

SOUTH DAKOTA STATE UNIVERSITY
Ag Experiment Station
Grazing Agreement
May 2019

CATTLE OWNER: NAME John Heylens
ADDRESS 20836 464th Avenue
CITY, ST, ZIP Volga, SD 57071
COUNTY Brookings
PHONE & EMAIL 605-690-3812 john.heykens@ebankstar.bank

Instructions: This document will serve as the bid document and upon authorized signatures from both parties as the binding agreement. You must complete the contact information, the bid information area and sign as the cattle owner to be considered.

KNOW ALL MEN BY THESE PRESENTS:
THAT SOUTH DAKOTA STATE UNIVERSITY, UNDER THE CONTROL AND MANAGEMENT OF THE SOUTH DAKOTA BOARD OF REGENTS, LESSOR, FOR AND IN CONSIDERATION OF THE FOLLOWING TERMS AND CONDITIONS, PURSUANT TO AUTHORITY SET FORTH IN SDCL 5-18A-22(6) HEREBY AGREES TO ALLOW THE ABOVE-NAMED CATTLE OWNER, FOR ONE (1) TERM OF 165 DAYS FROM MAY 15, 2019, TO NOVEMBER 1, 2019 ALL OF THAT CERTAIN TRACT OR PARCEL OF REAL PROPERTY SITUATED IN BROOKINGS COUNTY, SOUTH DAKOTA, AND DESCRIBED AS FOLLOWS, TO WIT:

NW, SW and SE ¼'s of section 33-111N-51W in Brookings County, South Dakota (this is approximately 450 acres of grassland for grazing)

UNDER THE CONTROL AND MANAGEMENT OF SOUTH DAKOTA STATE UNIVERSITY PURSUANT TO LEASE FROM AG EXPERIMENT STATION, HEREINAFTER KNOWN AS "THE PROPERTY."

CATTLE OWNER will deliver the following cattle, numbers, and pay the following rates, as outlined:

Cattle Description	Number	Rental Rate (per head per day)	Total \$/day
<i>Cow/calf Pairs</i>	<i>100 pairs</i>	<i>\$1.86 per head per day</i>	<i>\$186.00 x 165 Days</i> <i>\$30,690.00</i>

IT IS MUTUALLY AGREED AND UNDERSTOOD THAT THE COVENANTS, TERMS, CONDITIONS, AND RESERVATIONS SET FORTH IN THIS DOCUMENT AS INCORPORATED HEREIN, AS WELL ALL APPLICABLE PROVISIONS OF SD CODIFIED LAW, APPLY TO THIS AGREEMENT AND ARE FULLY BINDING UPON THE PARTIES HERETO.

DATED AND SIGNED THIS 10th DAY OF May, 2019

John Heylens
CATTLE OWNER *John Heylens*

DATED AND SIGNED THIS _____ DAY OF _____, 2019 | 5/15/2019 | 12:59 PDT

Robert Korman
SOUTH DAKOTA STATE UNIVERSITY VICE PRESIDENT FOR FINANCE AND BUSINESS

SOUTH DAKOTA STATE UNIVERSITY
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TERMS AND CONDITIONS OF GRAZING AGREEMENT

IT IS HEREBY AGREED AND UNDERSTOOD:

- 1. PAYMENT.** The Cattle Owner shall pay to South Dakota State University, herein after referred to as the "University," the sum above specified, in full at the time of turning cattle out on property each term.
- 2. EXPIRATION.** The Cattle Owner will peaceably and quietly leave, surrender, and yield all the property at the expiration of this agreement, or upon cancellation or termination of this agreement for any cause and remove all cattle. Duration of the agreement will depend on amount of available forage of the acreage.
- 3. ASSIGNMENT AND SUB-LEASING.** This agreement will only be executed directly with the Cattle Owner. No assigning, transferring, or sub-letting will be allowed.
- 4. DISPOSAL OF PROPERTY INTEREST.** University reserves the right to dispose of its interests in the property, and Cattle Owner shall remove cattle, peaceably and quietly leave, and surrender property upon such disposal.
- 5. TAXES.** The Cattle Owner shall pay all taxes owed pursuant to Cattle Owner's grazing under this Agreement, should taxes be or become due for said use.
- 6. RIGHT TO ENTER AND USE.** The University shall have full control of the property and reserves the right to enter upon the property and to use the property for all purposes without any notice to the Cattle Owner. The Cattle Owner shall have the right to enter the grazing area for legitimate cattle care, delivery, and removal purposes and shall notify University of entrance.
- 7. CATTLE OWNER USE AND RESPONSIBILITIES.** Cattle Owner will deliver specified cattle to the University designated loading/unloading area on May 15th, 2019 for grazing upon the designated property as set forth and approved by University. Cattle Owner is responsible for trucking costs and fees and assisting with loading and unloading cattle. The Cattle Owner shall remove cattle that pose management problems (i.e. continue to break through fences), upon notice from University. The Cattle Owner shall not put any cattle for grazing without getting specific approval from University in advance regarding number, health, sex breed, and age. Cattle Owner shall deliver cattle for grazing that are healthy and free from disease or injury and shall ensure positive means of animal identification. Medicines and veterinary services are the responsibility of the Cattle Owner. Cattle Owner is responsible for health of livestock, required vaccinations, payment of veterinary expenses, and liability insurance. Cattle Owner is also responsible for supplying mineral, maintaining perimeter fence, checking livestock and water on regular basis.
- 8. UNIVERSITY RESPONSIBILITIES.** University reserves right of refusal of bids based on suitability of cattle which will be determined by inspection before delivery. University is responsible for spraying for noxious weeds on property. University provides water via a hydrant if natural water source dries up during summer.
- 9. HOLD HARMLESS AND INDEMNIFICATION:** Neither party hereto shall pledge the credit of the other party hereto for any purpose whatsoever without the consent of the other party. Neither party shall be responsible for the debts or liabilities incurred or for damages caused by the other party. The Cattle Owner agrees to hold harmless and indemnify the State of South Dakota, the South Dakota Board of Regents, South Dakota State University, their officers, agents or employees, from and against any and all actions, suits, damages, liability or other proceedings that may arise as a result of its performance of this contract. Nothing herein requires the Cattle Owner to be responsible for any action, suit, damage, liability or other proceeding that may arise as a result of the negligence, misconduct, error or omission of the State of South Dakota, the South Dakota Board of Regents, South Dakota State University, their officers, agents or employees.
- 10. INSURANCE PROVISION:** The Cattle Owner agrees, at all times during the term of this Agreement, at its sole cost and expense, to maintain in force insurance coverage of the types and with the limits as follows:
 - Commercial General Liability Insurance:**

