

**TERMS AND CONDITIONS OF GRAZING & HAYING LEASE  
SPRING 2024**

**IT IS HEREBY AGREED AND UNDERSTOOD:**

1. **PAYMENT.** That the Lessee shall pay the Office of School and Public Lands for the State of South Dakota herein after referred to as the "Lessor" the sum above specified per annum, in advance of January 31 of each year.
2. **EXPIRATION.** That the Lessee will peaceably and quietly leave, surrender, and yield all the property at the expiration of this lease, or upon cancellation or termination of this lease for any cause.
3. **EXTENSION.** That at the expiration of the term of the original lease, and upon compliance with SDCL 5-5-25 and 5-5-27, the Lessee shall be entitled, at his or her option, to a five-year extension of the lease.
4. **ASSIGNMENT.** That this lease may be assigned and transferred only after the Lessee submits a completed assignment form as well as the assignment fee to the Lessor and obtains the Lessor's approval.
5. **SUB-LEASING.** That the sub-leasing of the property, or any part thereof, is specifically prohibited; that sub-leasing is cause for the cancellation and forfeiture of this lease, at the Lessor's sole discretion; and the Lessee is liable to the Lessor for damages as provided in SDCL 5-5-20 and SDCL 5-5-21.
6. **SALE BY LESSOR.** That the Lessor reserves the right to sell the property; that, if the property or any part thereof is sold during the term of this lease, the lease shall terminate on January 1 of the year following the date of the public auction at which the property is sold, regardless of the dates upon which written sales contracts therefore are executed and approved; that the Lessee agrees to surrender possession of the property to the purchaser not later than the herein described January 1; that no damages of any kind may be claimed by the Lessee or any other party against the Lessor on account of anything connected with the sale of any of the property. The Lessor retains ingress and egress on behalf of the Lessor, the Lessor's Agent, or, for purposes of a sale pursuant to this Section, Buyer or Buyer's agent to access the property for purposes of inspection, appraisal, maintenance, exploration, or repair of the property at any without notice.
7. **CONDITION.** The Lessee acknowledges that the property is at the time of this Lease in acceptable condition. The Lessor makes no warranty of fitness for any particular use of the leased premises and makes no warranty of quiet enjoyment of the leased premises.
8. **USE OF PREMISES.** The Lessee will use the property only for the purposes contemplated by this Lease and agrees not to engage in any activity or practice that will impact the value of the property.
9. **ABANDONMENT.** If, at any time during the term of this Lease, the Lessee abandons the property or any part of the property, the Lessor may, at the Lessor's option, obtain possession of the leased premises in the manner provided by law, without becoming liable to the Lessee for damages or for any payment of any kind whatsoever, and may, at the Lessor's discretion, relet the leased premises, or any part, for the whole or any part of the then unexpired term. The Lessor may receive and collect all rent payable by virtue of such reletting, and, at the Lessor's option, hold the Lessee liable for any difference between the rent that would have been payable under this Agreement during the balance of the unexpired term, if this Lease had continued in force, and the net rent for such period realized by the Lessee by means of such reletting. If the Lessor's right of reentry is exercised following abandonment of the leased premises by the Lessee, then the Lessor may consider any personal property belonging to the Lessee and left on the leased premises to also have been abandoned, in which case the Lessor may dispose of all such personal property in any manner the Lessor will deem proper and the Lessor is hereby relieved of all liability for doing so.
10. **RIGHT TO EXCHANGE.** That the Lessor reserves the right to exchange the property pursuant to SDCL 5-5-14, and the exchange and termination of this lease are further subject to ARSD 4:01:08.
11. **TAXES.** That the Lessee shall pay all real property taxes payable to the County Treasurer of said county. **Failure** to pay these taxes shall result in the cancellation of the lease pursuant to SDCL Chapter 5-11.
12. **MINERALS, TIMBER, SAND, GRAVEL, WIND, AND SOLAR.** That the Lessor reserves the right to enter upon the property and to sell and remove timber, coal, ores, metals, asphaltum, oil, gas, geothermal resources, stone, sand, gravel, and any and all other minerals and mineral products or to place wind and solar projects as required by SDCL 5-2-12.
13. **SURFACE DAMAGES DURING MINERAL DEVELOPMENT.** That the Lessee shall receive 50% of the surface damages occurring as a result of mineral development of the property pursuant to SDCL 5-7-17.1.
14. **WEED AND PEST CONTROL.** That the Lessee shall obtain the appropriate herbicides/pesticides from the Lessor; that the Lessee is thereafter responsible for the labor required to control weeds and pests on the property. (SDCL 5-5-18 and ARSD 4:01:06)
15. **OVERGRAZING AND WASTE.** That the Lessee shall not allow overgrazing, waste, including waste caused by burning as set forth in SDCL 5-5-19, or spoilage of the property; and that the Lease shall be forfeited, and the Lessee shall be subject to the penalties of SDCL 5-4-12 and 5-4-13 if overgrazing, waste, or spoilage of the property occurs. This lease may be cancelled for grazing of more animal unit months than allowed under the provision of subdivision ARSD 4:01:02:02(3) or for refusal to submit information or submitting inaccurate information as provided by ARSD 4:01:02:05 pursuant to ARSD 4:01:02:08.
16. **HAY.** That all hay not removed from the property within thirty days after the expiration or termination of this Lease, whether by forfeiture or otherwise, shall belong wholly to the Lessor.

