

Name: Christopher Smith

Business/Organization Name: The Colorado State Board of Land Commissioners

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Transaction Day/Date/Time: Monday 03/02/20 12:15:26 PM EST

How is revenue generated from the project? Please generally describe fee method(s) used.: **Annual rent payments generally start at \$9-\$11/acre, but may be as high as \$40/acre if a property is known to be in high demand.**

If revenue is based on land value, please explain how the land value was determined and describe the math used for the fee calculation(s): **NA**

When in the process are bonding and decommissioning plans required and how is the bonding amount determined? **A decommissioning plan is not required during the planning lease. Bonding is not required during the planning lease, unless there is ground disturbance. Bonding amount is a minimum of \$5,000, but may be higher depending on ground disturbance.**

Please describe the type of environmental review required for the project and when it is/was completed in the process. **Environmental studies that are required by any federal, state, or county agency or regulation, including but not limited to the study of the impacts to avian and raptor activity and evidence of efforts to work cooperatively with and mitigate or resolve issues and concerns raised by the Colorado Division of Wildlife. These studies are due prior to negotiating a production lease.**

Please explain if there are any Land Board or other authorizing entity approval requirements, and when those approvals occur in the process. **Yes, all federal and local requirements must be followed and is typically done during the planning lease. The State Land Board reviews and approves all required documents within the lease.**

If you require competitive bidding or other solicitation for wind/solar projects, please briefly describe the process. **We typically do not bid or solicit for wind or solar projects. However, when a major Request For Proposal (RFP) is announced by a utility, we have in the past issued non-exclusive planning leases whereas the entity selected by the utility maintains the planning lease with the opportunity to negotiate a production lease. All other non-exclusive planning leases related to that RFP are terminated. This typically generates a high demand and therefore higher planning lease rates.**



STATE OF COLORADO  
STATE BOARD OF LAND COMMISSIONERS

**NO. SO - «NLTRANID»**  
**Solar Energy Planning Lease**

THIS LEASE is entered into this «NLCUSTBODY\_HEIN\_START\_DATE\_LTR\_MERGE» by and between the State of Colorado, acting through its State Land Board of Land Commissioners ("State Land Board"), whose address is 1127 Sherman Street, Suite 300, Denver, CO 80203, and «NLCUSTBODY\_HEIN\_MM\_LESSEES» ("Lessee", whether one or more), whose address is «NLBILLADDRESS».

**1. DESCRIPTION OF THE PREMISES**

The State Land Board leases to the Lessee and Lessee leases from the State Land Board, exclusively for the purposes indicated below, the trust lands, in the County of «NLCUSTBODY\_HEIN\_MM\_COUNTY», Colorado, more particularly described in **Exhibit A** attached hereto and made apart hereof (the "Premises") and subject to all existing easements and right-of-ways of third parties, and the rights of existing surface and mineral lessees and surface patentees, and further subject to the terms, conditions, and agreements set out in this Lease.

**2. CONDITION OF LEASED PREMISES**

Lessee represents that Lessee has had an opportunity to inspect the Premises prior to entering into this lease, and Lessee accepts the Premises in their present condition and acknowledges that the Premises are in all respects suitable for the purposes permitted. The State Land Board disclaims any and all obligation to provide access to the Premises across adjacent land or to fence, make any repairs to or construct any improvements upon the Premises, and the State Land Board does not warrant that the Premises are suitable for the permitted purposes. Lessee acknowledges that it is solely responsible for performing its own due diligence and for becoming fully familiar with the condition of the land and any applicable restrictions, uses, or other conditions that might affect its development or use for a particular purpose.

**3. USE OF THE LEASED PREMISES**

The use of the Premises shall be limited to wind and solar energy development studies. Lessee shall not produce for sale any power under this Lease. Lessee shall have the right of access only for the purpose of determining the feasibility of wind energy and solar energy conversion to electrical power, including studies of wind speed, wind direction, solar insolation, air temperature and other related and relevant meteorological data; extracting soil samples, for the purpose of determining the feasibility of installing wind turbines, solar panels and related power generation facilities, meteorological towers, and solar measurement equipment; and undertaking any other activities that Lessee reasonably determines are necessary, useful or appropriate to accomplish the foregoing, including the right of ingress to and egress from the Premises by means of existing roads and lanes.

No activities are allowed or shall commence on the Premises without first obtaining written approval of the State Land Board for such activities. Lessee must provide information to the State Land Board

sufficient for the State Land Board to determine and evaluate Lessee's proposed work activities, including but not limited to the location and number of meteorological towers and the full extent of all activities that will occur on or impact the surface. The State Land Board may require changes to Lessee's proposed work activities.

#### 4. LEASE TERM

This lease is effective for the term of Three (3) years, being until the «NLCUSTBODY\_HEIN\_END\_DATE\_LTR\_MERGE», (the "Initial Term") subject to the covenants and agreements herein.

The Lessee may terminate this Lease prior to the expiration of the Term. The Lessee shall provide the State Land Board with a written notice of early termination at least thirty (30) days prior to the intended date of early termination ("Early Termination Date"). Upon the State Land Boards receipt of such notice, this Lease shall terminate and Lessee shall be released from all obligations under this Lease other than those obligations that expressly survive such termination, cancellation or relinquishment.

