

# LEASE

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This lease is entered into by State Street Business Center LLP, Attn: Kelly Zander, having its principal place of business at 4646 Amber Valley Parkway, Fargo, North Dakota 58104, the owner of the premises described in SCOPE OF LEASE (LANDLORD), and the State of North Dakota, acting through its North Dakota Beef Commission (STATE).

## SCOPE OF LEASE

LANDLORD, in consideration of the rent to be paid and the covenants to be performed by STATE, hereby leases to STATE the following described premises situated in the city of Bismarck, county of Burleigh and the state of North Dakota:

Office facilities in the building located at 4023 State Street, Suite #170, Bismarck, ND, consisting of approximately 3,257 gross square feet with 2,499 usable square feet.

## TERM OF LEASE

The term of this lease is for a period of 69 months, commencing on October 1, 2021, and terminating on June 30, 2027.

## RENTAL PAYMENTS

Rent will be paid in advance by the 10<sup>th</sup> day of each month in a monthly amount of \$4,000, commencing on the later of October 1, 2021, or when the STATE takes occupancy and continuing monthly thereafter until June 30, 2027. Rent is payable at the address of LANDLORD's property management firm, which is Parkway Management located at 1001 Gateway Avenue, Bismarck, North Dakota 58503 unless STATE is notified otherwise in writing by LANDLORD.

## OPTIONS TO RENEW

If STATE is not in default of this lease beyond any applicable period of notice and grace, STATE may renew this lease for an additional 72 months at the monthly rent of \$4,400, under the same terms of this lease by giving notice to LANDLORD of STATE's intention to renew at least three months before the scheduled termination.

## LANDLORD'S OBLIGATIONS

1. Shall make improvements to the space including removing two walls from the southwest corner office to open the room into one office, cut in a doorway between office walls in the south office, remove and install new carpet throughout the entire office, remove and replace all broken/stained ceiling tiles and paint all walls within the space.
2. Shall provide a written proposal for the mechanical improvements to be made to the space with improvements to be completed by May 31, 2022. Contract for annual maintenance shall be established with a professional mechanical contractor licensed to work in North Dakota for the heating/cooling/ventilation system dedicated to the leased space. Copy to be provide to STATE.
3. Shall continue to allow access to the common meeting room and kitchen facilities, appliances and furnishings owned by the STATE as long as the space is not leased to another tenant.

4. Shall make exterior facade improvements as designed no later than October 31, 2022.
5. To pay all water, sewer, garbage collection, and all other utility fees charged against the premises.
6. To perform all required exterior maintenance and repairs for the exterior premises.
7. To perform all maintenance and repairs requested by STATE which are related to use and habitability of the premises.
8. To keep the walkways and parking areas of the premises free of accumulations of snow and ice and to cut and care for the grass, shrubbery, plants, and trees on the premises.
9. That if other portions of the building are leased to other parties, LANDLORD shall not permit any activity to be conducted in other portions of the building or grounds that will materially interfere with STATE'S use and enjoyment of the premises.
10. That STATE may install items that it deems necessary for maximum and optimum utilization of the premises. STATE may, at any time, remove from the premises all fixtures and other equipment owned by STATE; provided the removal is completed before termination of this lease or any renewal or extension. STATE agrees to repair any damages that may be done to the premises resulting from the removal of the items, if any.
11. That STATE may place decorations, wall hangings, signs and directories in hallways leading to its premises, or doors and walls within the premises. STATE may not attach or display any signs on the outside of the building other than on the main "Spectrum Directory" sign located at the entrance of the building.
12. To furnish seven automobile parking stalls for use by STATE, its agents or designees, in the lot provided for use by the building tenants.
13. To comply at its own expense with all federal, state, county, and city laws and ordinances and all lawful rules, regulations, or orders of any duly constituted authority, present or future, affecting the premises.
14. To pay all real estate taxes and special assessments on the premises during the term of the lease.

