerk
Melessia Helberg, Council Stenographer

NOTE: All items in the Council packet for all agenda items are incorporated herewith by reference. The original Council packet is on file in the Office of the City Clerk.

3. APPROVAL OF AGENDA

MOTION: Councilor Dominguez moved, seconded by Councilor Dimas, to approve the Agenda as published.

VOTE: The motion was approved on a voice vote with Mayor Pro-Tem Ives and Councilors Dimas, Dominguez, Maestas, Rivera and Trujillo voting in favor of the motion and none voting against.

4. REQUEST FOR APPROVAL OF A LEASE AGREEMENT PURSUANT TO §19-7-55 NMSA 1978 AND 19.2.9 NMAC, BETWEEN THE CITY OF SANTA FE AND THE COMMISSIONER OF PUBLIC LANDS FOR APPROXIMATELY 30.55 ACRES OF STATE TRUST LANDS LYING WITHIN SECTION 36, TOWNSHIP 17 NORTH, RANGE 8 EAST, N.M.P.M., LOCATED SOUTHWEST OF THE SOUTH MEADOWS ROAD/NM 599 INTERCHANGE. (MATTHEW O'REILLY)

A Memorandum dated December 12, 2014, with attachments, to the Governing Body, from Matthew S. O'Reilly, Asset Development Director, is incorporated herewith to these minutes as Exhibit "1."

Mr. O'Reilly reviewed the information in Exhibit "1." Please see Exhibit "1" for specifics of this presentation.

Ray Powell, State Land Commissioner, said he is really excited about this opportunity, and thinks it will turn out to be in the best interest of the Trust, noting they generate revenue for the public schools, universities and hospitals, and keep our taxpayer's bills down through this process. He said over the past four years, they have been doing projects like this one all across the State, which have resulted in more than 5000 new jobs, paying twice the salary of the local community. This collaborative and cooperative agreement is a win-win. Commissioner Powell asked the members of his staff to stand and introduce themselves.

Commissioner Powell said he appreciates Mr. Chacon being here from *The Santa Fe New Mexican*, and covering this development, because it represents exactly what collaboration between governmental bodies can result in – a real win-win. He said, "One of the concerns is always, have you done your due diligence and if people will have the opportunity to get to know what's happening there and make their comments know. I know, through your process, as you develop what I think will be a very successful business park out there, there will be a number of opportunities the public will have to learn about what the proposals are and to give their comments through that process. So again, I think this is something that, from our standpoint at the Land Office, we're very excited about and appreciate the professionalism and the talent that you have here in the City, and I think it will result in something that we can all, for generations, look back on as a real economic engine creating good jobs, more tax revenue, and more money for the school kids which results in lower taxes. I think, and it's been demonstrated across the State, that this sort of project is exactly what we should be doing. And I compliment you and thank you for the opportunity to work with you. Thank you Mayor."

Mayor Pro-Tem Ives thanked Commissioner Powell for his attendance and remarks to the Governing Body.

The Governing Body commented and asked questions as follows:

- Councilor Dominguez thanked Commissioner Powell for being here this evening, saying he is always a friend to Santa Fe. He said Mr. O'Reilly talked a little about restrictions, and asked if there are any other restrictions of which we need to be wary, such as the highway corridor – is there anything else that needs to be identified outside of the lease and the lessee's potential restrictions.

Mr. O'Reilly said, "As you can tell by reading the lease, it is very similar to the leases that the City itself enters into when it leases property or sells property. The landlord, the Lessor, the State Land Office, does retain some control over things, mostly approval control over what we do."

- Councilor Dominguez said, "We're the Lessee, they're the Lessor, the State."

Mr. O'Reilly said, "That is correct. They are the Lessor, we are the Lessee in this case. And most of those, as you can tell from the lease, require us to check with them before we do things, and there are certain requirements, as I described, the requirement for an approved site plan, the requirement for a ground disturbance permit, the requirement that if we build anything, they look at the construction plans beforehand and that we provide them as built drawings of those things. It is very similar to the kinds of things that we enter into from time to time when we lease our property to someone."

Mr. O'Reilly continued, "With regard to the requirements, I mentioned a minute ago, the site plan. If we get to the point where we're ready to build a fire station and we need to create a site plan, that would be the time where we would enter into our full public review process of this. We can do ENN's, we can have land use hearings on this thing, we can do a site plan that may or may not contain a rezoning action that would require Planning Commission and City Council meetings. So, we can undertake those steps of our own volition. And were someone else to control this property, the State Land Office would not necessarily be required to do that, so by controlling this property, we can work with the State Land Office to create a robust public involvement when the time comes. What's in front of you tonight is just securing the land and tying it up so the City can move forward with its plans."

- Councilor Dominguez said, "Just one question for you Chief. How many acres do you need for a fire station. We want the biggest, best fire station in that area, so what has your analysis been so far."

Chief Erik Litzenberg said, "We generally look at our footprint to be in the neighborhood of 3 acres for a station that is usable for the right size crew."

- Councilor Dominguez said, “This is a great opportunity. Thank you again Commissioner for your work on this. Thank you staff for your work on this as well.”
- Councilor Maestas thanked Commissioner Powell for his service to the State, and thanked him for collaborating with the City on this great project which has great potential. He said he looked through the lease, and he sent questions to Mr. O'Reilly in advance, and he has addressed some of them.
- Councilor Maestas said, “I’m going to go down my list and restate those questions that haven’t been fully answered. One of them is that the lease is for 25-years, and Matt, you mentioned we could simply employ a pay-as-you-go process, and we could maybe benefit from a sub-lease and pay off whatever development we may make. In looking at the potential cost of a brand new facility, such as a fire station, and no doubt we probably would have to pay for the extension of the utilities. I don’t know what that cost is, but we may require some method of financing. Would the funders look favorably on a 25-year lease versus something longer, or would that be an impediment to financing improvements if we need to.”

Mr. O'Reilly said, “That is a good question, and one of the first things I thought about in looking at this process. As I said before, the State law allows the Commissioner of Public Lands to enter into up to a 25-year lease with the municipality. But if we were to figure out a way to build our fire station, and hopefully we will, or if someone else comes to us and figures out they want to put their business on this property, at that point, before we made the final decision to do that, we would want to go back to the State Land Office, and most likely ask to enter into what they call a bid lease for this property, which would allow us to extend the lease term beyond 25-years. We don’t need to do that right now today, because we aren’t immediately ready to put a fire station here, and we don’t immediately have some wonderful company that wants to be located on this property. But once those things started to gel and we were moving closer to that, that would be a time that we would take the opportunity to reach out to the State Land Office again, and do whatever their procedures require to enter into a lease with a much longer term. So, we could fund our fire station, and so that private companies that were going to build here would be able to finance their improvements.”

- Councilor Maestas said, “My next question is on the improvement value credit. It seems, in reading this, that there really are no limitations by the Land Commissioner and the office. I mean, it could be terminated at any time, they can initiate mining on that land. Really there are no essential limitations. The only protection is kind of locking at the base rent, and any sublease rent, whether it’s public or private development.”
- Councilor Maestas continued, “But my question is, in reading the section on the improvement value credit, it seems that the State Land Office has full discretion to either modify the credit, which would be based on a fair market appraisal, or reject it outright. And I’m concerned, because that appraisal and that credit is our investment in the property. So, if we walk away after some investment, I want to make sure that we do realize our return on investment, that we get appropriate credit on it, and not just for actual construction, but the fair market value, or should I

not be worried about this. There's no kind of dispute resolution process. What if we disagree with the appraisal, or if we agree with the appraisal and we disagree with the Land Office who doesn't fully accept the appraisal. I'm kind of concerned about that. Can you maybe clarify how we can be assured that our investment will be protected through this credit and the appraisal that will be the basis for the credit."

Mr. O'Reilly said, "I understand the basis of your inquiry. The improvement value credit as stated in the lease is also subject to a reasonableness test. The lease does not allow the Lessor, the State Land Office, to outright dismiss and not give us any of our improvement value credit. The way it reads is that the Lessor reserves the right to reasonably modify and reject any such appraisal in the amount, if any, of the improvement value credit, shall rest in the Lessor's final, reasonable discretion. That does not mean they can throw the whole thing out. And Kelley can talk about what the reasonableness test means."

Mr. O'Reilly continued, "The other thing I will say, before I think I should let somebody from the State Land Office describe how they handle these things. I think that you want to look at this provision of the lease in the context of the extremely favorable lease terms we are being offered in the first instance. As my report to you stated, there is currently property directly across the street from this parcel which has been master planned. It's almost exactly the same size, about 28 acres, and it is currently being offered for sale for more than \$8.4 million. And they are offering it for ground lease in the many tens of thousands of dollars per acre per year. So even if it were possible, and I don't believe it is, for the State Land Office to outright reject what we think is our improvement value credit, we would still be in this lease far far below the market rate of what it would cost for us to go out and buy a piece of private property and put our fire station on it."

Mr. O'Reilly continued, "So with that said, I'm not an expert on the improvement value credit and how they handle that internally. So."

– Councilor Maestas said, "Yes. If you could define final, reasonable discretion."

Harry Relkin, General Counsel for the Land Office, said, "It's an excellent question and it's one that comes up very often for us with any of our Lessees. The first thing that makes us quite a bit different than a normal landowner, regarding improvements that become permanently attached to the property, which is what we're talking about here.... normally that becomes the property of the land owner. Under State law, with the State Land Office, that is switched. So that always is your property, the improvements that are placed on there, you own it, not the State Land Office. That's the first protection."

Mr. Relkin continued, "So if we were, at some future time at the end of the 25 years or whatever, to say no, we don't want to release it to you, we want to lease it to somebody else or do something else with our property, that entity has to come to you to get ownership of those improvements. If you won't give it to them, then the appraisal process kicks in. If you, and the then Land Commissioner don't agree on that process, there's an administrative hearing process that ensues and ultimately that goes, in this case, to the Santa Fe District Court. So if, in your judgment at that

point in time, whenever that is, the then Land Commissioner is not being reasonable, you have multiple ways of making sure you are protected.”

Mr. Relkin continued, “And historically, this is the reason there’s been millions and millions and millions of dollars invested on State Trust Land on 5-year grazing leases. If not for that improvement value credit, the banks would not have loaned on that on 5-year, short term leases, which is what we can lease for grazing. So it’s a mechanism to try to assure our lessees, but it’s an excellent question. It’s exactly the right question, but it’s the uniqueness of the State Land Office and who actually use those improvements that make us different, and the built-in process all the way up to an appeal to court if the two parties can’t come together. Hopefully, that answers your question.”