There shall be no refunds of any previously paid rental regardless of early termination. Lessee shall not be obligated to pay any future rental for subsequent years under this lease provided that the Early Termination Date occurs prior to the subsequent Anniversary Date (defined below). In no event shall this provision release the Lessee from paying any rental due to the State Land Board prior to the Early Termination Date.

#### 5. EXTENSION TERM

The State Land Board and the Lessee may agree to an extension of this lease for a period up to one (1) additional year (the "Extension Term") on terms and conditions set forth by the State Land Board and agreed to by both parties provided a notice of intent to enter into such extension shall be given in writing to the State Land Board no later than ninety (90) days prior to the expiration of the Initial Term. In the notice of intent, Lessee may request a reduction in the area of the Premises to be leased during the Extension Term. Lessee may not reduce the size of the leased Premises by less than contiguous tracts of approximately 160 acres or Governmental lot corresponding to a quarter section. The State Land Board shall determine the new rental rate during the Extension Term to reflect a reduction in the size of the leased Premises; however, the rental amount shall not be less than \$2,000 per year.

The initial term and any extension term are collectively referred to herein as the "term."

#### 6. RENTAL

The rental amount for each year shall be as follows:

- Year 1: «NLCUSTBODY\_HEIN\_ANNUAL\_RENT» Dollars (\$«NLCUSTBODY\_HEIN\_ANNUAL\_RENT»)
- Year 2: «NLCUSTBODY\_HEIN\_ANNUAL\_RENT» Dollars (\$«NLCUSTBODY\_HEIN\_ANNUAL\_RENT»)
- Year 3: «NLCUSTBODY\_HEIN\_ANNUAL\_RENT» Dollars (\$«NLCUSTBODY\_HEIN\_ANNUAL\_RENT»)

Rental shall be paid to the Lessor in advance of the date this lease commences and upon each Anniversary Date thereafter. The "Anniversary Date" shall mean the date one-year after this lease is entered into, and each subsequent one-year date thereafter during the Term. Lessee shall pay the rental at the office of the State Land Board of Land Commissioners, Denver, Colorado.

#### 7. EXCLUSIVE RIGHT TO NEGOTIATE SOLAR ENERGY AND PRODUCTION LEASE

##### A. Exercise of Exclusive Right to Negotiate Solar Energy Production Lease

Lessee may at any time within the term of the lease exercise an Exclusive Right to Negotiate Solar Energy Production Lease by giving the State Land Board at least ninety (90) days written notice of intent to enter into such lease on the Premises, or a portion of the Premises. The State Land Board and Lessee will make a good faith effort to negotiate the Solar Energy Production Lease.

B. Exclusive Right to Negotiate Lease

This lease does not guarantee Lessee a Solar Energy Production Lease, only the exclusive right to negotiate with and request approval from the State Land Board for a Solar Energy Production Lease during the Term of this lease, subject to the terms and conditions contained herein and subject to the approval of the State Land Board.

C. Conditions

Lessee must provide and have in place the following information, documentation, permits, plans, approvals, etc., and provide the same to the State Land Board as a condition of and before the State Land Board will consider allowing the exercise of the Exclusive Right to Negotiate and the granting of a Solar Energy Production Lease.

i. Project Plans that include:

- a) the timing of solar energy development from feasibility studies and planning to construction and operations,
- b) capital cost projections,
- c) the proposed use for each tract of state land,
- d) maps and plats that indicate the project area, the state sections, and the location of solar panels, access roads, overhead and underground electrical transmission lines, electrical transformers, energy storage facilities, telecommunications equipment, power generation facilities, meteorological towers and solar measurement equipment, control buildings, maintenance yards, and other related facilities and equipment, and,
- e) any other land use plans required to develop the project, including the transmission component from the solar farm to the interconnect.

ii. Financial information and documentation that demonstrates a) the financial wherewithal and creditworthy record of the project developer, b) experience in developing large wind and/or solar energy projects, c) compliance with the requirements and laws necessary to do business in the State of Colorado, and, d) financial arrangements and partnerships in place to accomplish the required capital investment.

iii. Estimates of revenue the state may realize as a result of this land use.

iv. Details regarding the marketing and sale of the electricity, including information on existing or potential power purchase agreements.

v. Information and documentation indicating compliance with all federal, state, county, and local government land use laws, rules, regulations, permits, codes, and ordinances, including the status of the appropriate county land use permit, a copy of which must be provided to the State Land Board.

- vi. Environmental analyses and studies that are required by any federal, state, or county agency or regulation, including but not limited to the study of the impacts to avian and raptor activity and evidence of efforts to work cooperatively with and mitigate or resolve issues and concerns raised by the Colorado Division of Wildlife.
- vii. Information regarding other work performed or to be performed to ensure that the project is constructed and operated in such a manner as to avoid or minimize potential impacts to sensitive plant and animal wildlife resources.

