

**TRIBAL LAND ENTERPRISE
LEASE POLICY**

PREAMBLE

Tribal Land Enterprise (“TLE”) is an arm and instrumentality of the Rosebud Sioux Tribe - a federally recognized Tribe – that was formed pursuant to the Indian Reorganization Act (the “IRA”), 25 U.S.C.A. § 461 *et seq.*, of June 18, 1934. The IRA provided that any tribe or tribes "residing on the same reservation" had the right to organize and adopt a constitution and by-laws which became effective upon a majority vote of the adult members of the tribe and upon approval by the Secretary of the Interior. (Section 16, 25 U.S.C. § 476).

Pursuant to its Constitution and Bylaws, the Tribe has the authority to: (1) charter subordinate organizations for economic purposes and to regulate the activities of all cooperative associations of members of the Tribe; Art. IV, §n and (2) delegate to subordinate boards or tribal officials...or to cooperative associations...reserving the right to review any action taken by virtue of such delegated power. Art. IV §u. Pursuant to these Constitutional authorities, the Tribe incorporated TLE as a subordinate organization under the Tribal Council. Bylaws § 1.

The Tribe’s purposes and objectives in establishing TLE were: (1) to effect a plan to remedy the situation of increasing fractionation of ownership interests in allotted lands resulting from probate procedure; (2) To provide a plan to consolidate individual ownership interest in restricted land in furtherance of economic enterprises; (3) To develop a land management plan for the economic interests of members who participate in this plan; (4) To provide for the preservation and safeguarding of the values in individual ownership equities in land; (5) To provide a simplified process by which an individual may exchange his landholdings; (6) To utilize lands under the control of the Tribe for the development of economic enterprises within the various communities of Indians on the reservation; (7) to provide for an adequate system of keeping records and accounting in connection with the operation and management of this plan; and (8) to provide a long-term land-buying program which would benefit members of the Tribe. Bylaws §§ 3-10.

A. RESERVATIONS:

All mineral rights, ceremonial and sacred grounds, and rights of way for irrigation ditches, power and telephone lines, and roads which may not exist or which may hereafter be constructed are reserved by the Tribe and no rights therein shall pass to a lessee unless expressly agreed otherwise.

B. NEGOTIATIONS:

The Tribal Land Enterprise (“TLE”) is authorized to negotiate leases on lands in which the Rosebud Sioux Tribe, under the management of TLE maintains a minimum of 51% ownership. These negotiations will be conducted through a lease proposal process unless instructed otherwise by the Board of Directors.

TLE will lease and negotiate all authorized leases according to a fair market value report. The negotiation of all leases will start at a minimum lease rental rate per acre specific to the type of land involved. Such adjustment will be made no later than November 1st of each year, i.e., three (3) months before the March 1st due date of lease payments.

The market data that determines the market for lands will vary because of demand, location, accessibility, livestock and commodity markets, and many other factors. Because of these factors, the TLE Board of Directors reserves the discretion to adopt different rates for different lands within its jurisdiction. The different rates shall be determined bi-annually by the TLE Board of Directors that may be based upon studies by the South Dakota Field Office of USDA’s National Agricultural Services or Office of Special Trustee.

All lease contracts, bonds, and lease payments shall be due before the first day of March of each year. Any lease payment not paid by March 15th of each year will be grounds for cancellation of the lease. All leases canceled will be advertised and awarded to highest bidder with only Indian Preference offered.

LEASE RENTAL RATES PER ACRE ARE ATTACHED TO THESE POLICIES.

C. LENGTH

Leases for lengths of three (3) or five (5) years are the preferred maximum number of years a lease can be negotiated. All leases will contain an escalating clause providing the Board of Directors the option to review and change the lease rental rate per acre based upon fair market value of changing data. This review can be implemented any time after the second year.

Leases that are negotiated for one year because of inability to be bonded on lands that could be leased by other parties shall require a negotiated bid of \$2.00 above the minimum established lease rate per acre. This negotiated increased price per acre shall be made at the discretion of the Board of Directors.