- Councilor Maestas said, “It does. Thank you. Maybe you should stay up there, I have one more question and Matt, you touched on it, on Section 8 titled Reservations and Negative Easement. And I understand the need for the State Land Office to maintain rights over any mineral rights and be able to make decisions regarding mining. My concern is, I didn’t see any limitations on surface area disturbance from mining. Let’s just say the State Land Office, after it leases this land to the City, decides to allow mining on a portion of it, what impact will that have on the property. I didn’t see any limitations/restrictions on mining.”
- Councilor Maestas continued, “My fear is, not only will this allow for any kind of unilateral approval of mining on this land, if we want to stop it, we have to pay more rent. And I really felt like the City is in a vulnerable position, and this seems to be totally at the discretion of the Commissioner. So, there could be an administrative policy change where, okay, we’re going to allow some mining. And if we want to stop it, we have to pay more rent. Can you maybe address the parameters, let’s just say, if mining were to occur on that parcel. What protections, limitations, would there be for the Lessee, for us.”

Mr. O’Reilly said, “I’d like to speak to that, but do you want to go first.”

Mr. Relkin said no.

Mr. O’Reilly said, “It’s a great question again Mayor, Councilors. Section 8 of the lease Reservations and Negative Easement talks about the resources themselves for exploring and mining and developing those resources, but it also talks about the necessity for easements and rights of way in order to get to those resources. And in Section 8(a) it talks about the Lessor reserving rights of ways of access, ingress that are necessary to get to those resources. And in the next paragraph, it also says that any such right-of-way or easement shall be located to avoid unreasonable interference with permitted uses.”

Mr. O’Reilly continued, “Now, that language may not be sufficiently calming for the Council. And so, I’ve been in touch with the Land Office, and I’ve inquired with them what it would take for the City to just, at this point in time, obtain this negative easement or remove these rights. What I am going to recommend when I close is that the Council approve the lease with a couple of

conditions. And one of the conditions would be that we amend Section 8 and pay the State Land Office some sort of a fee to obtain this negative easement or remove these rights. And that the Council, given the incredibly low rate that we're entering into the Land Office right now in this lease, that the Council approve up to say \$4,000 as a one time fee to remove this provision or to buy this negative easement. So that will be a condition that I propose to you a little bit later in my presentation, and that would eliminate this."

- Councilor Maestas said he will wait for that recommendation, "but maybe if you could do the math and tell us, even if we purchase the negative easement, where is that revised price relative to market value of the lease, just to make sure that it's still a good deal, even with the negative easement. But I would recommend that we address this. The economic development potential is great, but as long as the discretion exists for the Land Office to allow mining on this parcel, could curtail our future options. And so that was my concern with Section 8."

Mr. Riley said because when we get to the point of building a fire station and/or the point where a future business wants to locate on this property – before we get to that point, we will be going back to the Land Office to request a longer term lease, and we would roll that provision into the longer term lease at that time. He said he didn't see it as an important thing to address right this minute as we are entering into the first 25-year lease, but there's certainly no reason why we couldn't. I would say that if the Council is willing to set a limit of \$4,000 as a one time fee so the Land Office would not pursue these mineral rights. If you apply that \$4,000 across a 25-year lease, it's hundreds of dollars and our lease is already at a few hundred dollars per acre in the first instance in the way it's drafted, and we would be well well below what the market rate would be if we were able to go out and try to obtain private land for the same purpose."

Mr. Riley continued, "That said, I think that you might have had some other questions, Councilor. I think you wanted to know if any water rights conveyed with the lease. The water rights do not come with the lease to the property, but the City through its water ordinances does derive water for a fire station. And any future other developer on the site, would have to comply with our water development budget ordinance, meaning they would have to bring water rights or pay a fee in accordance with our water ordinance. So no water rights actually come with this lease."

Mr. Relkin said, "A very good question. A couple of points that I would like to make that might be helpful. First of all State law requires us to reserve those mineral rights and access to them. It's not a discretionary thing with the Commissioner. The second thing to recognize is pragmatically, the surface owners disturbance law protects the surface owner from a mineral disturbance. So the mineral state is dominant in New Mexico law, but nonetheless, if that mineral exploiter of the mineral is causing damage to the surface, then they have to pay for that. So you see, State-wide and in other states in similar situations, is that the business reality says if you've got a fire station and an economic development part and somebody's thinking about sand and gravel, the numbers don't add up for that sand and gravel operator to try to get a mineral lease from the then Commissioner. That's kind of the practical balance. And so a lot of people that get surface leases from us, ground leases from us, choose not to purchase this negative easement. They believe the economic reality."

Mr. Relkin continued, "Now if you're in the oil patch, you might think a little differently, but in places where that isn't the case, a lot of them make that choice. Nonetheless to be your public body and to be totally comfortable, we have this where you purchase this negative easement. And what happens on that, just so you understand the process, you put whatever cap you want on it, whatever amount. We take it to our Minerals Division. They do an analysis of the mineral estate in that area, the geologists, and will come back with a value they believe for the term of the lease that the minerals might be. I have no idea what that would be, but in similar situations where the geology isn't indicating that we have gold, silver or oil immediately available, the numbers are relatively low. So that's a practical business decision that I think the City should make. But we have that way of dealing with it. And what the negative easement says is, so you have given us X amount of dollars, and for that while we have this right, this contract says we won't exercise it. We will not exercise.... we will not lease this for minerals because you have paid whatever amount and we've agreed that that's a fair market value amount for that."

Mr. Relkin continued, "Additionally, I would like to point out, while this lease is very favorable in terms, as Matt has been explaining, on the economics for the City, it is also a great boon for the State Trust. We have to get, from our perspective, true value for the use of the land. And the way we're doing it is, although we make \$800 million a year, or have under Commissioner Powell, never before, but made \$800 million a year, we can't spend any of that to improve our own land, not one dime. So we have to partner with either the private sector or other governmental entities in order to get our land improved, so we can get the higher rate of return when you actually do have a private sector user for that land, for example. That's how we get the money for the schools, we incentivize the City to make its investment as it deems fit, do the marketing, bring it, but then we start to get the return for our schools. That's the other nice thing, that rent goes back into our schools, so once again, we're saving all our taxpayers money by this arrangement. So I hope that answers the question on the mineral reservation."

- Councilor Maestas said, "It does. Lastly, I read some language in here about an environmental site assessment. Typically, in real estate, the property owner has to disclose any issues with the property. Matt, are there... has there been any kind of environmental site assessment. Should we be concerned about any potential findings, if and when we develop this property. Have there been any disclosures or assessments done by the Land Office on this parcel."

Mr. O'Reilly said, "The short answer is no, we haven't performed a Phase 1 Environmental Analysis of the property, and to my knowledge, neither has the State Land Office. But at the same time, the State Land Office has not informed us that there has been any uses of this property that would cause anything to actually worry about. I would also just remind the Council that the City has the ability to relinquish the entire lease any time we want to for the payment of a whopping \$50 fee. So, if for some reason we decide, you know what, this isn't working out for us, we're not going to put our fire station here or gee, we have doubts, we can relinquish this lease. I don't know, Kelley, if you want to speak to that."

Kelly Brennan, City Attorney, said, "I just wanted to add that on page 18 of the packet, Section 16 addresses Hazardous Materials, and Subsection B says, '*Lessee shall be responsible for conditions on the Lease Premises caused by Hazardous Materials placed thereon by Lessee or others acting by, through or under Lessee, but Lessee shall not be responsible or liable with respect to Hazardous Material conditions not cause by Lessee or by others acting by, through or under Lessee...*' So, we are responsible for our own pollution, but not for others."

- Councilor Maestas said, "Thank you. Those are my questions."
- Council Rivera said, "Kelley, I assume the Legal Department has reviewed this and is okay with it."

Ms. Brennan said, "Yes Councilor, we have and we are. And the only other comment I would make is that the lease, as pointed out by Counsel for the Commissioner of Public Lands, the Land Office, is many of these terms in the lease are mandated by State law, and are expressed in the Administrative Code that governs this particular form of lease."

- Councilor Rivera said, "Thank you. Another question for the Fire Chief. Chief, has there been any further discussion with County regarding what their plans are for the fire station that is in close proximity of this location."

Chief Litzenberg said, "Yes, we continue discussions with them. No matter what their plans are, there seems to be the issue is that it's partly a volunteer station. So, even if they move their paid staff once we assume full responsibility for the annexation area, they probably won't have the ability to move the entire volunteer group out for quite some time. So they would not be able to vacate that property entirely by the time we need to build. But yes, our discussions about it keep going. I don't see that their viewpoint will change any time soon."

- Councilor Rivera asked, "What would those volunteers respond to – just the Agua Fria Village."

Chief Litzenberg said, "They mainly are responding to the traditional village and everything outside of 599, everything that's growing outside of 599."

- Councilor Rivera said, "That was all I had Mayor Pro-Tem. Thank you."
- Councilor Trujillo said, "Matt and Commissioner Powell.... first of all, thank you for your service to New Mexico, we appreciate that. I had a conversation with Commissioner Powell prior to this [meeting]. I guess, are there grazing rights that are tied to this piece of property, is what I'm hearing."

Mr. O'Reilly said, "Yes. The City, in working with the State Land Office and finalizing the due diligence, have identified that there is a residual grazing lease that is on part of this property. It actually is on all of this property. That grazing lease expires in 9 months. So, a few moments ago, I mentioned that I was going to recommend two conditions of approval. One was the negative easement, and if the Council is still interested in doing that, that could be a potential condition of

approval. The other would be that the State Land Office obtain a relinquishment from the current leaseholder of those rights prior to the City signing this lease. And it's my understanding that the State Land Office is in conversation with that leaseholder right now, and will be meeting with them this week to hopefully get that relinquishment."

- Councilor Trujillo said, "Okay. So I guess my question is to the State Land Office. Do you foresee a problem in relinquishing that."

Mr. Relkin said, "Councilor, I don't foresee a problem, but can't stand here today and speak for that grazing Lessee. We're in communication. They've agreed to have that discussion with us in the very near future. In addition to that, this is a very very small part of a much much larger grazing lease and it's isolated now that 599 has gone through, so I don't think there has been a cow on it for a long long time. But, nonetheless, the process and the rights of the grazing lessee, we have to go through that process and those rights are protected up until the lease expiration. So, I think the recommendation of Matt to make it contingent upon that makes a lot of sense to me."