D. One-Year Notice to Other Lease Holders

Lessee acknowledges by signing of this lease that they realize the Premises may have active agricultural leases and/or other use leases at present and the State Land Board is required to give a one-year notice of cancellation of any part or all of the agricultural lease prior to the construction of permanent solar generation facilities if the Lessee determines through their planning process to request a Solar Energy Production Lease and proceed with construction of permanent facilities.

8. BOND

If the Lessee intends to disturb the surface or subsurface of the property for any reason during the term of this Planning Lease, the Lessee shall execute a bond (or other sureties as may be approved by the State Land Board) at the time this lease is executed by the parties in an amount to be determined based on the intended disturbance. The bond shall guarantee restoration or/and revegetation of the Premises to a native grassland condition or to such other conditions as may be approved by the State Land Board. The bond shall consist of cash, bank certificate of deposit, or other sureties as may be approved by the State Land Board. However, if the bond is other than cash, the bond must be in a form that will guarantee payment in cash to the State Land Board upon receipt by any bank or insurance company of written demand by the State Land Board, without further condition. Lessee shall commence restoration work not less than six months prior to the expiration of this lease. The State Land Board shall return the bond to the Lessee if and when it deems that the Premises have been restored or revegetated to the required conditions.

9. GOVERNMENTAL IMMUNITY

Liability for claims or injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act, C.R.S. § 24-10-101 et seq., and the risk management statutes, C.R.S. § 24-30-1501 et seq., as amended. No term or condition of this Lease will be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Governmental Immunity Act as applicable now or hereafter amended.

10. INDEMNIFICATION

Lessee assumes all liability arising from the use, occupation or control of the Premises by Lessee under this Lease. This assumption includes, but is not limited to, liability for all personal injuries (including death) and environmental and property damage and destruction. Lessee agrees to defend, indemnify and hold harmless the State Land Board from and against any and all liabilities, losses, damages, liens, expenses, claims, demands, debts, obligations, fines, penalties, suits or actions, judgments, and costs of

any kind whatsoever arising from the use, occupation or control of the Premises, caused by any act, omission or neglect of Lessee, or Lessee's employees, agents, guests, invitees, contractors or assigns. Lessee further agrees to indemnify the State Land Board for any costs, including costs of suit and fees for consultants, experts, and attorneys, incurred by the State Land Board in terminating or canceling, enforcing obligations or defending itself against any matter arising under this Lease caused or permitted by lessee or Lessee's employees, agents, guests, invitees, contractors or assigns. This provision shall survive termination, cancellation or relinquishment of this Lease and any cause of action by the State Land Board to enforce it shall not be deemed to accrue until the State Land Board's actual discovery of said liability, claim, loss, damage, or exposure. This indemnity is in addition to any other indemnity provided for in this Lease. Lessee will not be responsible for any liability caused by persons granted other uses of the Premises by the State Land Board.

## 11. INSURANCE

Lessee, at its sole cost and expense, shall during the entire term of this Lease procure, pay for and keep in full force and effect an occurrence based general liability insurance policy from an insurance carrier licensed to do business in Colorado, in an amount not less than one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) aggregate. Lessee, at its sole cost and expense, shall during the entire term of this Lease procure, pay for and keep in full force and effect a property insurance policy from an insurance carrier licensed to do business in Colorado covering all insurable improvements owned by the State Land Board located on the Premises in an amount not less than necessary to cover the replacement cost. All policies shall name the State Land Board as an additional insured, shall provide that the coverage is primary and noncontributory over any other insurance coverage available to the State Land Board, its agents and employees and shall include a clause waiving all rights of recovery, under subrogation or otherwise against the State Land Board, its agents and employees. Failure to buy and maintain the required insurance is a default of this Lease. Before starting work under this Lease, Lessee shall, at the State Land Board's request, furnish a certificate of liability insurance, referencing the lease number and reflecting the above requirements. The State Land Board may alter any requirements of this section to meet the requirements of the Colorado Governmental Immunity Act or any requirements determined by the Colorado Office of Risk Management.

## 12. CONSTRUCTION OF IMPROVEMENTS

- A. No improvement shall be placed on the Premises by the Lessee without prior written authorization of the State Land Board. Lessee may request in writing, permission to construct temporary improvements related to planning and research for potential solar energy development. The State Land Board will consider such requests and respond in writing of approval or denial of the request and any additional terms if any. Such written authorization shall not be unreasonably denied. Lessee shall provide any designs, construction plans or building specifications requested by the State Land Board when the State Land Board is considering authorization of improvements. Improvements placed upon the Premises by the Lessee with the State Land Board's written authorization shall be referred to herein as "Authorized Improvements".
- B. Upon the termination of this lease, and provided Lessee is not then in breach of or in default under this lease, all Authorized Improvements and other property of Lessee shall, at the Lessee's option, either be

removed by Lessee without damage to the Premises or sold by Lessee to a subsequent lessee pursuant to paragraph 21 of this lease.