The TLE Board of Directors, upon recommendation from the TLE Executive Director and Lease Manager, can offer to renegotiate an option of an extended lease up to five (5) years for a lessee that has invested their own financial resources into tribal land.

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First time Indian operators who receive loans or contracts associated with their management plan shall receive a lease that covers the duration of the loan contingent upon compliance with lease terms.

D. BONDS

All leases will be protected by an adequate performance bond to guarantee the collection of delinquent lease payments and to collect for any damages that may be caused to the land and connecting resources as a result of the mismanagement of the lessee. A letter of credit from a financial institution can serve as a bond for the purpose of guaranteeing the lease payment. The Board of Directors has the discretion to waive the bond as a reward to responsible stewards of Tribal Lands. All bonds payments are required prior to approval of the lease contract.

E. RE-NEGOTIATIONS/RENEWAL

The TLE Board of Directors will determine if any land should be re-negotiated or advertised as a result of rejecting a negotiated lease or in the absence of a successful leases negotiation.

All leases must be re-negotiated no later than three (3) months prior to the expiration date. (i.e. Lease that expires March 1st of 2009 must be re-negotiated no later than November 1st of 2008). Should a lessee not re-negotiate a lease prior to November 1st, the land involved will be advertised for bid and the previous lessee will receive no special preference.

The TLE Lease Department will notify all lessees of their right to renegotiate their lease no later than September 1st of each year.

Re-Negotiations will be open to all qualified interested parties. However, the previous lessee will have the First Right of Refusal privilege or the Privilege of Meeting the High Bid.

Where questions or concerns arise, TLE will investigate to insure that the person submitting the proposal is not a person outside of consistent area producers and/or a land broker.

All announcements for Re-Negotiations will be broadcast on the radio and published in the newspaper with personal notice sent to the lessee via United States certified mail. Indian Preference will apply. Previous lessee preference will be applied at the discretion of the TLE Board of Directors.

If similar offers are received for a tract of land, a determination will be made as to the operator's satisfaction of the bona-fide operator criteria that is defined herein, the resource management plans submitted, and the necessity of the land to the business plan

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of the lessee. The Board of Directors reserves the right to request additional information in making its determination.

For similar proposals, the TLE Board of Directors reserves the right to request the submission of a written counter offer. The decision of the TLE Board of Directors shall be final.

The TLE Board of Directors reserves the right to refuse any and all negotiated leases.

F. ADVERTISEMENT

All land under the management of TLE that are not leased through the negotiation process before November 1st of each year will be advertised for lease.

The advertisement will provide for Indian for qualified Tribal Members to meet the high bid. The Board of Directors, in consultation with the Lease Manager and Executive Director, shall determine the length of time for posting of the advertisement. All bids will be received as SEALED BIDS and stamped by the Lease Department as to the date received.

If a Sealed Bid is sent via United States mail, the bid shall be placed in an envelope and placed inside a second envelope addressed to TLE. The inner envelope shall be marked "sealed bid" with the tract or tracts bid upon written clearly thereon. All tracts advertised for bid will be advertised at the current minimum rate per acre as the starting bid for specific to the land in question.

All bids must be accompanied by a 100% deposit for each tract or tracts of land that are bid upon. If the bid advertisement is published in January or before, a letter of credit from a financial institution will be required guaranteeing payment of the bid amount before the 1st of March each year.

The full bid amount of any unsuccessful bidder will be returned by certified mail accompanied by a notification letter of the official status of their bid.

The successful bidders will be notified by an Official Award Letter from TLE. The failure of the successful bidder to execute the contract within thirty (30) days of receipt from the BIA will nullify the lease award with a forfeiture of 25% of the Bid Amount.

The TLE Board of Directors will determine if any land should be re-advertised as a result of rejecting a bid or in the absence of successful bidders.

The TLE Board of Directors reserves the right to reject any and all bids.

G. COMPLIANCE

Random checks will be conducted on all lands under the management of TLE by BIA and TLE employees through a memorandum of agreement to ensure compliance with the stocking rate and the number of cattle present, the management plan, TLE policies, the condition of the grass and other plants, the water supply, the fencing, home sites, and other factors. Should a problem be found during a check, there will be follow-up to ensure compliance.