- Councilor Trujillo said, "Thank you. That's all I have Mayor Pro-Tem."
- Mayor Pro-Tem Ives said, "I only have one or two observations. I thought that the negative easement actually provided an appropriate balance between the possessory interest being given to the City of Santa Fe, and the ongoing obligations of the State Land Office under their Trust responsibilities to bring in revenue, and I wasn't aware of the opportunity to buy that out. That certainly makes that a much easier process and something we can address up front, which I think you're hearing expressed as a positive from the Governing Body."
- Mayor Pro-Tem Ives said, "The only other question I had under Permitted Uses, and this a little different than what you had indicated, Matt. It says that '*The Lessor and Lessee acknowledge that Lessor is not subject to any municipal or county ordinances and regulations that may on the effective date or thereafter regulate zoning and use of the leased premises.*' And that's presumably under the supremacy of State vis a vis the ordinances and what not of the City of Santa Fe. It goes on to say that we would use those as guidelines, so I think the effect is much the same and certainly appreciate the opportunity to be observant of our own processes, even though it might be State property. So what is the pleasure of the Governing Body."
- Councilor Dominguez said, "Just real quick, Mayor Pro-Tem. Are those the only two conditions that you had Matt."

Mr. O'Reilly said, "Yes, Mayor Pro-Tem, if it's okay, I would like to restate what I think those conditions of approval might be. The first would be that the City not sign the lease until the existing grazing lease on this property is relinquished by the current lessee. And two, that the City Council authorize up to \$4,000 to purchase a negative easement on the property and that be done at the same time as the main lease is executed."

MOTION: Councilor Dominguez moved, seconded by Councilor Trujillo, to approve the lease pursuant to the discussion and the lease we have before us, with the two conditions that it will be contingent upon the existing grazing lease being relinquished and that we allocate up to, but no more than \$4,000 to purchase the negative easement.

DISCUSSION: Mayor Pro-Tem Ives said, "On that point, and before going further, let me just ask a clarifying question on the grazing lease. You said it was set to expire in 9 months, so I assume it's expiring based on its term as opposed to simply having to be renewed or repaid for the ensuing year. It begs in my mind the question I've been worrying about totally getting rid of the lease which is certainly the best alternative, which is to go ahead and sign this and put it in place, but simply have the rental obligation and the term begin as of the point that the grazing lease is terminated. And I don't know if that's a possibility for the State Land Office. That way, we secure it and get it in place without having to worry about any changes."

Mr. Relkin said, "That's a possibility to explore. However, I'll point out a few reasons why that might not make the most sense in this case. First of all, the Land Commissioner has the authority to withdraw from any grazing lease when there is a higher and better purpose for that land, up to 640 acres or ½ of the grazing lessee's lease, whichever is less. So if, and we hope this doesn't become the situation, that discretion rests with the Commissioner at that time, if for some reason we can't work something out, which I'm very hopeful that we can. And we always like to try to do that first, for obvious reasons. Second, if we issued this lease today, or after these conditions are met, without getting the relinquishment, we will have leased someone else's property while their lease is still in place. And without their agreement on that, I think we could be subjecting both of ourselves to potential challenge as opposed to the other two methodologies that we have. And so we think it makes a lot more sense. We have faced this issue before. It's never gone through the courts before, and so we think this is the much more prudent way and also the much more neighborly way in this particular instance. So, that would be our suggestion, Mayor."

Councilor Maestas said, "I'm a little uncomfortable with capping the purchase amount for the negative easement. Can the State Land Office simply agree that if the appraisal for the potential for mining exceeds \$4,000, that you'll agree to \$4,000, because this appraisal is to be determined. So what if the appraisal exceeds the \$4,000 cap on the purchase for the negative easement. Then that will scuttle the deal."

Mr. Relkin said, "So, if I might make a suggestion, Mayor, Councilor. We cannot agree that \$4,000 is going to be the cap tonight, without having our geologists take a look at it. It's not a full-blown real estate appraisal, it's an evaluation by our in-house geologists and they can turn it around rather quickly, and they do this, not every day, but multiple times a year, so they're pretty good at it and pretty quick at it. So, what I might suggest in order to alleviate your concern is to have a cap of \$4,000 or an amount agreed to by the Land Office and bring it back to the Council for approval, if there's anything above the cap."

Mayor Pro-Tem asked the City Attorney to weigh-in.

Ms. Brennan said, "I would suggest a cap, a higher cap, if that were acceptable to you, just to be on the safe side. I assume that the \$4,000 number represents some kind of sense of an estimate of a top number, but to avoid having to come back at a period when it would be difficult to do that, I would consider setting a higher cap that, nevertheless, represents your level of tolerance for that."

Mayor Pro-Tem Ives said, "Madam City Attorney, let me just ask, given the expenditure authority of the City Manager, do we have to set a specific cap or is that something that could be left to the discretion of the City Manager."

Ms. Brennan said, "If you are willing to do so, you could leave it to the discretion of the City Manager within the \$50,000 authorization and make that the cap, or less, I mean it could be \$10,000, with the authorization of the City Manager."

Mayor Pro-Tem Ives said, "I think we have a couple of options here."

Councilor Maestas said, "I would just leave it to the City Manager's discretion relative to the lease."

Councilor Dominguez noted that the Governing Body is well aware of the whole easement thing. He is confident the City Manager would make us aware of it and it's not something that has to be in the lease itself. He said, "I just don't want the City Manager to go spend \$50,000 or \$49,000 on this. It's not very likely, but there's just not I guess a fallback provision in here for us anyway. But I'll go ahead and amend the motion."

FRIENDLY AMENDMENT: Councilor Dominguez proposed to amend the motion to leave it to the City Manager's discretion on dealing with the purchase of the negative easement. **THE AMENDMENT WAS FRIENDLY TO THE SECOND, AND THERE WERE NO OBJECTIONS BY THE OTHER MEMBERS OF THE GOVERNING BODY.**

VOTE: The motion, as amended, was approved on the following Roll Call vote:

For: Mayor Pro-Tem Ives, Councilor Dimas, Councilor Dominguez, Councilor Maestas, Councilor Rivera and Councilor Trujillo.

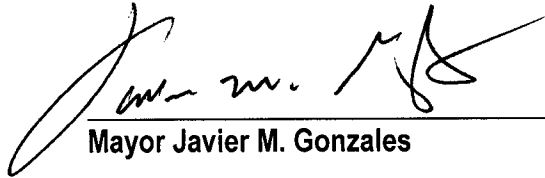
Against: None.

Mayor Pro-Tem Ives thanked Mr. O'Reilly for his presentation, and Commissioner Powell and staff and Chief Litzenberg and staff for attending the meeting and responding to questions.

9. ADJOURN

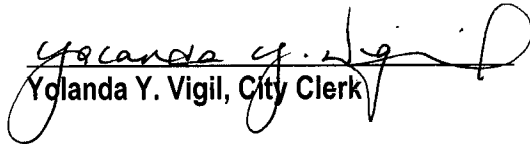
There was no further business to come before the Governing Body, and the meeting was adjourned at approximately 6:10 p.m.

Approved by:



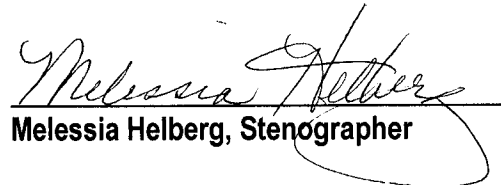
Mayor Javier M. Gonzales

ATTESTED TO:



Yolanda Y. Vigil, City Clerk

Respectfully submitted:



Melessia Helberg, Stenographer


City of Santa Fe, New Mexico

memo

DATE: December 12, 2014

TO: Governing Body

FROM:


Matthew S. O'Reilly, P.E.
Asset Development Director

ITEM

This item is a request for the approval of a Lease Agreement pursuant to §19-7-55 NMSA 1978 and 19.2.9 NMAC, between the City of Santa Fe and the Commissioner of Public Lands for approximately 30.55 acres of state trust lands lying within Section 36, Township 17 North, Range 8 East, N.M.P.M., located southwest of the S. Meadows Road/NM 599 Interchange.

BACKGROUND

The land that is the subject of the proposed lease is located with the city limits adjacent to the recently completed NM 599/South Meadows Road interchange, northwest of the recently constructed extension of South Meadows Road (See Exhibit A). The property is located north of the new El Camino Real Academy recently constructed by Santa Fe Public Schools. Access to the property is via a stub-out of the NM 599 frontage road on the southwest side of the NM599 interchange (See Exhibit B). The land is vacant and is approximately 30.55 acres in size as shown on the most recent boundary survey completed in February 2014 (See Exhibit C).

The proposed lease property is state trust land managed by the State Land Office under the jurisdiction and authority of the Commissioner of Public Lands. Article XIII, Section 2 of the New Mexico Constitution gives the Commissioner of Public Lands full authority over all public lands. Chapter 19, Article 7 of the New Mexico State statutes (NMSA 1978) provides that the Commissioner may lease public lands to municipalities upon such reasonable terms and conditions as may be prescribed by the Commissioner. Title 19, Chapter 2, Part 9 of the New Mexico Administrative Code (19.2.9 NMAC) governs the granting of business leases for commercial and business leasehold uses on those lands within the Commissioner's constitutional jurisdiction and specifies various provisions that are reflected in such leases.

USES

The City of Santa Fe Fire Department has previously identified the need for an additional fire station on the southwest side of the city to serve the needs of the recently annexed "Phase 2

Annexation Area". The proposed lease property has been identified by the Fire Department as a highly favorable location. The property's immediate proximity to NM599 would allow rapid access to the Santa Fe Airport and to other points both south and north, and its adjacency to South Meadows Road and West Alameda, both important arterial roads, is also advantageous.

Construction of a fire station at any location requires extension of related utilities. Should a fire station be constructed on a portion of the leased parcel, the required utilities and access roads constructed could also serve the balance of the parcel.

LEASE PROVISIONS

The proposed terms of the lease are very favorable. The lease allows: the construction of a future fire station; developing and extending required infrastructure to serve the fire station and to allow for economic development; marketing and promoting the property to entities that may foster economic development through job creation, generation of gross receipts tax, or other methods; seeking authorized subleases of the property that will promote the goal of fostering economic development.