- C. All Authorized Improvements or property not so removed or sold within thirty (30) days after termination of this lease shall be deemed abandoned and may, at the State Land Board's option, be removed by the State Land Board at the Lessee's expense, retained by the State Land Board for use by subsequent lessees, or sold by the State Land Board with all proceeds going to the State Land Board. The State Land Board shall be entitled to recover from the Lessee the costs of removing any improvements and personal property pursuant to paragraph 21 of this lease. Lessee shall not be entitled to sell, remove, alter or receive compensation for any Authorized Improvements or property at any time the Lessee is in default or breach of any term, provision or covenant of this lease.
- D. Ownership of Authorized Improvements Upon Premises. The State Land Board and the Lessee acknowledge, covenant and agree that any Authorized Improvements, including all appurtenances and additions thereto, erected at any time upon the Premises by the Lessee shall immediately upon erection or installation be the property of and belong to the Lessee for the Term of this lease subject to the requirements and conditions of this lease.

### 13. OPERATIONS

- A. No more of the surface of the Premises shall be disturbed than is reasonably necessary for the purpose for which this lease is issued.
- B. This lease does not grant exclusive use of the land described, and the Premises shall be available for other surface uses, including livestock grazing. This lease is subject to all leases, rights-of-way, and other agreements now in effect on said land, and the Lessee is to cooperate with, and not to interfere with, nor prevent the operations of any lessee or permittee.
- C. Lessee shall be responsible for the control and eradication of noxious weeds on the Premises insofar as the presence of such noxious weeds is the result of Lessee's actions. Lessee shall cooperate with other existing or future lessees or permittees to control and eradicate noxious weeds on the Premises; including cost sharing in weed control and eradication for up to one year after this lease is terminated. Said cost sharing will be at the sole discretion of the State Land Board.
- D. Lessee is to provide drainage and erosion control structures, fences, gates, cattle guards, or any other facilities necessary to protect the Premises.
- E. Excavations, facilities, Authorized Improvements and Lessee's Property shall be maintained in a safe condition to prevent injury to persons, livestock, and wildlife.
- F. All operations of the Lessee shall be conducted in a workmanlike and reasonable manner, and all necessary precautions shall be taken to avoid damage to the Premises. Any damage done by Lessee to the Premises, native grass or timber, or state-owned improvements, shall be paid for by Lessee to the State Land Board including any cost for reclamation and revegetation. Damage to private property on the Premises, including fences, crops, irrigation structures, wells, livestock, and privately-owned improvements, caused by the actions of the Lessee shall be paid by Lessee to the surface lessee or owner thereof.
- G. No refuse, waste, or litter of any kind shall be left on the land by Lessee.
- H. Lessee shall not permit the storage of or spill of any toxic or hazardous material on the Premises while in its possession. No underground storage facilities are authorized.

- I. No minerals of any kind, including but not limited to oil, gas, sand, gravel, or stone, found on the Premises, shall be sold by the Lessee unless purchased from State Land Board.
- J. No off road traffic allowed.
- K. No wood collection or tree cutting allowed.
- L. Disturbing, dislodging, damaging, defacing, destroying or removing historical archaeological, paleontological, or cultural sites or artifacts is prohibited.
- M. Disturbing, dislodging, damaging, defacing, destroying any improvement, fixture, item, object or thing placed or located in, under or upon the land is prohibited.
- N. This permit does not grant a right to enter State Trust Lands to which there is no public access.
- O. Any uses or activities not within the scope of this lease are not allowed unless prior written approval from the State Land Board is granted.
- P. There shall be no disposal of sewage, liquid or solid waste on the Premises by Lessee, unless approved by the State Land Board during the lease term. Any project plans that require disposal of sewage shall comply with applicable laws and regulations and be approved by the State Land Board prior to being filed with any local government.
- Q. Lessee may not store on the Premises any materials, product, or equipment not directly related to the Lessee's operations on the Premises.

#### **14. NO PARTNERSHIP**

Nothing in this lease shall cause the State Land Board in any way to be construed as a partner, a joint venturer or associated in any way with the Lessee in the operation of the Premises, or subject the State Land Board to any obligation, loss, charge or expense connected with or arising from the operation or use of the Premises or any part thereof.

#### **15. MAINTENANCE AND REPAIR**

The State Land Board shall have no duty of maintenance or repair with respect to the Premises, any Authorized Improvements. Or any Lessee's property thereon. The Lessee shall keep and maintain the Premises, Lessee's property, and Authorized Improvements thereon in constant good order and repair in the same condition as when initially constructed, ordinary wear and tear excepted. All repairs made by the Lessee shall be at least equal in quality to the original Authorized Improvements.

#### **16. DAMAGE OR DESTRUCTION**

In case of damage to or destruction of the Premises or any part thereof, by any cause whatever resulting from the Lessee's activities, the Lessee shall give or cause to be given to the State Land Board prompt notice of such occurrence and shall promptly proceed with due diligence to repair, restore, replace or rebuild so as to make the Premises at least equal in quality to the original condition, or restore the same to such modified plans as shall be previously approved in writing by the State Land Board.

If Lessee fails to repair, restore, replace or rebuild, Lessee shall be liable and agrees to pay the State Land Board or the State Land Board's surface lessee (depending on the ownership of the property damaged) for all damage to the surface, livestock, crops, pasture, hay, or other agricultural products, water wells, reservoirs, or other improvements, caused by Lessee's activities and operations on the Premises. Damages shall be determined by the average of three independent quotes obtained from



three mutually acceptable consultants familiar with the compensation paid for such damages. These obligations shall not terminate upon the termination, surrender or expiration of the lease, but shall continue until the surface is returned to at least equal quality to the original condition.