H. TRESPASS

A Trespass means any unauthorized occupancy, grazing, use of, or action on TLE lands. TLE and/or BIA will investigate and complete a report that contains the following:

1. legal description of the affected land;
2. Name of the owner of the livestock (State Brand Books);
3. Name of the individual illegally grazing, farming or hay cutting;
4. Name of lessee; and
5. The corrective action to be taken to remedy the trespass.

Notice of the trespass will be sent via certified mail to the Trespasser at their last known address. If service is not feasible, an announcement will be broadcast on the radio and published in the newspaper and posted at the Community Buildings or Post Office where the offense occurred.

The owner of the livestock may contest a trespass notice by contacting the TLE Lease Office and/or the BIA in writing.

A Letter of Trespass will remain in effect in the lessee's file for the duration of the lease agreement one (1) year. The Trespasser will be monitored for the remainder of the year to ensure no further violations are committed. More than one (1) violation will be cause for cancellation of leases.

If a Trespasser fails to take corrective action as specified by TLE and/or BIA, a notice of intent to impound the livestock will be sent via certified mail and/or hand delivery to the trespasser. The trespasser must take the corrective action described in the notice within the time frames prescribed by the notice. If no corrective action is taken, the livestock will be impounded and penalties will be assessed against the trespasser. The penalties and damages and costs incurred during the impoundment will be recovered from the sales. All assessment penalties will be triple the rate for the specific land involved. The impoundment letter will remain in effect for one (1) year.

The trespasser can reclaim their livestock by paying penalties and other costs incurred during the impoundment action. Livestock not reclaimed will be shipped and sold at a local livestock auction for cattle. All horses will be sold at a livestock auction. Notice of

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the impoundment will be broadcast on the radio and published in the newspaper and posted at the Community Buildings or Post Office where the offense occurred.

Lease Compliance will be strictly enforced. Subject to the approval of the Board of Directors, the Executive Director shall prescribe the maximum number of livestock which may be grazed on each farm and pasture leases and the season, or seasons of use to achieve the purpose and objectives of this policy. The grazing capacity so prescribed shall take into consideration the implementation of tribal objectives and the land use and conservation requirements of the Tribe. Stocking rates shall be reviewed on a continuing basis and adjusted as conditions warrant.

Penalties; TLE will assess penalties for overstocking and trespass violations that triple the lease fees. For example, a tract of land that was proposed at \$10.00 per acre X 160 acres - \$1,600.00. The \$1,600.00 would be multiplied by three (3) equaling a penalty of \$4,800.00. If all penalties are not paid, all of the violator's leases will be cancelled. No refunds for lease payments will be returned.

I. BID OPENING

All sealed bid advertisements will contain a date and time that the bids will be publicly opened for interested parties to attend. All bid openings will be held in the conference room of the TLE Office unless announced otherwise.

J. DELINQUENCIES

Any proposed lessee who is delinquent with Tribal Land Enterprise, the Rosebud Sioux Tribe, and/or the Bureau of Indian Affairs will not be eligible to lease land from TLE. The Board of Directors will determine if any land should be re-advertised or negotiated as a result of a rejected bid or in the absence of a successful bidder.

Any disputed delinquencies can be resolved only by the lessee by the production of documenting payments. In the case of a delinquency where the lessee and/or family business would be drastically hurt by the loss of a lease, TLE may negotiate for settlement. The TLE Board of Directors, with the recommendation of the TLE Staff, can provide for a repayment program for lessees that does not exceed two (2) years evidenced by a written executed contract. If the delinquent lessee fails to make a payment, the contract is nullified and the lease shall automatically be cancelled.

K. AGRICULTURAL RESOURCE MANAGEMENT PLANS

A priority of TLE is implementing the development and improvement of Tribal Lands. Therefore, an Agricultural Resource Management Plan must be submitted with each negotiated lease or lease that is bid.