The lease is beneficial to the city as it allows the city to sublease all or a portion of the property to other users of the city's choosing. Presumably the city would market the property to entities that would provide jobs and promote its economic development goals. This is important because if the city does not lease the property, the State Land Office could lease the property for almost any use or mixture of uses, some of which might not be in conformance with city zoning or not otherwise considered in the best interests of the city and its citizens.

The "annual base rent" for the entire 30.55 acres is \$10,000 per year (\$327 per acre)¹ and increases 3% per year. Should the city construct its fire station on the property an additional "annual sublease rent" would be due at the rate of 3% of the appraised value of the fire station area. When the city arranges for the use of the property for other economic development uses, the annual sublease rent for those uses would be at the rate of 5% of the appraised value of the property with improvements. These sublease rates are very favorable as they are substantially below market rates in order to promote economic development. Market sublease rates for ground leases generally vary between 8 to 10% of the value of the property. The resulting 3 to 5% margin could be used by the city either as an incentive to attract desired users, or to offset the cost/debt service on a future fire station, or both. The city is responsible only for the annual base rent of \$10,000 until and unless improvements are added to the property. The city can relinquish the lease of the property at any time. If the State Land Office sells the property in the future, the city can recover certain costs of the improvements made to the property through the "improvement value credit" provisions of the lease.

¹ For comparison, 27.75 acres of privately-owned land immediately adjacent to the proposed lease property are currently listed for ground lease at \$70,000 to \$80,000 per acre per year.

FUNDING

The proceeds of the sale or lease of city-owned real property are directed to the city's economic development fund in accordance with Chapter 11 unless otherwise specified. Pending and future sales and leases of the city's own property will offset the annual base rent of the proposed lease.

REQUESTED ACTION

Please approve the attached Lease.

Exhibits: A – Aerial Photo;
 B – Aerial Photo (Close-up);
 C – Boundary Survey;
 D – Proposed Lease



PROPERTY LOCATION

NM 599

EXHIBIT A
AERIAL PHOTO



EXHIBIT B
AERIAL CLOSE-UP

EXHIBIT D
PROPOSED LEASE

**COMMISSIONER OF PUBLIC LANDS
NEW MEXICO STATE LAND OFFICE
STATE OF NEW MEXICO**

COMMERCIAL LEASE

LEASE NO. BL-_____

THIS LEASE ("Lease") is entered into by and between the Commissioner of Public Lands ("Lessor") and City of Santa Fe, New Mexico, 200 Lincoln Avenue, Santa Fe, NM 87501 ("Lessee") (collectively Lessor and Lessee are the "Parties"), pursuant to NMSA 1978, § 19-7-55 and State Land Office Rule 19.2.9 NMAC and is made effective this _____ day of _____, 2014 (the "Effective Date").

1. CERTAIN DEFINITIONS.

A. Approval means written approval and includes only that which has been expressly approved and not anything further which might be implied.

B. Assignment occurs when Lessee's entire right, title, and interest in this Lease is directly or indirectly transferred to another by any means, including, but not limited to:

- (1) an express conveyance or other disposition of Lessee's interest;
- (2) the transfer of Lessee's interest by operation of law; or
- (3) the mortgage or encumbrance of this Lease other than by collateral assignment, as permitted under applicable State Land Office Rules.

C. Effective Date means the date this Lease is signed by Lessor.

D. Fee Schedule means the schedule of business or commercial lease fees and costs validly promulgated by Lessor from time to time.

E. Ground Disturbance Permit means a letter from Lessor authorizing construction of Improvements after Lessee satisfies all applicable specified conditions of this Lease and obtains all required approvals from government agencies required before the start of construction.

F. Hazardous Material includes, but is not limited to, oil, petroleum products, explosives, PCBs, asbestos, formaldehyde, radioactive materials or waste, or other hazardous, toxic, or contaminated materials, substances, or wastes, including without limitation any substance, waste, or material which is defined or listed as a "hazardous substance," "hazardous water," "hazardous material", "toxic substances", or "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 laws, ordinances, or regulations relating to landfills, industrial hygiene, environmental protection, or the manufacture, use, generation, presence, analysis, transportation, handling, storage, treatment, or disposal of any such material, substance, or waste.

G. Holding Over means, upon the expiration or cancellation of this Lease, any act or conduct of Lessee or a sublessee, including, but not limited to, the unapproved entry upon, occupancy

or use, whether continuous or not, of all or any part of the Lease Premises by Lessee, Lessee's agents, or by any unauthorized improvements.

H. Improvements means any of the following:

- (1) any item of tangible personal property developed, placed, or constructed by Lessee on the Lease Premises, including, but not limited to, buildings, roadways, and permanent equipment and fixtures;
- (2) any tangible or intangible rights or privileges obtained or developed in connection with Lessee's use of the Lease Premises, including, but not limited to, development rights, approvals, and water rights, except those transferred to the Lease Premises by Lessee. The value of any such rights or privileges shall be determined based on the increase in the market value of the Lease Premises, and not based on the cost to Lessee for obtaining those rights or privileges.

I. Improvement Value Credit is a credit approved by the Commissioner to be paid to Lessee by a subsequent lessee, purchaser, or other third party, except Lessor, which is a successor in interest to Lessee other than as a result of an Assignment or Sublease by Lessee, for the market value of tangible and intangible Approved Improvements (as defined in Section 10). A State certified real estate appraiser shall determine the market value of such Approved Improvements as part of a proven property operation. The appraisal shall be submitted to Lessor for review and approval. Lessor reserves the right reasonably to modify or reject any such appraisal, and the amount, if any, of any Improvement Value Credit shall rest in Lessor's final reasonable discretion.

J. Lease Premises means the real property located in City of Santa Fe, New Mexico, more particularly described in Exhibit A, attached hereto and incorporated herein, and any additional real property at any time and from time to time made part of the Lease Premises by the written agreement of Lessor and Lessee.

K. Lease Year means the period beginning at midnight on the Effective Date or an anniversary of the Effective Date and ending at midnight on the next following anniversary of the Effective Date.

L. Monthly; Annual. "Monthly" refers to calendar months. "Annual" means a calendar year.

M. Rent means (i) Annual Rent, as provided for in Section 5 and (ii) all other amounts described as "Rent" in this Lease.

N. Sublease means a transaction or arrangement whereby Lessee transfers to another either the use or possession of all or part of the Lease Premises or the management and control of Improvements, fixtures, furnishings, or equipment, or Permitted Uses (as defined in Section 9) on the Lease Premises. A Sublease is not created when Lessee retains possession and control of the Lease Premises and manages and controls temporary or moveable improvements, fixtures, furnishings, or equipment located on the Lease Premises, but not owned by Lessee. Following Lessee's grant of a Sublease, Lessee shall remain primarily liable for the performance of all Lease terms.

O. Trust refers to the Trust established by the Enabling Act for New Mexico (Act of June 20, 1910, 36 Statutes at Large 557, Chapter 310) and related statutes and laws, pursuant to which

Lessor holds and manages lands, which include the Lease Premises.

2. LEASE.

A. For consideration, Lessor hereby Leases to Lessee that tract of land located in City of Santa Fe, New Mexico and described in Exhibit A attached to and incorporated into this Lease, subject to all matters of record at the State Land Office or in the real property records of the County Clerk of City of Santa Fe. Lessee has conducted its own due diligence search of State Land Office and County records to determine all existing encumbrances on the Leased Premises. Without warranting accuracy, an informal search of State Land Office records reveals the existence of the easements, rights of way, reservations, and encumbrances in the attached Exhibit B. Lessee may at any time and from time to time relinquish all or any part or parts of the Lease Premises by furnishing Lessor with (i) a written notice of relinquishment, (ii) if less than all of the Lease Premises is being relinquished, a survey of the part or parts of the Lease Premises being relinquished, (iii) if reasonably requested by Lessor, a Phase One Environmental Site Assessment and, if that indicates that there is potential contamination on the Lease Premises, a Phase Two Environmental Site Assessment, and (iv) a relinquishment fee as set forth in the then-current Fee Schedule. Under the Fee Schedule in place at the time of the execution of this Lease, the General Relinquishment Release fee is \$50.00 (fifty dollars).

B. This Lease is entered into pursuant to New Mexico State Land Office Rule 9, "Business Leasing" (19.2.9 NMAC), and the provisions of that rule control the interpretation and application of the terms of this Lease, except that in the event of a conflict between a provision of this Lease and a provision of Rule 9, the Lease provision controls. This lease does not fall within the scope of New Mexico State Land Office Rule 22, "Planning and Development Leases."

C. Lessee agrees to the following conditions:

- (1) Upon any Sublease or assignment of less than all of the Lease Premises, which Sublease or assignment must be consistent with Section 13 of this Lease, Lessee shall provide to Lessor a survey of the subleased or assigned portion of the Lease Premises which conforms in all respects to the New Mexico Minimum Standards for Surveying, published at 12.8.2 NMAC, and the requirements of the State Land Office set forth at 19.2.9.12 (A) NMAC and in the Business Lease Application Packet available on Lessor's web site. All other surveys provided under this Lease by Lessee to Lessor shall also conform to such standards and requirements.
- (2) Lessee shall permit Lessor, or Lessor's designee, to connect all such utilities that Lessee constructs or has brought to the Lease Premises, if and to the extent that such connections do not unreasonably interfere with Lessee's use of the Lease Premises.
- (3) Lessee shall provide Lessor with a Site Plan of the Lease Premises showing proposed Improvements, consistent with Section 10 of this Lease and including utilities and roadways, before Lessor issues a Ground Disturbance Permit. Prior to construction of the fire station, Lessee shall provide to Lessor copies of construction plans. Upon completion of the fire station, Lessee shall provide copies of as-built plans.

3. TERM; SALE BY LESSOR; NEW LEASE.

A. The term of this Lease shall begin on the Effective Date and end at midnight, exactly twenty-five (25) years later, on _____, 20____ (the "Term"). Nothing in this Lease

shall limit Lessor's right to sell the Lease Premises during the Term as provided in Section 7. Any such sale, absent Lessee's express written agreement to the contrary, shall be subject to this Lease.

B. Prior to the end of the Term, Lessee may apply for a new lease for a term starting on _____, 20____ on such forms as Lessor may require or provide. If Lessor determines in his or her discretion that a new lease is in the best interests of the Trust and Lessee agrees upon the terms for renewal offered by Lessor and to pay the same or a higher Rent than any initial bona fide offer made by a third party, Lessor shall grant a new lease to Lessee upon such terms and for such Rent.