17. **IMPROVEMENTS.** That the Lessee shall request from Lessor prior to construction permission to erect buildings, corrals, fences and well apparatus; sink wells and construct dams; prepare the ground and plant shelterbelts, perform government approved ripping, furrowing, contouring and reseeded, provided that such improvements are necessary to fully carry out the purposes of the lease .Failure to seek permission prior to construction may result in forfeiture of the improvement to Lessor, at Lessor's sole discretion. The Lessee shall confirm completion of the improvement once construction is conclude to the Lessor through submission of a form furnished by the Lessor which shall contain the following information: type of improvement, cost of improvement, and location of improvement. That the cost of such improvements may not exceed an amount permitted by the Lessor. That the Lessor shall not be liable for any material furnished or labor performed on the improvements pursuant to SDCL 5-5-22 and 5-5-23. When a tract, on which registered improvements are located, is leased by someone other than the owner of the improvements, the owner of the improvements may remove them or sell the improvements to the new Lessee or owner. If an agreement on the value of the improvements cannot be reached, a Board of Appraisal may be appointed as provided by SDCL 5-5-29-32, inclusive. No improvements may be made pursuant to this section after Lessor has received a legal offer to purchase or listed the tract for sale. ARSD 4:01:02:03. Further, no improvements may be made after October 1 of the final year of this lease. ARSDL 4:01:02:04.
18. **UNAUTHORIZED TILLAGE.** Tillage of lands leased for grazing purposes shall result in the cancellation of said lease and the Lessee shall be liable for damages as provided for in SDCL 5-4-12 and 5-4-13.
19. **HUNTING.** All hunting rights are reserved to the state and the Lessee shall not receive any monetary or other payments for or from anyone to hunt on land leased from Lessor.
20. **ARCHEOLOGICAL MATERIALS.** The Lessor hereby reserves and retains title to any and all archeological and paleontological materials found upon the leased premises pursuant SDCL 1-20-25. If the Lessee discovers an archeological or paleontological resource during its operation on the leased premises, the Lessee shall not disturb or alter the resource. The Lessee shall notify the Lessor and undertake protective measures, if any, that the Lessor requires to preserve, or to protect the resource.
21. **AUTHORIZED FIRES.** The Lessee may start fires and use fire so long as said fire serves the purposes of this lease and upon the condition that any fire is properly maintained, controlled and extinguished. Such fires are subject to any burning bans and other regulations legally adopted and enforced by any applicable and authorized local government entity. Lessee indemnifies and holds harmless Lessor for any and all damages that may result from an authorized fire pursuant to this section.
22. **FORCE MAJEURE (ACT OF GOD).** Should the property, during the course of the Lease, become unsuitable for the purposes contemplated by this Lease due to drought, fire, natural disaster, or any other unforeseen circumstances beyond the control of the Parties and should said condition persist for longer than six months this Lease becomes voidable by either party. Lessor shall not be responsible for any loss of income or other damages suffered by Lessee as a result of these circumstances.
23. **INDEMNIFICATION.** Lessee agrees to indemnify and hold harmless Lessor, its officers, agents and employees, against and from any and all claims by or on behalf of any person arising from any condition of the property, or arising from any breach or default on the part of Lessee, or arising from any act or omission of Lessee or any other occupant of the property, or any part thereof, or of its or their agents, contractors, servants, employees or licensees, or arising from any accident, injury or damage whatsoever caused to any person or property occurring during the term of this Lease in or about the property, upon or under the property and the land adjacent thereto, or arising from this Lease, and from and against all judgments, costs, expenses and liabilities incurred in or about any such claim or action.
24. **DEFAULT.** Lessee shall be in default of this Lease if Lessee fails to perform any of the agreements, terms, covenants or conditions hereof on Lessee's part to be performed, and failure continues for a period of thirty days after written notice by Lessor or if default is of such a nature that it cannot be reasonably cured within the thirty day period or Lessee has not in good faith commenced performance within the thirty day period to diligently proceed curing such default. Lessor may void this Lease upon Lessee's default at Lessor's sole discretion.
25. **NOTICE.** All notices, including notice of default, or other forms submitted to Lessor pursuant to this Lease shall be deemed to have been given when mailed by United States mail, First Class, postage prepaid, to the addresses set out below, or, if personally delivered, when received by such party.