The plan must address needs such as water, fencing, prairie dog problems, and the overall current condition of the land. TLE is continually collecting such data through GIS and an

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Ecological Site Similarity Index Study that will benefit the land and the lessee. These plans will be evaluated and discussed with the lessee as well as monitored for compliance and application. Lessees are encouraged to work with the Natural Resources Conservation Service (NRCS) for cost share program participation.

The implementation and participation of these plans will be considered when leases are renewed through negotiation and in the bidding process.

Prairie Dogs; As part of the conservation of TLE managed lands, TLE has invested a considerable amount of time and money into pre-baiting and baiting prairie dog towns in TLE's effort to protect and conserve tribal lands. The lessee shall be responsible for the maintenance/control of the prairie dog population consistent with TLE prairie dog control guidelines.

Where TLE has taken action to reduce the number of prairie dogs on Tribal lands, the lessee will be required to either become certified to pre-bait and bait or shall be required to retain the services of TLE's prairie dog program to control the population on the affected land. Failure of a Lessee to comply with prairie dog control guidelines established by TLE may result in **fine based on acres treated and/or the cancellation of the lease.**

L. DETERMINATION OF AWARDING LEASES FOR THE BEST MANAGEMENT AND USE, OF THE LAND

When a lease proposal is received, the lessee's use of the land and payment record will be reviewed. If a tract(s) of tribal land under the management of TLE is located within lands owned in fee by non-members, the following must be proven:

- A. The individual submitting the proposal is a Bona-fide producer;
- B. The land is essential to the lessee's agricultural business;
- C. Ownership of livestock as an operator –or- has a business plan that through leasing land will become an owner of livestock;
- D. The existence of a management plan to utilize the tract(s);
- E. Producer has the financial means to fence half and/or develop water on land; and
- F. Other options or proposals for fence and/or water.

TLE will base their decisions in the best interests of the land and the ability of the land to produce income from the land. Secondary concerns will include consideration of the interests of the individual producer.

M.

Leasing privileges are subject to the Rosebud Sioux Tribe Law & Order Code and/or the privileges of the Tribal Fish and Game Law & Order Code Chapter 35. Access shall be

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available to the landowner of the land in question and members of the Rosebud Sioux Tribe on tribal land to hunt, fish gather firewood, rocks, saga, medicinal plants wild food, sweet grass and fruit. Denial of tribal member access by lessee is grounds for cancellation.

The RST Guide will be responsible to notify the lessee and landowner of his parties planned to hunt tribal tracts and respect all improvement on the land. All hunters will not interfere with the agriculture operation.

DATA AND RECORDS PROGRAM

As part of becoming managers that are responsible for the best use and fairest value received for the land, TLE is developing an infrastructure of a data based program that will require from lessees of farm land, the yearly information and data of type of crops planted, total acres planted, and yield per acre of crop planted. If crop is irrigated this data will be furnished as to the gallons of water utilized to achieve the yield per acre.

For grass land, TLE will require an estimated weight of calves or yearlings placed upon the lease, the length of time the livestock is on the lease, and the weight of the calves when sold or weaned. Failure to provide requested information prior to the lease year may result in review and/or termination of the lease contract.

N. CORRESPONDENCE AND TLE/BIA LEASING PROCESS

All lessees and potential lessees will be notified by letter, radio, or newspaper of lands available for lease and the outcome of their bid or negotiated lease. All negotiated leases and bids shall be submitted on the TLE Lease Proposal Forms.

The TLE Lease Manager through the TLE Executive Director's Office will notify the Bureau of Indian Affairs, in writing, of all TLE approved negotiated and bid leases. The BIA will receive copies of the Award Letters accompanied by the white and yellow copies of the lease proposal form. The gold copy of the lease proposal will be forwarded to the lessee.

The BIA will notify the TLE Executive Director in writing when the lease contracts have been fully executed and provide copies of same. If an executed lease is not returned within the thirty (30) day period, the BIA will inform TLE of the incompleteness. TLE will notify the delinquent lessee that within ten (10) days of receipt of said notice, whether certified mail or hand delivery, if the contract is not executed and returned the lease will be canceled.