4. HOLDING OVER. If Lessee or a sublessee holds over for any purpose after the end of the Term and this Lease is not renewed, Lessee shall pay Lessor Rent for each day or any part of a day of such Holding Over in an amount equal to two hundred percent (200%) of the pro rata Annual Rent due under this Lease for one (1) day of the immediately preceding Lease Year. Nothing contained herein shall be construed as a grant to Lessee of the right without the prior written Approval of Lessor to hold over or otherwise enter the Lease Premises for any purpose after the expiration or cancellation of this Lease.

5. ANNUAL RENT. Annual Rent includes Annual Base Rent and Annual Sublease Rent. The Annual Base Rent shall be \$10,000 per year for the first Lease Year, which shall be increased by three percent (3%) per year. Annual Base Rent shall be due for the entire Lease Term, regardless of whether portions of the Lease Premises are subleased or assigned.

With the exception of the approximately 4 acres to be subleased for construction of a fire station, for those portions of the Lease Premises that are subleased, Annual Sublease Rent shall be an amount equal to five percent (5%) of the market value of such part or parts of the Lease Premises at the time the sublease is entered. Market value will be determined by an appraisal conducted at Lessee's expense by a State certified real estate appraiser mutually approved by the Parties. Annual Sublease Rent shall increase by three percent (3%) per year. In the event that Lessee assigns portions of the Lease Premises, the Annual Rent for the assignee shall be determined in the same manner as for subleases.

Annual Sublease Rent for the acreage designated for the fire station shall be three percent (3%) of the market value of the land at the time the fire station sublease is entered. Market value will be determined by an appraisal conducted at Lessee's expense by a State certified real estate appraiser mutually approved by the Parties. Annual Sublease Rent for the fire station sublease shall increase by three percent (3%) per year.

Annual Rent and any Rent due for assigned or subleased portions of the Lease Premises shall be payable annually in advance on or before the Effective Date and thereafter on or before the beginning of each Lease Year. Annual Sublease Rent for a partial year shall be pro-rated on a monthly basis or, for any portion of a month, on a daily basis. Interest on delinquent Annual Rent payments shall accrue from the date the payment is due at the rate of one percent (1%) per month or any fraction of a month until received by Lessor in full. In addition, each late payment of Annual Rent shall be accompanied by a late processing fee of \$100.

6. RECEIPT OF MONIES.

A. No receipt of monies, including but not limited to Rent, by Lessor from Lessee, or any other person acting for or on Lessee's behalf, after expiration or cancellation of this Lease shall reinstate, continue or extend the Term, affect any notice previously given to Lessee, operate as a waiver of Lessor's right to enforce payment of any Rent or other monies due or thereafter falling due, or operate as waiver of the right of Lessor to recover possession of the Lease Premises by legal action.

Lessor and Lessee agree that after (i) commencement of any such legal action or (ii) a final order or judgment for possession by Lessor of the Lease Premises or establishing Lessor's rights and remedies, Lessor may demand, receive and collect any monies due without affecting such notice, legal action, order or judgment. All such monies collected shall be deemed to be payments on account of Lessee's obligations under this Lease.

B. Lessee understands that Lessor's receipt of any monies is governed by statute and the related regulations. Lessee agrees that Lessor's negotiation of Lessee's check or other means of payment, and crediting the proceeds of such instrument to a suspense account, does not constitute acceptance of Lessee's payment. A payment shall not be deemed made until it is accepted in accordance with the statutes and regulations which govern Lessor's operations.

C. Lessor shall have the right to apply any payments made by Lessee to satisfy Lessee's debt or obligation to Lessor at Lessor's sole discretion, and without regard to Lessee's instructions as to the application of any such payment or part thereof, whether such instructions are endorsed on Lessee's check or otherwise, unless Lessor and Lessee otherwise agree, in writing, before Lessor accepts such payment. Lessor's acceptance of a check or payment by Lessee or others on Lessee's behalf shall not in any way, affect Lessee's liability hereunder nor be deemed an approval of any Assignment or Sublease of this Lease.

7. SALE. At any time, Lessor may, in its sole discretion and in accordance with applicable statutes and regulations, offer to sell the Lease Premises, or any part or parts thereof, to the highest bidder, subject to all of the terms and conditions of this Lease and any other Assignment or Sublease approved by Lessor in accordance with this Lease. In the event Lessor decides to make such an offer, Lessor shall give Lessee sixty (60) days prior written notice of the proposed sale, which 60-day period shall not be in addition to any statutorily required notice period. Lessee may bid at such sale, provided Lessee (i) is not in default under this Lease and (ii) complies with the bid requirements established by Lessor pursuant to applicable statutes and regulations and this Lease. In the event that Lessee bids for or purchases the Lease Premises or the part or parts thereof offered at such a sale, it shall be given credit in its bid and the purchase price for an amount equal to the Improvement Value Credit. If all or any part of the Lease Premises is sold to any person or entity other than Lessee, such person or entity shall before Lessor issues any patent or deed to it, and unless Lessee executes and delivers to such person or entity a bill of sale for such Improvements, pay the Improvement Value Credit in cash to Lessor who shall, after deducting any Rent, costs and damages owed by Lessee to Lessor, promptly pay the balance thereof to Lessee. If Lessee purchases all or any part or parts of the Lease Premises at such a sale, it may elect to terminate this Lease by giving Lessor written notice of termination. Nothing in this Lease shall be interpreted to grant Lessee a right or an option, no matter how described or denominated, to purchase the Lease Premises or any part or parts thereof except pursuant to this Section 7, in the event Lessor decides to sell the same.

8. RESERVATIONS; NEGATIVE EASEMENT.

A. Lessor reserves the right to execute Leases for mining purposes, including, but not limited to, the exploration, development, conservation, and production of geothermal resources, oil, natural gas, and any other minerals, natural resources, or deposits of whatsoever kind, located in, under, or upon the Lease Premises. Lessor further reserves all rights of access, ingress and egress over, through, or across the Lease Premises that are or may become necessary to such exploration, development, conservation or production.

B. Lessor further reserves the right to grant rights-of-way and easements over, upon, or

across the Lease Premises for any legal purpose whatsoever, including, but not limited to, utilities, public highways, railroads, tramways, telephone, telegraph, and power lines, irrigation works, conservation, environmental or remediation studies or work, sewer lines, drainage ditches, mining, or logging. Any such right-of-way or easement shall be located to avoid unreasonable interference with Permitted Uses, as defined in Section 9.A.

C. At the request of Lessee and upon payment by Lessee to Lessor of such additional Rent as is agreed upon by Lessor and Lessee, Lessor shall (i) grant a negative easement to Lessee, (ii) subject all or any part or parts of the Lease Premises to land and use restrictions and conditions, or (iii) by some other means acceptable to Lessor and Lessee, agree not to exercise the rights reserved in Section 8.A and/or Section 8.B during the Term. Any such agreement shall be memorialized in writing and recorded by Lessor in the real property records of the Lessor and by Lessee in the real property records of the County Clerk of City of Santa Fe, New Mexico.

9. PERMITTED USES.

A. The purpose of this lease is to promote economic development in City of Santa Fe that benefits Lessee and Lessor and that is consistent with Lessor's Trust responsibilities. Accordingly, the following are considered to be "Permitted Uses" under this Lease: **construction of a fire station; developing and extending infrastructure to the Lease Premises to allow for economic development; marketing and promoting the Lease Premises to entities that may foster economic development through job creation, generation of gross receipts tax, or other methods; seeking authorized Subleases of the Lease Premises that will promote the goal of fostering economic development.** Subject to the terms and conditions of this Lease, Lessee may authorize occupation and use of the Lease Premises through the issuance of Subleases for economic development projects and activities selected by Lessee ("Permitted Uses."), subject to the terms and conditions herein related to subleasing. Lessee acknowledges that no Sublease is valid until it is approved by Lessor.

B. Lessor and Lessee acknowledge that, due to the long Term, additional or new Permitted Uses not currently anticipated may become necessary or desirable. Lessor and Lessee will negotiate diligently and in good faith to amend this Lease and any other documents and agreements as may be necessary or desirable to reasonably authorize and facilitate such additional or new Permitted Uses as Lessor finds to be in the best interests of the Trust.

C. Lessor and Lessee acknowledge that Lessor is not subject to any municipal or county ordinances and regulations that may on the Effective Date or thereafter regulate zoning and use of the Lease Premises. Nevertheless, Lessor and Lessee agree that such ordinances and regulations may provide appropriate guidelines for the use of the Lease Premises and, therefore, shall be complied with by Lessee, including permit requirements imposed under such ordinances and regulations, except where Lessor deems the same in conflict with the best interests of the Trust. Lessor and Lessee shall cooperate and use their best efforts to obtain any and all appropriate governmental approvals, including state, county and municipal approvals, as may be necessary or advisable, to facilitate Lessee's use of the Lease Premises. This Section 9.C shall not, however, grant to any third party or to any government or municipal agency, the right to enforce this Section 9.C.

10. IMPROVEMENTS.

A. In connection with Permitted Uses and consistent with a Site Plan to be developed by Lessee and approved by Lessor, Lessee shall have the right from time to time and at any time to

develop, construct, or place Improvements on the Lease Premises. The Site Plan to be developed shall include a roadway and utility infrastructure plan, including electrical and natural gas utilities, and shall address drainage. The Site Plan may also include fiber optic cable. Improvements developed, constructed, or placed on the Lease Premises in accordance with this Section 10 are "Approved Improvements"). Prior to the start of construction of any Approved Improvements, Lessee shall furnish to Lessor for Lessor's approval a written Site Plan describing the Improvements. Lessor agrees to review any such Site Plan, and any proposed amendments to the Site Plan, within 30 days and either (i) provide written approval, or (ii) provide specific suggestions for revising the Site Plan so that it will meet with Lessor's approval. The Parties understand that Lessor does not intend to issue a Ground Disturbance Permit until such time as Lessor has received a Site Plan that meets with Lessor's approval. Lessee may at any time and from time to time amend the Site Plan by furnishing to Lessor a written amendment thereof for Lessor's consideration and approval. Lessor and Lessee agree to work cooperatively in good faith to reach agreement on the contents of the Site Plan and any amendments thereto. Consistent with this commitment to work cooperatively in good faith, to the extent feasible, the Parties will consult with each other regarding the contents of the Site Plan in advance of Lessee's submission of the initial Site Plan and any amendments thereto for Lessor's consideration. Improvements consistent with the Site Plan shall be constructed in accordance with applicable laws.