#### **17. TAXES, UTILITIES AND OTHER EXPENSES**

It is understood and agreed that all taxes, assessments, insurance, utilities and other operating costs including those which could otherwise result in a lien being placed against the Premises as well as the cost of all repairs, remodeling, renovations, alterations, and improvements, and all other direct costs, charges and expenses of any kind whatsoever respecting the Premises shall be borne by the Lessee and not by the State Land Board so that the rental return to the State Land Board shall not be reduced, offset or diminished directly or indirectly by any cost or charge, nor subject to suspension or termination for any cause.

#### **18. RESERVATIONS TO THE STATE LAND BOARD**

This lease is subject to any and all presently existing easements, rights-of-way and other interests, whether or not visible on the ground; and, in addition to its reversion upon termination of this lease, the State Land Board hereby reserves:

##### **A. Access**

- i. The State Land Board or its authorized representatives may from time to time, at any reasonable hour, and with or without notice, enter upon and inspect the Lessee's books, accounts and records, the Premises, any portion thereof, and the Authorized Improvements or other improvements thereon to ascertain and secure compliance with this lease, but without obligation to do so or liability therefore. Lessee hereby grants to the State Land Board a non-revocable license for such access over and across Lessee's other lands during the term of this lease.
- ii. The right to access, inspect, and monitor the Premises at all reasonable times by the State Land Board, utilizing all reasonable means and methods, including but not limited to gate counters, game cameras and Unmanned Aerial Systems (UAS). The use of UAS will be in accordance with applicable Federal Aviation Administration (FAA) rules and regulations. Lessee will cooperate and not interfere with all reasonable means and methods of access, inspection, and monitoring including taking actions necessary to comply with FAA rules and regulations.

##### **B. Additional Uses**

- i. The right to sell, exchange, or otherwise dispose of all or any portion of the Premises during the term of this lease.
- ii. The right to lease all or any portion of the premises to other persons for the purposes of exploring for and removing timber, minerals, ores, metals, coal, asphaltum, oil, gas, sand, gravel, clay, quarry products, peat, geothermal resources, and all other naturally occurring resources, together with reasonable and adequate rights of entry and surface rights necessary or convenient to exercise such reserved rights.
- iii. The State Land Board reserves title to all water rights associated or appurtenant to the Premises. In addition, no water, ditch, reservoir, well, spring, seepage or other right, permit, or use of any kind ("Water Right") may be initiated, established, appropriated or adjudicated (for use on or off the Premises) by Lessee without the prior written approval of

the Board. All applications and documents pertaining to any such Water Right must be made in the name of the Board, and the Board reserves the right to make or convert any related applications or documents in or to its own name. Any such Water Right, approved or unapproved is the sole and absolute Property of the Board without cost to the Board.

- iv. The right at any time to grant a right-of-way upon, over, under, through, or across all or any part of the Premises for any ditch, reservoir, railroad, communication system, electric power line, pipeline, schoolhouse, or other lawful purpose. Such grants shall be compatible with the rights and privileges granted to Lessee herein, and shall be subordinate to the rights of Lessee. Any new grant of easement or right-of-way upon, over, or across the Premises shall include provisions requiring that any and all damages caused to any structures or Authorized Improvements placed upon the surface of the Premises subsequent to the date hereof shall be repaired by and at the expense of the party to whom the easement or right-of-way was granted.
- v. The right to put the Premises to additional uses by granting additional leases, permits, access, or rights to the Premises or any portion thereof, at any time and for any purpose, including but not limited to hunting, fishing and other recreational purposes.
- vi. All rights, privileges and uses of every kind or nature not specifically granted to Lessee by this lease.
- vii. The right to dispose of surface where the State Land Board is the surface owner subject to the terms and conditions of this lease.
- viii. The right at any time to place the Premises into the Stewardship Trust as set forth in Section 10 (1)(b)(l) of Article IX, of the State Constitution. Placement into the Stewardship Trust can be made under conditions such that this placement will not unreasonably interfere with the rights and privileges of Lessee.

#### **19. ASSIGNMENTS, SUBLEASING AND ENCUMBRANCES**

- A. This lease shall be binding on the parties hereto, their heirs, representatives, successors and permitted assigns.
- B. This lease shall not be assigned, transferred or sold, voluntarily or by operation of law, without the prior written consent of the State Land Board. It shall be understood that any name change, or changes in ownership of the Lessee shall be considered an assignment. Consent to an assignment shall be at the State Land Board's sole discretion and upon such terms and conditions as determined by the State Land Board.
- C. Assignment or other transfer without written consent of the State Land Board shall not result in a novation of this lease, and shall, nevertheless, make the assignee responsible and liable, along with the Lessee, for performing this lease. The acceptance by the State Land Board of any payment due hereunder from any person other than the Lessee shall not be deemed a waiver by the State Land Board of any provision of this lease or to be consent to any assignment.
- D. Subleasing, encumbering, pledging or otherwise transferring this lease is expressly prohibited under the terms of this lease.