O. CRITERIA FOR QUALIFICATION AS A BONA-FIDE AGRICULTURE PRODUCER

Any party, other than a first-time Tribal Member operator, that wishes to lease land from TLE must meet at least three (3) of the following criteria:

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- 1) Own livestock, a) **A Brand Inspection form and/or Financial institution statement of Ownership and/or Bill of Sale with Notary signature**; b) Lessee must prove ownership of 25% of the livestock that could be pastured on leased land from TLE; (c) must be pastured on the land leased from TLE (d) must provide a growth in an operation for the need of additional land.
- 2) **Market Receipts**-Produce sales and procurement receipts from sale barns or legitimate cattle buyers, receipts of sales of crops, feed/food corporations, businesses, or local producers or other proof of sales of crops. **(If own use example in a Management Plan).**
- 3) **Proof that FSA recognizes them as an operator- 156 EZ Form**
- 4) **Income Tax Statement-Schedule F and/or Purchase Agreement for Farming Equipment.**
- 5) **State Brand Registration**

However, first-time Tribal Member operators are only required to fulfill two (2) as bona-fide agriculture producer criteria.

All Prices must be excluded in all documents submitted to Tribal Land Enterprise All Tribal Land Enterprise needs to know is that you are bona-fide agriculture producer.

P. PROCESS and PROCEDURES for BIDS by BONA-FIDE ELECTED OFFICIALS, EMPLOYEES OF TLE and RELATIVES OF TLE EMPLOYEES

All employees have a responsibility to immediately notify the Executive Director when an immediate family member of the employee has submitted a bid and/or lease proposal for TLE lands.

If an immediate family member of the Executive Director submits a lease proposal, the Executive Director will provide a written directive to the Assistant Director and Lease Manager to handle all transactions of the leasing process.

If a member of the Board of Directors, Tribal Council, or any other elected official or employee of a tribal program submits a lease proposal, all criteria for leasing of lands and the process of leasing lands shall be strictly followed. No special privileges will be allowed.

Any member of the Board of Directors of TLE that submits a lease proposal will excuse themselves from the decision of the Board of Directors in writing and orally for the record.

The interested Board member will be allowed, as a tribal member and potential lessee, to address the Board regarding their proposal. At no time will such Board member be allowed to be present when the Board of Directors is deliberating and voting on the interested Board member's proposal.

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If an immediate family member or a business partner of a TLE Board member submits a lease proposal or bid, the Board member must for the record disclose their relationship and remove themselves from any deliberation or vote on the proposal and/or bid.

Q. AFTERMATH GRAZING ON CROP LANDS.

No residue consisting of volunteer grains, weeds, small grains and legume straw or other surface crop residue will be allowed to be grazed, baled for hay or straw or removed on cropland designations in this lease, unless the remaining surface residue is determined to be in excess of local Natural Resource Conservation Service surface crop residue management practices. Such practices are used to facilitate reducing erosion and improving soil quality. Activation of this provision shall require an approved cropping plan and the landowners shall be entitled to compensation before grazing and/or removal of excessive surface residue. The liquidated damages for unauthorized grazing is \$30.00 per acre and the liquidated damage for forage removal is \$30.00 per acre plus the value of the forage removed. In the event aftermath grazing is approved only livestock bearing the registered brands of the lessee(s) will be authorized on the lands under this contract, unless other arrangements are approved by the landowners by TLE and BIA.

R. PASTURE AUTHORIZATIONS.

All Pasture authorizations must be **submitted with Lease Proposal** and approved by TLE. Any lessee found to be pasturing livestock without TLE approval shall be assessed a penalty of \$2.00 per head per day

S. IMPROVEMENTS

If, in the construction of improvements, TLE is named in the NRCS application or any other government cost program, written approval must be obtained from TLE prior to the placement of any improvements on the leased property. If TLE determines that the improvement benefits the property, TLE will negotiate with the lessee to prorate the cost of the improvement and the beneficial use of the land. A reduction in lease rental will be calculated to allow TLE to completely amortize the improvement in accordance with a standard amortization schedule then in use at or before the end of the normal termination of the lease. Upon termination of the lease, ownership of the improvement free of all liens shall vest in TLE. Improvements placed upon the leased premises that have exceeded their lifetime as calculated by NRCS shall become the property of TLE upon expiration of the lease.