B. If Lessee constructs any improvements in violation of Section 10.A, Lessor may elect to (i) deem such improvements abandoned and forfeited to Lessor at the cancellation or expiration of this Lease, (ii) require Lessee to obtain Lessor's Approval of such improvements and pay all such reasonable fines and costs of Lessor as Lessor deems appropriate, or (iii), by written notice to Lessee, order the removal of such improvements and the restoration of the Lease Premises to their condition existing prior to the placement of such improvements, all at Lessee's sole expense and at such time as Lessor may reasonably direct. The foregoing rights of Lessor shall be cumulative to Lessor's other rights and remedies.

C. Lessee shall diligently, and at its own expense, maintain and protect from waste and trespass the Lease Premises and the Improvements.

D. The Approved Improvements and the Improvement Value Credit shall, unless Lessor and Lessee otherwise expressly agree in writing, be and remain Lessee's property. The interests of Lessee in, to and under this Lease shall be personal property interests. If under the terms of this Lease or any related agreement, Approved Improvements are to remain on the Lease Premises after termination or relinquishment pursuant to Section 11, relinquishment pursuant to Section 12, or cancellation pursuant to Section 18, the subsequent lessee or purchaser of all or any part of the Lease Premises (but not under any circumstances Lessor) shall pay to Lessee an amount equal to the Improvement Value Credit. Upon such payment, such subsequent lessee or purchaser shall become the owner of such Improvements, unless those Improvements are part of a Lessee-owned municipal utility system, in which case ownership shall remain with Lessee.

E. Improvements must be covered by liability insurance consistent with industry standards. Lessee shall at Lessor's request provide copies of the policy or policies of such insurance and all renewals thereof to Lessor. Lessor may, upon reasonable written notice to Lessee, require an increase in the amount of any such policy in keeping with his or her reasonable determination of increased liability.

F. Any documents, whether on paper or in magnetic, electronic or other format, relating to the development of Improvements, including but not limited to, all analyses, appraisals, approvals, contracts, drawings, lists, manuals, permits, plans, plats, reports, schematics, and studies, but

excluding documents containing proprietary information, shall be provided to Lessor upon Lessor's written request.

11. IMPROVEMENT REMOVAL.

A. Unless (i) otherwise specified in this Lease or (ii) Lessee subsequently purchases all or any part or parts of the Lease Premises, upon relinquishment or cancellation of this Lease or any renewed Lease granted pursuant to Section 3.B, Lessee shall at its sole expense remove all Improvements as Lessee desires or as Lessor may direct in writing and leave the Lease Premises in a safe condition. All Improvements not removed shall become the property of Lessor.

- (1) If any Improvements that Lessee desires to remove or is required to remove have not been removed by the date this Lease is relinquished or cancelled, Rent will continue at the rate in effect on such date. Lessor may, in his or her discretion, waive this requirement if and after Lessee provides written notice of its desire to renew this Lease at least six (6) months prior to the end of the Term and Lessee is in compliance with the terms and conditions of this Lease.
- (2) If Lessor and Lessee have so agreed, either in this Lease or in another authorized writing, that specified Improvements shall remain in place, Lessee shall provide to Lessor, no later than the end of the Term, satisfactory evidence that such Improvements have been paid for, including but not limited to waivers of mechanic's and materialmen's liens thereon and releases of any security interests or other liens therein or thereon.

B. Notwithstanding the provisions of Section 11.A, no Improvement shall be removed from the Lease Premises without Lessor's prior Approval, which shall not be unreasonably conditioned, delayed or withheld, if Lessee owes Rent or any other sums to Lessor or if any material duties owed by Lessee under this Lease remain unperformed.

C. Lessor may require, in writing, that specified unauthorized improvements be left in place during the Term.

D. Any Improvements left on the Lease Premises without Lessor's prior Approval, which shall not be unreasonably conditioned, delayed or withheld, for a commercially unreasonable period of time following the end of the Term and any renewal thereof, shall remain the sole property and liability of Lessee and shall constitute a nuisance until they are removed or abandoned as set out in Section 11(D)(2) or (3). Lessor may elect to:

- (1) Leave such Improvements in place and permit Lessee to retain the right to compensation for such Improvements from a subsequent lessee or purchaser pursuant to Section 10;
- (2) take such action as is necessary to abate such nuisance, with all costs and fees incurred in so doing to be additional Rent due from Lessee under the terms of this Lease or any renewed Lease; or,
- (3) declare, by written notice to Lessee, such Improvements abandoned, at which time they shall become the property of Lessor.

E. All costs, fines, and fees incurred by Lessor as a result of (i) Improvements being left on the Lease Premises for a commercially unreasonable period of time following the end of the Term and any renewal thereof without Lessor's Approval and (ii) damage or waste to the Lease Premises during the Term arising from or in connection with Lessee's use and occupancy thereof, shall remain the sole liability of Lessee and shall be deemed additional Rent due at the time incurred. This Section 11.E shall survive the expiration or cancellation of this Lease.

12. RELINQUISHMENT.

A. Lessee may at any time before the start of construction following the issuance of a Ground Disturbance Permit, in its sole discretion, and for any reason, relinquish and terminate this Lease in its entirety upon written notice to Lessor and, except as provided in Section 12.E, payment to Lessor of a relinquishment fee according to the then-current Fee Schedule. Under the Fee Schedule in place at the time of the execution of this Lease, the General Relinquishment Release fee is \$50.00 (fifty dollars).

B. Lessee may at any time and from time to time, in its sole discretion, and for any reason, relinquish this Lease as to all or any part or parts of the Lease Premises by completing and delivering to Lessor the forms for relinquishment prescribed by Lessor and, except as provided in Section 12.E, paying Lessor the relinquishment fee according to the then-current Fee Schedule and, if the relinquishment is of less than all of the Lease Premises, a survey of the part or parts of the Lease Premises being relinquished.

C. Lessee shall not as a result of any relinquishment avoid or be released from any liability for known or unknown waste or damage to the Lease Premises, including environmental damage which arose from, or in connection with, Lessee's or a sublessee's use or occupancy thereof.

D. No relinquishment shall be valid or effective until approved by Lessor. Any attempted relinquishment or rejection of this Lease without Lessor's Approval, which will not be unreasonably conditioned, delayed or withheld, shall be deemed a material breach of the Lease.

E. Except as provided in this Section 12.E, upon any relinquishment, Lessee shall not be entitled to the refund of any Rent previously paid. However, if Lessee seeks relinquishment in response to a request by Lessor, no relinquishment fee shall be charged and Lessee shall be entitled to a pro-rata refund of Rent previously paid.

13. ASSIGNMENT OR SUBLEASE.

A. Lessee shall not (i) assign or Sublease, in whole or in part, this Lease, the Lease Premises or any Improvements or (ii) change its identity, control or ownership, through sale, acquisition, merger or the like without the prior written Approval of Lessor. Any such act without Lessor's prior Approval shall be null and void as to Lessor, and shall be deemed a breach of this Lease by Lessee. Lessor may seek any and all remedies available at law or in equity for third-party trespass or such other damages as may be caused by any such breach.

B. Applications by Lessee to Lessor for Approval of Subleases or Assignments shall be made under oath, on forms prescribed by Lessor, and accompanied by such fees as are designated in the then-current Fee Schedule. Under the Fee Schedule in place at the time of the execution of this Lease, the Application to Sublease fee is \$50.00 (fifty dollars) and the Assignment of State Business Lease fee is \$50.00 (fifty dollars).

C. Any sublease agreement entered between Lessee and a sublessee shall include provisions that are consistent with Lessor's regulations and other applicable laws. Exhibit C attached hereto contains terms that Lessor requires in a sublease, at minimum, in order to grant approval. Lessee shall include substantially similar terms in any sublease agreement that it submits to Lessor for review. The Parties understand that Lessee's sublease agreements may contain business terms that are not addressed in Exhibit C, and that each sublease may be unique depending on the specifics of the agreement negotiated between Lessee and a proposed sublessee. It is also understood that inclusion of all the terms in Exhibit C does not guarantee that Lessor will approve the proposed sublease agreement. Pursuant to Lessor's legal obligations, Lessor must evaluate each proposed sublease on a case-by-case basis to ensure that the sublease is lawful and that it fulfills Lessor's objectives of obtaining revenues from business leasing and assuring protection and maintenance of trust lands. Exhibit C may be amended by mutual agreement of the parties, in writing.

D. No sublease shall be approved unless the Lessee is in compliance with the terms of this Lease. Lessor's approval of a sublease shall not relieve the Lessee from any liability that may have arisen before the sublease. Lessor's approval of a sublease shall not release the Lessee from its continuing and primary liability for performance of all terms and obligations under this Lease. Lessor's approval of a sublease will not constitute approval of any subsequent sublease.

E. Lessor may condition Approval of any proposed Assignment or Sublease upon a commercially reasonable (i) increase in the Rent amount, (ii) modification of this Lease, (iii) addition of other provisions to this Lease, and (iv) proof of the assignee's or sublessee's creditworthiness, financial soundness and skill and experience in effecting Permitted Uses, and such other conditions as Lessor may reasonably impose to protect Lessor's interest. Lessee's application or request for Approval of an Assignment or Sublease shall be deemed a guarantee that no interest in this Lease is subject to pending or then reasonably foreseeable litigation, and it shall not be necessary for Lessor to inquire into this.

F. Lessor's Approval of a Sublease or Assignment will not constitute Approval of any subsequent Sublease or Assignment, nor will Approval of a specific Sublease or Assignment indicate that Lessor will grant such future Approvals when requested.

G. The occupation or use of Trust lands pursuant to any Sublease or Assignment made without Lessor's Approval shall be a material breach of this Lease and a trespass by the purported assignee or sublessee, and cannot vest the trespasser with any tenancy or other rights, interests, claims, or privileges in the Lease Premises or with respect to Lessor whatsoever. In addition to such other remedies as may be available to Lessor at law or in equity for such trespass, Lessee shall be liable for all costs, fees, and damages incurred by Lessor resulting from such trespass.

H. No Assignment or Sublease shall have the effect of extending the Term of this Lease.

14. INSPECTION BY LESSEE. Lessee is entering into this Lease on the basis of its inspection of and judgment regarding the Lease Premises. Lessor is making no representations or warranties of any kind or nature whatsoever with regard to the Lease Premises.