- E. The State Land Board's approval of an Assignment shall not relieve Lessee from any liability that may have arisen under the lease prior to the Assignment.

## 20. DEFAULTS AND REMEDIES

### A. Defaults

The occurrences of any one or more of the following events shall constitute a default hereunder by the Lessee:

- i. Failure by the Lessee to make any payment of rental or other payment of additional rental or charge required to be made by the Lessee hereunder, as and when due.
- ii. Use of the Premises by the Lessee, its successors and assigns or attempted use of the Premises for any other purpose than those permitted by this lease without the written consent of the State Land Board.
- iii. Failure by the Lessee to perform any of the covenants, conditions or requirements contained herein.

Any of the above events of default may be cured by the Lessee within thirty (30) days after written notice thereof from the State Land Board to the Lessee in accordance with the "Miscellaneous, Notices" section of this lease. If the nature of the Lessee's default is such that more than thirty (30) days are reasonably required to cure such default, then the Lessee shall not be deemed to be in default if the Lessee shall commence such cure within said thirty (30) day period and thereafter diligently pursue such cure to completion.

### B. Remedies

In any event of default and in addition to any or all other rights or remedies of the State Land Board hereunder or by the law provided, the State Land Board may exercise the following remedies at its sole option:

- i) Termination. Terminate the Lessee's right to possession of the Premises by any lawful means, in which case this lease shall terminate and the Lessee shall immediately surrender possession of the Premises to the State Land Board according to the terms of the "Surrender" section of this lease. In such event of termination, the State Land Board shall be entitled to recover from the Lessee:
  - 1) The unpaid rental, taxes and damages which have accrued up until the time of termination together with interest; and
  - 2) Any other amount necessary to compensate the State Land Board for the Lessee's failure to perform its obligations under this lease or which would be likely to result therefrom, including, but not limited to, the cost of recovering possession of the Premises, expenses of reletting, including necessary repair, renovation and alteration of the Premises, reasonable attorney's fees, and any other reasonable costs.
  - 3) The interest shall be one and one-half percent (1-1/2%) per month. Said interest shall accrue from the dates such amounts accrued to the State Land Board until paid by the Lessee.
- ii) Rental During Unlawful Detainer. In any action for unlawful detainer commenced by the State Land Board against the Lessee by reason of any default hereunder, the reasonable rental value of the

Premises for the period of the unlawful detainer shall be two (2) times the current rental and other charges or payments to be made by the Lessee under this lease for such period.

- iii) Cumulative Rights. The rights and remedies reserved to the State Land Board, including those not specifically described, shall be cumulative, and the State Land Board may pursue any or all of such rights and remedies, at the same time or separately.

## **21. SURRENDER**

Upon expiration or termination of this lease, the Lessee shall peaceably and quietly leave, and surrender possession of the Premises to the State Land Board, and at its own expense shall promptly and diligently within thirty (30) days remove, demolish and/or clear off from the Premises all Authorized Improvements, other improvements, and personal property and restore the surface to its original condition. Any Authorized Improvements and personal property remaining after thirty (30) days shall, at the option of the State Land Board, become the property of the State Land Board. In addition, State Land Board shall be entitled to recover from the Lessee the costs of removing any Authorized Improvements, facilities and personal property and the costs of restoring the surface to its original condition. This right to recover costs shall remain in effect after the termination or expiration of this lease.

Notwithstanding any provisions to the contrary, the Lessee shall have no right to remove, alter or demolish all or part of the Lessee's Authorized Improvements or personal property at any time the Lessee is in default or breach of any term, provision or covenant of this lease.

## **22. HAZARDOUS SUBSTANCES**

- A. The Lessee shall not place, store, use or dispose on the Premises, temporarily or permanently, any substance that is hazardous, toxic, dangerous or harmful or which is defined as a hazardous substance by the Comprehensive Environmental Response Compensation and Liability Act, 42USC9601. These substances shall be referred to collectively as "hazardous substances".
- B. The Lessee is also prohibited from storing any gasoline or other fuel on the Premises without the State Land Board's prior written permission.
- C. The Lessee shall immediately notify the State Land Board of all spills, releases, inspections, correspondence, orders, citations, notices, fines, response and/or cleanup actions, and violation of laws, regulation or ordinance which affect the Premises.
- D. Lessee shall be solely liable for all liability, damages, costs or claims, including attorneys' fees arising from or in connection with activities caused or permitted by Lessee, or which Lessee knew or should have reasonably known about concerning hazardous substances and hereby indemnifies the State Land Board against the same.

## **23. CONDEMNATION**

- A. If all of the Premises are taken by any public authority under the power of eminent domain, this lease shall terminate as of the date possession was taken by said public authority pursuant to such condemnation. If part of the Premises is taken and, in the opinion of either the State Land Board or the Lessee, it is not economically feasible to continue this lease, either party may terminate this lease.