## **STATE'S OBLIGATIONS**

1. To pay the rent when due.
2. To pay for its own janitorial, telephone, and internet service.
3. To keep the premises in reasonable condition the same as at the commencement of the term or as it may be put by LANDLORD, except for reasonable use and wear, or damage by fire and unavoidable casualty.
4. Not to make any unlawful, improper, or offensive use of the premises, and to observe all the laws of the State of North Dakota and the ordinances of the city of Bismarck in force from time to time relating to the leased premises.
5. To permit LANDLORD at all reasonable times to enter and examine the premises and to make necessary repairs for the protection of the premises.
6. To surrender the premises to LANDLORD at the end of the term; and, in default of the payment of rent due or failure to perform its obligations under this lease, to surrender the premises upon demand by LANDLORD.
7. To maintain at its own expense and assume responsibility for all office equipment, furniture, and fixtures installed by STATE.

### **TERMINATION OF LEASE**

STATE has no obligation under this lease should LANDLORD not complete all items listed under LANDLORD OBLIGATIONS for the initial or succeeding terms or if the North Dakota Legislature fails to appropriate to STATE sufficient funds to defray the full rental costs. STATE, without any liability, may terminate this lease by providing thirty (30) days written notice, if its legislative appropriations are reduced or if its authority to spend its appropriations is reduced or limited by state or federal law or by reductions in federal or other grant funds to a point STATE, in its sole discretion, deems insufficient to pay the full rental cost for the remainder of the term of this lease. During the term of this lease or any renewal or extension, STATE may terminate this lease by providing thirty (30) days written notice to LANDLORD, if LANDLORD fails to comply with any of its obligations under this lease, or if STATE determines it must relocate to comply with the Americans with Disabilities Act of 1990 or any rules adopted under the act, or with any other state or federal law or rules.

### **TERMINATION OF LEASE IN THE EVENT OF DESTRUCTION OF PREMISES**

If the leased premises are destroyed or damaged by fire or the elements to the extent they become untenable, then this lease will terminate immediately, unless LANDLORD, within twenty (20) days of the happening of the event, gives written notice of intention to restore the building and fully restores the premises within a reasonable time. During the term between destruction and restoration of the premises rent will not be due, and if rent has already been paid LANDLORD shall refund to STATE all that portion of the prepaid rent attributable to the time during which STATE was unable to use the premises for its intended use.

### **HOLDING OVER**

If STATE remains in possession of the premises after the lease expires, and LANDLORD accepts rent from it, the lease will be deemed renewed on a month-to-month basis.

### **MERGER AND MODIFICATION**

This lease constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this lease. This lease may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties.

### **SEVERABILITY**

If any term of this Lease or provision is declared to be illegal or unenforceable by a court having competent jurisdiction, the validity of the remaining terms are unaffected, and the rights and obligations of the parties will be construed and enforced as if the lease did not contain that term.

### **ASSIGNMENT – SALE OF PREMISES**

This lease must not be assigned or subleased by STATE without LANDLORD'S written consent. This lease does not terminate if the premises are sold, but continues throughout the entire term.

### **NOTICE**

Whenever the term "written notice" or "in writing" is used in this lease, mailing of the notice must be by certified mail sent to:

LANDLORD:

State Street Business Center  
PO Box 10552  
Fargo, North Dakota 58106-0552

STATE:

North Dakota Beef Commission  
4023 State Street, Suite 170  
Bismarck, ND 58503

**APPLICABLE LAW AND VENUE**

This lease is governed by and construed in accordance with the laws of the State of North Dakota. Any action commenced to enforce this lease must be adjudicated exclusively in the State District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

**SPOILIATION – NOTICE OF POTENTIAL CLAIMS**

LANDLORD shall promptly notify STATE of all potential claims that arise from or result from this lease. LANDLORD shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to STATE the opportunity to review and inspect the evidence, including the scene of an accident.

**INDEMNITY**

LANDLORD agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by LANDLORD to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. LANDLORD also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred if the State prevails in an action against LANDLORD in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

**INSURANCE**

LANDLORD shall secure and keep in force during the term of this agreement and LANDLORD shall require all subcontractors, prior to commencement of an agreement between LANDLORD and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.