Fencing: Tribal Land Enterprise will follow the South Dakota Law for fencing 43-23-1 and 43-23-5:

South Dakota State Law states: 43-23-1 “Erection and maintenance of partition fence—Liability of owners of adjoining land. Unless adjoining landowners otherwise agree, every owner of land shall be liable for one-half of the expense of erecting and maintaining a partition fence between his own

and adjoining lands. However, no owner of land is liable for expense if neither keeps livestock on the affected tract of land and neither derives any other substantial benefit from the fence for the period of five years from the date of erection or repair of the fence.”

South Dakota Law states: 43-23-5 “Neglect or refusal to erect and maintain half of legal fence--Enforcement by adjoining landowner--Service of notice and demand. If any owner of any land who is liable for one-half of the expense of erecting and maintaining a partition fence pursuant to § 43-23-1 neglects or refuses to so erect and maintain one-half of a legal fence on the lines separating his land from adjoining land, the owner of the adjoining land may serve upon the delinquent owner a notice in writing demanding that the delinquent owner shall erect or repair, as the case may be, a legal fence along one-half of such line, describing it, within thirty days from the date of the service of the notice and demand upon him.

T. TERMINATION/CANCELLATION OF LEASE FOR ECONOMIC DEVELOPMENT

If the leased land is solely owned by the Rosebud Sioux Tribe, the lease may be terminated or part of the leased property used if needed for housing or other programs sponsored by the federal government and/or the Rosebud Sioux Tribe, their assignees or successors. A lease may be cancelled to serve the economic, cultural, agricultural, farm and pasturing and/or educational needs of the Rosebud Sioux Tribe. The TLE Board of Directors has sole discretion in cancelling leases for the benefit of Tribal members.

TLE Board of Directors shall provide the lessee with ten (10) days written notice of hearing sent by any reasonable means of their intent to use the leased premises and/or cancel the lease. No less than ten (10) days after providing notice of hearing, the TLE Board of Directors shall hold a hearing. The lessee shall be given an opportunity to be heard, have the right to be represented by counsel and to present witnesses on their behalf. The decision of the TLE Board of Directors shall be final.

The Lessee may unilaterally waive rental adjustments for acreage taken or TLE and Lessee may modify the lease to reflect their agreement on a rental adjustment. In the event no agreement is reached as to rental adjustment, the rent will be adjusted on a prorated basis.

To substantiate its position regarding the land, the TLE need only submit a resolution. If any appeal is sought regarding the lease cancellation, the Superintendant will defer to the decision made by TLE.

U. ARCHEOLOGICAL, CULTURAL, AND HISTORIC RESOURCES.

In the course of construction, operation, or maintenance of the leased premises, lessee agrees that if archeological or historical resources are uncovered, the construction,

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operation, or maintenance shall immediately be halted and a report of such findings shall be reported to THPO. Upon receiving a report of a discovery, THPO will initiate a preliminary site assessment and recommend a mitigative strategy that may include termination of the lease. The lessee is required to comply with the decisions made by THPO.

V. COOPERATIVE PARTNERSHIP BETWEEN TLE AND THE LESSEE

TLE intends to maintain a partnership with the lessee. In order for this to happen, there must be open lines of communication. If a problem arises, TLE must be immediately notified **in writing** to ensure prompt resolution.

W. NO AUTHORIZATION FOR CLAIMS

Nothing in this Policy shall be construed as authorizing any action to be brought against the Rosebud Sioux Tribe or TLE which may arise from the use, disposition, or otherwise of present and previous leases, or any portions thereof.

X. JURISDICTION

All lessees of TLE managed lands shall be deemed to have consented to the jurisdiction of the Rosebud Sioux Tribe, whether or not such land is held in trust or fee status **and further agree to the submission of any disputes arising to the Courts of the Rosebud Sioux Tribe. All Lessees will be required to know the Rosebud Sioux Tribe Law and Order Code.**