15. COMPLIANCE WITH LAWS AND PROTECTION FROM WASTE AND TRESPASS. Lessee shall fully comply with all laws, whether statutory or court-made, regulations, rules, ordinances, and requirements, including but not limited to those addressed to environmental protection and all current New Mexico State Land Office Rules and Regulations and such Rules and Regulations of general

application that may be hereafter promulgated, applicable to the Lease Premises or to operations thereon under this Lease, including NMSA 1978, §19-6-5, requiring Lessee to protect the Lease Premises from waste and trespass by unauthorized persons, and the New Mexico Cultural Properties Act, NMSA 1978, § 18-6-1 et seq. ("the CPA"). It is illegal for any person to knowingly appropriate, excavate, injure, remove or destroy any structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance located on lands held and managed by the New Mexico State Land Office without a valid permit from the New Mexico Cultural Properties Review Committee and the express consent of Lessor. Governmental agencies promulgating laws, regulations, rules, ordinances, and requirements relating to cultural properties or historic or prehistoric preservation shall not be deemed third-party beneficiaries under this Lease. Lessee's compliance with the CPA shall be at its own expense and shall not be considered an offset to Rent due under this Lease.

16. HAZARDOUS MATERIALS.

A. Lessee covenants and agrees that (i) Lessee shall not use, store, dispose of, or release any Hazardous Materials on the Lease Premises and (ii) 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 Materials, except in such quantities as may be required in its normal business operations that are permitted uses under the Lease or under a Sublease approved by Lessor, and only if such use is not harmful to Lessor or its employees and is in full compliance with all applicable laws.

B. Lessee shall be responsible for conditions on the Lease Premises caused by Hazardous Materials placed thereon by Lessee or others acting by, through or under Lessee, but Lessee shall not be responsible or liable with respect to Hazardous Material conditions not caused by Lessee or by others acting by, through or under Lessee. Lessee's responsibility for environmental remediation for conditions on the Lease Premises caused by Hazardous Materials shall survive the termination of this Lease.

C. If Hazardous Materials are allowed on the Lease Premises because they are necessary to a Permitted Use under the Lease or specifically permitted under a Sublease approved by Lessor, Lessee must maintain at all times comprehensive and up-to-date documentation regarding any toxic or hazardous materials to be used on the Lease Premises or subleased premises. This documentation must include a plan for safe use and storage of these materials, and detailed information regarding Lessee and sublessee financial responsibility for environmental remediation in the event of contamination. Regardless of the terms of Lessee's sublease agreement, Lessee shall retain full liability for environmental remediation in the event of contamination. This provision shall survive the termination of this Lease.

D. If accidental discharge, release, spill, or fire or any other event having environmental consequence occurs, Lessee agrees to provide notice to Lessor at the same time and in the same manner as Lessee is required to provide to the federal, state or local agency having responsibility for enforcing compliance with environmental laws, regulations and policy. Lessee agrees that, upon request by Lessor, Lessor shall have access to all reports, documents, test data and all other materials provided by Lessee to or received by Lessee from a governmental agency having responsibility for enforcing compliance with environmental or other laws.

E. In the event Lessor is required to incur any cost or expense to enforce the provisions of this lease, including but not limited to consultants, engineers, soil, air or water sampling and attorney's fees and costs, Lessee shall be liable for and reimburse Lessor for said costs and expenses. This provision shall survive the termination of this Lease.

17. HOLD HARMLESS; INSURANCE. Each of Lessor and Lessee shall remain solely liable for any act or omission of its respective officers, employees, agents, or contractors, subject to any otherwise available defense or limitation of liability. Nothing in this Lease is intended to be a waiver of any constitutional, statutory, or common-law sovereign immunity. Liabilities of Lessor or Lessee are subject to the terms of the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, *et seq.* Lessee shall be liable and responsible for the abatement or remediation of surface, subsurface, surface water or groundwater contamination caused by Lessee's or a sublessee's activities on the Lease Premises when such abatement or remediation is required by law or court order or judgment. This provision shall survive the termination of this Lease.

A. Lessee shall at no cost to Lessor insure all Improvements against (i) liability to third parties and (ii) construction risks, in accordance with industry standards for the estimated maximum probable loss.

B. Lessee's insurance carriers shall be in good standing, adequately underwritten, and duly licensed to issue insurance policies in New Mexico. Lessee shall provide Lessor with proof of insurance upon demand by Lessor.

C. Lessee may satisfy the foregoing insurance requirements by requiring and assuring that a sublessee obtains and maintains the coverage required under this Lease.

18. BREACH AND CURE.

A. In the event of Lessee's breach, Lessor shall give Lessee thirty (30) days notice by registered mail. If any breach of Lessee is not properly cured on or before the thirtieth (30th) day, Lessor shall have the option of cancelling this Lease, or of pursuing any other remedies provided by this Lease or available at law or in equity. No proof of receipt of such notice shall be necessary in order for Lessor to act.

B. Lessor shall be entitled to recover reasonable compensation from Lessee for all damages and costs caused by a breach not cured within the time periods set forth in Section 18.A and all reasonable costs and expenses incurred by Lessor in pursuing its remedies for such uncured breach.

C. In the event of Lessee's eviction from the Lease Premises following a cancellation pursuant to Section 18.A or abandonment of the Lease Premises, Lessor shall have the right, but not the obligation, to re-lease or to sell all, or any part of, the Lease Premises. The exercise of such right shall be at Lessor's sole discretion and except as otherwise provided in this Lease, shall not extinguish Lessee's obligations hereunder. If Lessor re-leases all or any part of the Lease Premises, Lessor may agree upon a term that is greater or less than the remaining unexpired Term at the time this Lease is cancelled and to such covenants, conditions, and agreements as Lessor may deem proper.

19. EXHAUSTION OF ADMINISTRATIVE REMEDIES. In the event that Lessee disputes a decision of Lessor determining that Lessee is in default or cancelling this Lease, Lessee shall within thirty (30) days after the date of such decision file an administrative contest pursuant to NMSA 1978, § 19-7-64 and State Land Office Rule 15 (19.2.15 NMAC). Lessee shall initiate no court action regarding this Lease except to appeal a final decision of the Commissioner of Public Lands rendered pursuant to such a contest proceeding, and as provided by NMSA 1978, § 19-7-64.

20. NO WAIVER BY LESSOR. No employee or agent of Lessor has the power, right, or authority

to orally waive any of the conditions, covenants or agreements of this Lease and no waiver by Lessor of any of such conditions, covenants or agreements shall be effective unless in writing and executed by Lessor. Lessor's waiver of any breach by Lessee or default under any such conditions, covenants or agreements shall not constitute or be construed as a waiver of any other or subsequent breach or default by Lessee. The failure of Lessor to enforce at any time any such condition, covenant or agreement, to exercise any option herein to Lessor provided, or to require at any time performance by Lessee of any such conditions, covenants or agreements, shall not constitute or be construed to be a waiver of any such conditions, covenants, or agreements, nor shall it affect the validity of this Lease or any part thereof, or Lessor's right to thereafter enforce each and every such condition, covenant, or agreement.

21. SCOPE OF AGREEMENT. This Lease incorporates all the agreements, covenants and understandings between Lessor and Lessee concerning the subject matter hereof and all such agreements, covenants and understandings are merged into this written Lease. No prior agreement or understanding between Lessor and Lessee shall be valid or enforceable unless expressly embodied in this Lease.

22. AMENDMENT. This Lease shall not be altered, changed, or amended except by an instrument duly executed by Lessor and Lessee.

23. APPLICABLE LAW AND VENUE. This Lease shall be governed by the laws of the State of New Mexico, without giving effect to conflict of law principles. Lessee consents to venue and jurisdiction in the District Court in and for the County of Santa Fe, New Mexico, and to service of process under the laws of New Mexico in any action relating to this Lease or its subject matter.

24. SUCCESSORS IN INTEREST. All terms, conditions, and covenants of this Lease and any subsequent amendments hereto shall extend to and bind the respective successors and assigns of Lessor and Lessee.

25. TIME. Time is of the essence in the performance of this Lease.

26. MISCELLANEOUS.

A. SINGULAR AND PLURAL; USE OF GENDERS. Whenever in this Lease (i) the singular is used, the same shall include the plural and (ii) a particular gender is used, the same shall include the other gender and no gender.

B. HEADINGS AND TITLES. The use of section or paragraph headings and titles herein is for descriptive purposes only and is independent of the covenants, conditions, and agreements contained herein.

C. SEVERABILITY. Nothing in this Lease is intended to supplant or be inconsistent with applicable statutes and regulations. In the event that any provision of this Lease is held invalid or unenforceable under applicable statutes or regulations, this Lease shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

D. MEMORANDUM OF LEASE. Lessor and Lessee shall execute and deliver for recording a memorandum of the material terms of this Lease.

Executed in duplicate.

LESSOR:

COMMISSIONER OF PUBLIC LANDS,
STATE OF NEW MEXICO

By _____

RAY POWELL, M.S., D.V.M.

(seal)

LESSEE:

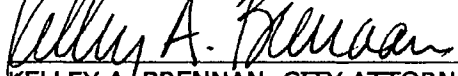
CITY OF SANTA FE, NEW MEXICO

JAVIER M. GONZALES, MAYOR

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:



KELLEY A. BRENNAN, CITY ATTORNEY

APPROVED:

OSCAR RODRIGUEZ, FINANCE DIRECTOR

EXHIBIT A

The Lease Premises

EXHIBIT B

Preliminary List of Encumbrances

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.

SURFACE ENCUMBRANCES:

R33977 (easement for southwest area of the parcel)

EXHIBIT C

Required Sublease Provisions

**TERMS TO INCLUDE IN SUBLEASE OF LANDS OWNED BY
THE COMMISSIONER OF PUBLIC LANDS AND LEASED TO
THE CITY OF SANTA FE UNDER
BUSINESS LEASE NO. BL-_____**

SUBLEASE AGREEMENT TERMS

THIS SUBLEASE AGREEMENT ("Sublease"), dated _____, 20____, is made and entered into by and between The City of Santa Fe ("Sublessor") whose address is 200 Lincoln Avenue, Santa Fe, New Mexico 87501, and _____, whose address is _____, hereinafter referred to as "Sublessee". Collectively Sublessor and Sublessee are the "Parties."