- 3) Property insurance insuring the full and true value of all Landlord's (or Tenant's) real and personal property located on or in the building in which the leased premises are located for all losses.
- 4) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
- 5) Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.

The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the LANDLORD.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.
- 3) The duty to defend, indemnify, and hold harmless the State under this agreement shall not be limited by the insurance required in this agreement.
- 4) The state of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the LANDLORD.
- 5) The insurance required in this agreement, through a policy or endorsement, shall include:
  - a) a "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State;
  - b) a provision that LANDLORD's insurance coverage shall be primary (i.e. pay first) as respects any insurance, self-insurance or self-retention maintained by the State and that any insurance, self-insurance or self-retention maintained by the State shall be in excess of the LANDLORD's insurance and shall not contribute with it;
  - c) cross liability/severability of interest for all policies and endorsements;
  - d) The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary;
  - e) The insolvency or bankruptcy of the insured LANDLORD shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured LANDLORD from meeting the retention limit under the policy.
- 6) The LANDLORD shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
- 7) Failure to provide insurance as required in this agreement is a material breach of contract entitling the State to terminate this agreement immediately.

LANDLORD shall provide at least 30 day notice of any cancellation or material change to the policies or endorsements.

#### **CONFIDENTIALITY**

LANDLORD shall not use or disclose any information it receives from STATE under this Lease that STATE has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Lease or as authorized in advance by STATE. STATE shall not disclose any information it receives from LANDLORD that LANDLORD has previously identified as confidential and that STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota public records law, N.D.C.C. ch. 44-04. The duty of STATE and LANDLORD to maintain confidentiality of information under this section continues beyond the term of this Lease.

LANDLORD acknowledges that STATE possesses substantial amounts of information at the leased premises that is confidential pursuant to state law. LANDLORD, if it views, comes into possession of, or otherwise becomes knowledgeable of confidential information located at the leased premises, shall maintain the confidentiality of that information and shall refrain from re-disclosing that information to any third party. LANDLORD shall require, by contract, any agent it retains to fulfill its obligations otherwise set out in this Lease to similarly maintain the confidentiality of any information it views, comes into possession or of which otherwise becomes knowledgeable. Those indemnity provisions otherwise set out in the Lease agreement specifically apply to this confidentiality requirement.

#### **COMPLIANCE WITH PUBLIC RECORDS LAWS**

LANDLORD understands that, in accordance with this Lease's Confidentiality clause, STATE may be required to disclose to the public upon request any records it receives from LANDLORD. LANDLORD further understands that any records obtained or generated by LANDLORD under this Lease, except for records that are confidential under this Lease, may, under certain circumstances, be open to the public upon request under the North Dakota public records law. LANDLORD agrees to contact STATE immediately upon receiving a request for information under the public records law and to comply with STATE's instructions on how to respond to the request.

#### **STATE AUDIT**

All records, regardless of physical form, and the accounting practices and procedures of LANDLORD relevant to this Lease are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors, if required. LANDLORD shall maintain all of these records for at least three (3) years following completion of this Lease and be able to provide them at any reasonable time. STATE, State Auditor, or Auditor's designee shall provide reasonable notice to LANDLORD prior to conducting examination.

#### **EFFECTIVENESS OF LEASE**

This lease is not binding on STATE until it is reviewed by the Office of Attorney General and approved by the Facility Management Division, Office of Management and Budget, as required in N.D.C.C. § 54-21-24.1.

LANDLORD

BY: 

TITLE: Managing Partner

DATE: 9-3-21

REVIEWED BY  
ATTORNEY GENERAL

BY: 

DATE: August 31, 2021

STATE OF NORTH DAKOTA

Acting through its  
North Dakota Beef Commission

BY: 

TITLE: Executive Director, NDBC

DATE: 9/3/21

APPROVED BY  
OMB FACILITY MANAGEMENT

BY: 

DATE: August 31, 2021