- B. Such termination by either party shall be made by notice to the other party given not later than thirty (30) days after possession is so taken. If part of the Premises is taken and neither the State Land Board nor the Lessee elects to terminate this lease the payment due under this lease shall be abated in the same proportion as the portion of the Premises so taken bears to the whole of the Premises.
- C. All damages awarded for the taking or damaging of all or any part of the Premises, or State Land Board-owned improvements thereon, shall belong to and become the property of the State Land Board, and the Lessee hereby disclaims and assigns to the State Land Board any and all claims to such award. The State Land Board shall not claim any interest in any Authorized Improvements.
- D. If the temporary use (defined as less than one year) of the whole or any part of the Premises shall be taken at any time during the term of this lease, the Lessee shall give prompt notice thereof to the State Land Board; however, the term, rentals and other obligations of the Lessee under this lease shall not be reduced or affected in any way. The Lessee shall be entitled to compensation as determined by applicable law for any such temporary taking of the Premises.

## 24. LIENS AND CLAIMS

### A. Mechanics' Liens

The Lessee shall not suffer or permit to be enforced against the Premises, or any part thereof, or any Authorized Improvements thereon, any mechanics', materialmen's, contractors', or subcontractors' liens arising from, or any claim for damage growing out of, the work of any construction, repair, restoration, replacement or improvement, or any other claim or demand howsoever the same may arise, but the Lessee shall pay or cause to be paid all of said liens, claims, or demands, before any action is brought to enforce the same against the Premises or Authorized Improvements.

The Lessee agrees to defend, indemnify and hold the State Land Board and the Premises free and harmless from all liability for any and all such liens, claims, demands, and actions (collectively, the "liens") together with reasonable attorney's fees and all costs and expenses in connection herewith.

### B. Rights to Contest

Notwithstanding the foregoing, if the Lessee shall in good faith contest the validity of any such lien, then the Lessee shall at its sole expense defend itself and the State Land Board against the same and shall pay and satisfy any adverse expense or cost or adverse judgment that may be rendered thereon before the enforcement thereof against the State Land Board or the Premises, upon the condition that if the State Land Board shall require, the Lessee shall furnish a surety bond satisfactory in form and amount to the State Land Board. Said bond shall not be less than one hundred twenty percent (120%) of such contested lien indemnifying the State Land Board against liability for the same, and holding the Premises free from the effect of such lien.

### C. Posted Notice

The Lessee shall, upon execution of this lease at its cost, prepare a Notice, pursuant to CRS §38-22-105, and cause the same to be posted for the purpose of protecting the State Land Board against any liens or encumbrances upon the Premises by reason of work, labor, services or materials contracted for or supplied to the Lessee.

### D. The State Land Board's Liens

To secure the payment of any Rental that becomes due, and to satisfy all reasonable costs and fees incurred by the State Land Board in recovering said Rental, the State Land Board shall have a contractual lien on any and all Authorized Improvements (the "Rent Lien") and their proceeds in any disposition. Any security interest granted in any Authorized Improvement, including a collateral assignment, will be subordinate to the Rent Lien. Lessee has the affirmative obligation to give notice of these Liens to any lender, investor or prospective secured party. The State Land Board agrees to work with Lessee's lenders, investors, or prospective secured parties to make satisfactory arrangements for the suspension or discharge of such liens.

## 25. MISCELLANEOUS

### A. False Statements

Any false certification or statement by the Lessee in the application, public disclosure statement or qualification of financial responsibility statement required to be submitted with the application for the lease, or in any other document or report required to be submitted under this lease, shall at the discretion of the State Land Board, result in termination of this lease and an action for damages.

### B. Lease Document Controls

In the event of inconsistency or conflict between this lease and documents incorporated herein by reference, this lease shall control.

### C. Compliance With Laws

The Lessee shall comply with all applicable federal, state and local ordinances, regulations and laws including but not limited to criminal, land use, fencing, noxious weed, environmental, wetlands protection, hazardous waste, health and safety laws, ordinances and regulations regarding the Premises and activities conducted thereon or by virtue thereof. Furthermore, the Lessee shall not use or permit the Premises to be used in violation of any such rule, regulation or law; or for any purpose tending to damage or harm the Premises or improvements thereon or adjacent thereto, or the image or attractiveness thereof; or for any improper, offensive or immoral use or purpose; or in any manner which shall constitute waste, nuisance or public annoyance. The Lessee shall immediately notify the State Land Board of all spills, releases, inspections, correspondence, orders, citations, notices, fines, response and/or cleanup actions, and violation of laws, regulation or ordinance which affect the Premises.

### D. Lessee's Authority

If the Lessee is an entity other than an individual, each individual executing this lease on behalf of said entity represents and warrants that he or she is duly authorized to execute and deliver this lease on behalf of said entity and that this lease is binding upon said entity in accordance with its terms. The Lessee shall deliver a certified copy of the appropriate document evidencing authorization for such execution.

### E. Entire Agreement

This lease and all documents incorporated herein by reference represent the entire agreement between the parties hereto. No oral agreement or implied covenant shall be held to vary the provisions hereof.

### F. Amendments

This lease shall not be amended or ratified except by written document executed by the parties hereto.