Lessor:  
Office of School & Public Lands  
500 E. Capitol Ave  
Pierre, SD 57501

Lessee:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

26. **WAIVER.** Failure of any party to insist upon the strict performance of any or all of the terms or conditions of this lease shall not constitute, nor be construed as, a waiver of that party's right to enforce any such terms or conditions, but the same shall continue in full force and effect.
27. **SUCCESSORS AND ASSIGNS.** This Lease shall bind and inure to the benefit of the parties hereto and their successors and assigns.
28. **CONSTRUCTION.** The language in all parts of this Lease shall be in all cases construed according to its plain meaning and not strictly for or against Lessor or Lessee.
29. **SEVERABILITY.** If any term, covenant, condition or provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unreasonable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
30. **GOVERNING LAW.** This Lease shall be governed by, construed, and enforced in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

- 31. ENTIRE AGREEMENT.** This Lease, together with any written modifications, addendums or amendments, hereinafter entered into, shall constitute the entire agreement between the parties and shall supersede any prior agreements or understandings, if any, whether written or oral, which the parties may have had relating to the subject matter.
- 32. PRIOR LEASE.** This Lease shall render null and void any previous lease or agreements between Lessee and Lessor for the Premises.
- 33. COUNTERPARTS.** This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 34. MODIFICATIONS.** Any modification of this Lease, or additional obligation assumed by either party in connection with this Lease shall be binding only if evidenced in writing and signed by each of the parties.
- 35. AUTHORITY.** Lessee is an individual or is: (i) a partnership duly formed; (ii) a corporation duly incorporated; (iii) a limited liability company duly formed; or (iv) a limited liability partnership duly formed. If not an individual, Lessee is validly existing and in good standing under the laws of its state of incorporation or formation; and has all requisite corporate or organizational (as the case may be) power and authority to execute, deliver and perform its obligations under this Lease. The execution, delivery and performance of this Agreement has been duly authorized by Lessor; and the individual(s) signing this Lease on behalf of Lessor are authorized to sign this Lease. No approval, authorization or consent of any member, private party, governmental or regulatory agency is required in order for Lessor to enter into this Lease and perform its obligations under this Lease that has not been obtained. If Lessee is acting as an agent for a previously undisclosed entity, Lessee shall inform Lessor of the identity of said undisclosed entity at the time of, or prior to, execution of this Lease. Failure to disclose in compliance with this provision constitutes immediate default of the Lease without regard to the provisions of Section 22 of this Lease.