Sublessor and Sublessee agree and covenant as follows:

1. **SUBLEASE.** For and in consideration of and subject to the terms, conditions, covenants, and reservations contained herein, Sublessor subleases to Sublessee the following described tract of land, hereinafter referred to as the "subleased premises":

The rights granted herein are subject to all valid existing rights in the subleased premises.

2. **NEW MEXICO STATE LAND OFFICE APPROVAL AND RESERVATION OF RIGHTS.** Sublessee understands that this Sublease is subject to approval by the landowner, the New Mexico State Land Office, also referred to as Lessor. Sublessee further understands that Sublessor's right to enter this Sublease agreement is subject to Sublessor's compliance with Business Lease No. BL-_____ ("Master Lease") between the Sublessor and the New Mexico State Land Office, as it may be amended from time to time. Sublessor cannot and does not purport to grant any rights to the mineral estate. In the Master Lease, Lessor reserved certain rights to execute leases for the exploration, development, and production of mineral resources as described with specificity in the Master Lease. Lessor further reserved the right to grant rights-of-way and easements over, upon, or across the subleased premises.

3. **WATER RIGHTS.** No water rights shall be used, placed or developed on the subleased premises without the express, written consent of Sublessor and the New Mexico State Land Office. All water appropriated shall be pursuant to state law and regulations. Any water rights used, placed, or developed on the subleased premises are herein and hereby deemed to belong to the New Mexico State Land Office, and all such rights shall be developed in the name of the New Mexico Commissioner of Public Lands ("Commissioner").

4. **TERM.** The term of this sublease shall begin on the date of this sublease and end at midnight on _____, 20____, unless terminated or canceled earlier as herein provided. Nothing contained herein shall limit the right of Lessor to sell or exchange the subleased premises during the sublease term.

5. **RENT.** Sublessee shall pay to Sublessor as rent for the subleased premises and for the rights and privileges granted hereunder \$_____. [Include details regarding when payments are due (for example, monthly or annually), and include specifics regarding all forms of all revenues to be received pursuant to the sublease including any ground lease payments, facilities use payments, operational use fees, user fees, or any other income to be received that is related to the sublease. Also include details regarding any in-kind services, goods, or other non-monetary forms of compensation in exchange for the sublease.]

6. **PERMITTED USE.** Sublessee shall use the subleased premises for the sole and exclusive purpose of: _____. No other uses shall be permitted.

7. **IMPROVEMENTS.** Sublessee may place the following improvements on the subleased premises:

No other improvements shall be placed on the subleased premises without the prior amendment of this sublease to permit such improvement placement. Sublessee shall maintain and protect from waste and trespass all improvements placed on the subleased premises. Sublessee shall keep and maintain the subleased premises and improvements thereon in constant good order and repair in the same condition as when initially constructed, ordinary wear and tear excepted. All repairs conducted shall be at least equal in quality to the original improvements.

8. **IMPROVEMENT REMOVAL AND RECLAMATION.** Before relinquishment or termination of this sublease without a new sublease to Sublessee, or upon Sublessor's cancellation of this sublease as provided herein, Sublessee shall remove all improvements placed on the subleased premises and shall restore the subleased premises to their condition existing prior to the placement of said improvements; provided, however, if any rent amount is due and unpaid at the time of sublease cancellation or termination, Sublessee shall remove improvements and restore the subleased premises as herein provided only at such time, in such manner and under such conditions as Sublessor may in writing demand. Sublessee hereby waives, and shall not assert, any right to compensation for improvements on the subleased premises under Section 19-7-14, NMSA 1978. This paragraph shall survive termination of this sublease.

9. **ASSIGNMENT.** Sublessee shall not assign this sublease, any part thereof, or assign any improvements located on the subleased premises without the prior written approval of Sublessor and Lessor.

10. **COLLATERAL ASSIGNMENTS AND MORTGAGES.** Sublessee may collaterally assign or mortgage Sublessee's lease interest only with prior written approval from Sublessor and from Lessor.

11. **SUBLEASE.** Sublessee shall not sublease the rights granted hereunder, any part thereof, any portion of the subleased premises or any improvements located on the subleased premises without the prior written approval of Sublessor and Lessor.

12. **SALE BY COMMISSIONER.** Sublessor and Sublessee acknowledge that the Commissioner may, at any time, in his or her sole discretion, and in accordance with applicable statutes and regulations, offer to sell the subleased premises, or any part or parts thereof, to the highest bidder, subject to all terms and conditions of the Master Lease, this Sublease, or any other Assignment approved in accordance with this Sublease, and all rights, titles and interests of any lenders that have a valid collateral assignment or mortgage approved by Sublessor and Lessor. In the event the Commissioner gives notice to Sublessor that he or she has decided to make such an offer, Sublessor shall immediately give Sublessee written notice of its receipt of the Commissioner's notice. Sublessee may exercise Sublessor's right under the Master Lease to bid at such sale if (i) Sublessor is not in default under the Lease, (ii) Sublessee is not in default under this Sublease, and (iii) Sublessee complies with the bid requirements established by the Commissioner pursuant to applicable statutes and regulations, the Master Lease and this Sublease.

13. **COMPLIANCE WITH LAWS.** Sublessee shall fully comply with all federal and state laws, regulations, rules, ordinances and requirements, applicable to the subleased premises or to Sublessee's operations thereon, including but not limited to all applicable laws governing water; endangered or threatened species; hazardous materials; environmental protection; land use; health and safety; cultural, historic or archeological / paleontological properties; waste; trespass; and all New Mexico State Land Office Rules and Regulations, including those that may be hereafter promulgated. Sublessee's obligations under this paragraph include but are not limited to compliance with NMSA 1978 Section 19-6-5, requiring a Sublessee of State Trust Land to protect the subleased premises from waste or trespass. Sublessee's compliance with all laws, regulations and policy shall be at its own expense.

14. **HAZARDOUS MATERIALS.** Sublessee covenants and agrees that (i) Sublessee shall not use, store, dispose of, or release any Hazardous Materials on the Lease Premises and (ii) Sublessee will not cause or permit to exist or be used, stored, disposed of or released on the Land as a result of Sublessee's operations, any Hazardous Materials, except in such quantities as may be required in its normal business operations that are permitted uses under this Sublease and duly approved by the Commissioner, and only if such use is not harmful to Lessor or Sublessor or their employees and is in full compliance with all applicable laws. If the use of Hazardous Materials is permitted under this sublease, Sublessee must maintain at all times comprehensive and up-to-date documentation regarding any toxic or hazardous materials to be used on the subleased premises or on common facilities used by sublessee. This documentation must include a plan for safe use and storage of these materials, and detailed information regarding Sublessor and Sublessee financial responsibility for environmental remediation in the event of contamination. Notwithstanding any agreement between Sublessor and Sublessee regarding financial responsibility for contamination, whether pursuant to this sublease or any other agreement, Sublessee shall retain full liability for environmental remediation in the event of contamination. Sublessee's liability and financial responsibilities for environmental remediation shall survive the termination of this Lease.

15. **INSURANCE.** During the term of this sublease, Sublessee must obtain and maintain at all times broad form comprehensive general public liability insurance that names the New Mexico State Land Office as an additional insured, and that meets the coverage requirements of Sublessor, including any requirements that may be imposed pursuant to any agreements between Sublessor and the New Mexico State Land Office. Sublessee also must obtain and maintain insurance coverage adequate to protect its operations, property, employees and agents in amounts that Sublessor finds sufficient and that the New Mexico State Land Office also finds sufficient. In the event of damage to Sublessee's improvements, Sublessor may require Sublessee to use the proceeds of insurance to repair the improvements.

16. **WAIVER, RELEASE AND PROTECTION OF THE SUBLEASED PREMISES.** Sublessee is leasing the subleased premises based on Sublessee's own inspection and investigation of and judgment regarding the subleased premises. Sublessor makes no warranties or representations of any kind or nature with regard to the subleased premises or with regard to this transaction.

If accidental discharge, release, spill, or fire or any other event having environmental consequence occurs, Sublessee agrees to provide notice to Sublessor at the same time and in the same manner as Sublessee is required to provide to the federal, state or local agency having responsibility for enforcing compliance with environmental laws, regulations and policy. Sublessee agrees that, upon request by Sublessor, Sublessor shall have access to all reports, documents, test data and all other materials provided by Sublessee to or received by Sublessee from a governmental agency having responsibility for enforcing compliance with environmental or other laws.

17. **AMENDMENT.** This sublease shall not be altered, changed, or amended except by an instrument executed by both Sublessor and Sublessee and approved by the New Mexico State Land Office.

18. **APPLICABLE LAW.** This lease shall be governed by the laws of the State of New Mexico.

19. **SUCCESSORS IN INTEREST; THIRD PARTIES.** All terms, conditions and covenants of this lease and all amendments thereto shall extend to and bind the heirs, successors and assigns of Sublessee and Sublessor. There are no third party beneficiaries of this sublease

20. **SUBLEASE ENTERED INTO UNDER STATE LAND OFFICE RULE 9.** This sublease is entered into pursuant to New Mexico State Land Office Rule 9, "Business Leasing" (19.2.9 NMAC), and the provisions of that rule control the interpretation and application of the terms of this sublease, except that in the event of a conflict between a provision of this sublease and a provision of Rule 9, the sublease provision controls.

21. **EXHAUSTION OF ADMINISTRATIVE REMEDIES.** Any claim within the jurisdiction of the Commissioner under NMSA 1978, 19-7-64 must be brought before the Commissioner in a contest in accordance with 19.2.15 NMAC.

Executed in duplicate.

SUBLESSEE:

By: _____

Name:

Title:

ACKNOWLEDGMENT

STATE OF NEW MEXICO)
) ss
COUNTY OF SANTA FE)

 This instrument was acknowledged before on _____ (date) by
_____ (name).

(seal)

(Signature of notarial officer)

My commission expires: _____

SUBLESSOR:
CITY OF SANTA FE, NEW MEXICO

JAVIER M. GONZALES, MAYOR

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

KELLEY A. BRENNAN, CITY ATTORNEY

APPROVAL BY LANDOWNER, THE NEW MEXICO COMMISSIONER OF PUBLIC LANDS
(Note: Although this sublease is not valid without the approval of the Commissioner as
the landowner, the Commissioner is not a party to this sublease agreement)

LANDOWNER:

NEW MEXICO COMMISSIONER OF PUBLIC LANDS

By: _____

RAY POWELL, M.S., D.V.M.

(SEAL)