The Cattle Owner shall maintain occurrence-based commercial liability insurance or an equivalent form with a limit of not less than \$1,000,000 for each occurrence. If the insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two times the occurrence limit. The insurance shall include state employees as additional insureds, shall contain no special limitations on the scope of the protection afforded to state employees, and shall be primary with respect to any insurance or self-insurance programs covering state employees.
 - Professional Liability Insurance:**

The Cattle Owner agrees to procure and maintain professional liability insurance with a limit not less than \$1,000,000.
 - Business Automobile Liability Insurance:**

The Cattle Owner shall maintain business automobile liability insurance or an equivalent form with a limit of not less than \$500,000 for each accident. The insurance shall include coverage for owned, hired, and non-owned vehicles.
 - Workers' Compensation Insurance:**

The Cattle Owner shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

11. CERTIFICATES OF INSURANCE: If requested, the Cattle Owner shall furnish the University with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement and which provide that such insurance may not be canceled except on 30 days' prior written notice to the University. Cattle Owner shall furnish copies of insurance policies if requested by the University.

12. CONTROLLING LAW & AMENDMENT PROVISION: This contract contains the entire agreement between the parties, and is subject to and will be construed under the laws of the State of South Dakota, and may be amended only in writing signed by both parties. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

13. COMPLIANCE PROVISION: The Cattle Owner will comply with all federal, state, and local laws, regulations, ordinances, guidelines, permits, and requirements applicable to providing services pursuant to the Agreement and will be solely responsible for obtaining current information on such requirements.

14. TERMINATION PROVISION: This Agreement can be terminated upon thirty (30) days written notice by either party and may be terminated for cause by the University at any time with or without notice.

15. DEFAULT PROVISION: This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. This Agreement will be terminated by the University if the Legislature fails to appropriate funds or grant expenditure authority. Termination for this reason is not a default by the University nor does it give rise to a claim against the University.

16. PROPERTY INTEREST. This Agreement does not create a property right or interest. This Agreement is for grazing services to be provided by Cattle Owner to University.

17. DISCLAIMER OF WARRANTIES. OTHER THAN AS EXPRESSLY SET OUT IN THESE TERMS AND CONDITIONS, NEITHER THE UNIVERSITY, ITS BOARD OF REGENTS, THE STATE OF SOUTH DAKOTA, THEIR EMPLOYEES, AGENTS, AND OFFICERS MAKE ANY SPECIFIC PROMISES ABOUT THE SERVICES, PROPERTY, OR COMMITMENTS WITH REGARD TO CONDITIONS THEREOF. THE ALLOWANCE OF GRAZING ON THE PROPERTY IS PROVIDED AS IS AND THE UNIVERSITY, THE BOARD OF REGENTS, THE STATE OF SOUTH DAKOTA AND THEIR EMPLOYEES, AGENTS AND OFFICERS HEREBY DISCLAIM ANY AND ALL LIABILITY OR WARRANTIES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

18. INTELLECTUAL PROPERTY. All original research results, such as but not limited to: data, information, records and work product generated under this Agreement, including all tangible and intangible property (collectively, "Work Products"), will be owned by the University in accordance with South Dakota Board of Regents policy and U.S. Patent Law. The University will have the right to publish or otherwise disclose the Work Products for the sole purpose of achieving the academic mission of the University. Right to all inventions, discoveries, methods, know-how (both patentable and not patentable) and other developments (hereinafter "Inventions") generated, developed, conceived and/or reduced to practice under this Agreement shall be determined in accordance with U.S. Patent Law. All rights to Inventions made solely by employees, students or researchers of the University shall belong solely to the University. All rights to Inventions made jointly by employees, students or researchers of the University and employees of the Cattle Owner ("Joint Inventions") shall belong jointly to the University and the Cattle Owner. Each Party will notify the other, in writing ("Invention Notice"), within thirty (30) days of reduction to practice or knowledge of conception or discovery of an Invention solely made by more employees, students and/or researchers of a Party, or of a Joint Invention, and each Invention Notice will describe the Invention with sufficient specificity to allow assessment by the other Party. Parties will treat Invention Notice in confidence and will not further disclose or use the same in ways not previously approved in writing by disclosing Party.