### G. Certain Rules of Construction

Time is of the essence in the performance of this lease. Unless the context clearly implies otherwise, each and every act to be performed or obligation to be fulfilled by the Lessee under this lease shall be performed or fulfilled at the Lessee's sole cost and expense. Lessee's failure to perform any of its obligations under this Lease in a timely manner shall be a breach of this lease.

H. Governing Law and Venue

This lease shall be governed by and construed in accordance with the laws of the State of Colorado and venue shall be in the City and County of Denver or the county in which the premises is located.

I. Notices

Every notice, demand, request, designation, consent, approval or other document or instrument required or permitted to be served hereunder shall be in writing, shall be deemed to have been duly served on the day of receipt and shall be sent by United States mail, postage prepaid. The parties may change the place for serving of such papers on it, or provide for the delivery of not more than two (2) additional copies, by giving the other party at least ten (10) days prior written notice to such effect.

J. Severability

If for any reason provisions of this lease or the application thereof to any person or circumstances, shall to any extent, be deemed invalid or unenforceable, the remainder of this lease shall not necessarily be affected thereby and each provision of the lease shall be valid and enforceable to the fullest extent permitted by law.

K. Costs of Suit: Attorney's Fees

In the event that the State Land Board shall, without fault on the State Land Board's part, be made party to any litigation instituted by the Lessee or by any third party against the Lessee, or by or against any person holding under or using the Premises by license of the Lessee, or for the foreclosure of any lien for labor or material furnished to or for the Lessee or any such other person or otherwise arising out of or resulting from any action or transaction of the Lessee or of any such other person, the Lessee hereby indemnifies and holds the State Land Board harmless from and against any judgment rendered against the State Land Board or the improvements or any part thereof, and all costs and expenses, including reasonable attorney's fees, incurred by the State Land Board in or in connection with such litigation. This provision shall survive the termination, cancellation or relinquishment of this lease.

L. Archaeology

It is contrary to state and federal law to excavate, appropriate or disturb any historical, prehistorical or archaeological site or resource on any lands administered by the State Land Board. Discovery of a suspected site or resource shall be immediately brought to the attention of the State Land Board and the State Archaeologist.

M. Colorado Open Records Act ("CORA") Disclosure

To the extent not prohibited by federal law, this lease and the performance measures if any, are subject to release through CORA, C.R.S. § 24-72-200.0 et seq.

26. HOLDING OVER

If Lessee remains in possession of the Premises after the termination of this lease (by expiration or otherwise) Lessee shall be liable for rental during such holdover possession. The reasonable rental during a holdover possession shall be two (2) times the current rental. At the State Land Board's option, the Lessee shall be construed to be in possession of the Premises and to be occupying the same so long as the Premises are used in any way to any extent by Lessee, or so long as any of his authorized or unauthorized improvements remain on the Premises. Continued occupancy shall not establish a new or extended lease

term or other right, no matter how long maintained and regardless of the State Land Board's knowledge thereof.

**27. ONGOING OBLIGATIONS**

Termination, surrender, or relinquishment shall not release or excuse Lessee from any liability: (i) for known or unknown waste or damage to the Premises, including environmental damage which arose from, or in connection with, Lessee's use or occupancy of the Premises; (ii) to the State Land Board, including all rent owed under this Lease, which accrued prior to the date of such relinquishment; (iii) from the obligations to restore or revegetate the surface and to maintain or remove Authorized Improvements or other Lessee property; or (iv) from any other requirement of this lease that survives the Termination of this Lease. Upon relinquishment, Lessee shall not be entitled to a refund of any rent previously paid. Any term, condition, restriction, reservation or covenant that gives rise to any rights or claims of the State Land Board against Lessee shall be deemed to survive the termination, relinquishment, surrender or abandonment of this lease until all claims and issues have been settled or resolved.

**28. STATE LAND BOARD'S AUTHORITY**

This lease is entered into pursuant to the authority granted to the State Land Board by Colorado state law.

**29. ADDITIONAL CONDITIONS**

Additional conditions, if any, are set forth below or on an attached rider, and made a part hereof.

**30. NO WAIVER**

No failure by either party to exercise and no delay in exercising any right, power or privilege hereunder will operate as a waiver hereof, nor will any single or partial exercise of any right or privilege hereunder preclude further exercise of the same right or the exercise of any right hereunder. A waiver on one or more occasions of any provisions hereof shall not be deemed a continuing one.

*[Signature Page Follows]*



IN WITNESS WHEREOF, Lessor and Lessee, by their signatures below, agree to the terms of this Lease:

«NLENTITY»

By: \_\_\_\_\_

Signature

Date

\_\_\_\_\_

Printed Name

Title

STATE OF COLORADO BY THE  
STATE BOARD OF LAND COMMISSIONERS

By: \_\_\_\_\_

«NLSALESREP»

Date: \_\_\_\_\_

(Seal)

EXHIBIT A

Solar Energy Planning Lease No. «NLTRANID»

THE PREMISES

«NLCUSTBODY\_HEIN\_MM\_DEMAND\_PAYMENT»

Containing «NLCUSTBODY\_HEIN\_TOTAL\_ACREAGE» acres, more or less