

LEASE AGREEMENT

GRAZING LEASE, PATENTED LANDS



**CITY OF FLAGSTAFF
ARIZONA**

APRIL 2021

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ATTACHMENT A - SUBMITTED BID

EXHIBIT A – LEGAL DESCRIPTION

EXHIBIT B – STATE LAND ASSIGNMENT OF LEASE

GRAZING LEASE AGREEMENT

This Grazing Lease Agreement (“Lease Agreement”) is made and entered into this ____ day of _____ 2021, by and between the City of Flagstaff (“Lessor”), a municipal corporation with offices located at 211 West Aspen Avenue, Flagstaff, Arizona 86001, Bar T Bar Ranch, Inc., an Arizona corporation (hereinafter referred to as “Lessee”) with its corporate office located at 3110 Crater Ranch Road, Winslow, Arizona.

RECITALS

1. Lessor is the owner of certain ranges and range rights consisting of patented lands and lands held under Arizona State Grazing Lease Number 05-3321 lying and being situated east of the City of Flagstaff, Coconino County, State of Arizona, such ranges being locally referred to and known as the “Patented Lands.” The patented lands are described in **Exhibit A**, attached and made a part of this Lease Agreement (“Patented Lands”). The lands held under Arizona State Grazing Lease Number 05-3321 are described in **Exhibit B**, attached and made a part of this Lease Agreement (“State Lands”).
2. Lessor has accepted the bid of Lessee for grazing livestock compatible with City land use plans at the Patented Lands location.
3. Lessee desires to lease the Patented Lands and State Lands (sometimes collectively referred to as “Patented Lands” or “Leased Premises”) for the purpose of running a livestock operation on the Leased Premises. The conduct of such livestock operation will be under the sole management, cost and responsibility of Lessee and pursuant to Attachment A.
4. Lessor, as the owner of Patented Lands, has the authority to impose and collect all rentals, fees and charges related and incidental to Lessee’s use of the Leased Premises.

NOW, THEREFORE, Lessor does hereby agree to lease to Lessee, and Lessee does hereby agree to lease from Lessor, certain land, rights, and privileges in connection with and on the Patented Lands lands as follows:

I. LEASE AND SUBLEASE

A. Lease of Patented Land.

Lessor does hereby lease to Lessee, and Lessee’s permitted successors and assigns, and Lessee does hereby take and lease from Lessor the land described in **Exhibit A** (“Patented Lands”) for the purposes of running a livestock operation on the Patented Lands that is compatible with City land plans and uses (“Operation”), as more particularly contained in this Lease Agreement, and subject to Lessor’s reservation of the following specified rights and all other rights or City uses as may be determined in the City’s sole discretion during the term of this Lease Agreement:

1. The exclusive right to all mineral rights, of any kind, appurtenant to the Patented Lands described in this Lease Agreement owned, controlled or possessed by

Lessor; and Lessor shall be entitled to prospect for, drill, produce, mine or extract such minerals.

2. The exclusive right to all timber or forest products, of any kind, appurtenant to the Patented Lands which Lessor owns, controls or possesses, including the right to harvest, cut, process, fabricate, remove or extract such timber or forest products.
3. The exclusive right to grant easements, rights of way, licenses, permits, leases or enter into third-party contracts for alternative land use plans. For example, Lessee expressly acknowledges and understands that Lessor is contemplating entering into a lease of a portion of the Patented Lands for solar energy creation purposes, and that the Lessor has plans to develop additional areas of the Patented Lands as a multi-use complex for land management, sustainability, climate action, land development and water production purposes. Lessee acknowledges and agrees that such uses are compatible with Lessee's Operation, and Lessee does not and will not object to or interfere with, either directly or indirectly, any leases, licenses or permits which may be granted by Lessor to third-parties for such purposes, all of which alternative uses shall remain in the Lessor's sole discretion. Lessee expressly acknowledges and understands that Lessee's grazing operation is secondary to and at all times subordinate to any land use plans or alternative uses identified or pursued by the Lessor or its third-party contractors during the term of the Lease Agreement. Where an alternative land use plan is initiated by the Lessor that may not be compatible with grazing, Lessee acknowledges and understands that the Lessor's alternative plan has priority and that the Lessor will not reimburse Lessee for any payments or improvements made on the Leased Premises, and Lessee waives any claims for damages or loss of any kind associated with Lessee's Operation on the Leased Premises.
4. The exclusive right to survey, drill wells and improve the surface of the Patented Lands or maintain and repair all improvements situated on such lands.
5. The exclusive right to all water from any source on or under the Leased Premises.
6. The exclusive right of ingress and egress to any part or portion of the Patented Lands for any purpose. At no time shall Lessee allow third-party ingress and egress to the Leased Premises or to the ASLD parcels within the Patented Lands unless expressly authorized by the Lessor.
7. All other uses not directly in conflict with Lessee's Operation.

B. Sublease of State Lands.

Lessor and Lessee mutually agree that for purposes of this Lease Agreement, the leasing of any lands described in **Exhibit B** under Arizona State Grazing Lease Number 05-3321 shall be considered a sublease of such lands and shall be subject to all rules and regulations of appropriate governmental authorities controlling the use of such lands owned by the State of

Arizona. Permission for such sublease shall be obtained in writing from the Commissioner of the Arizona State Land Department, and if such permission is not obtained, this Lease Agreement shall automatically become null and void upon the date that Lessor receives notice from the State Land Department that the sublease has not been approved.

Lessee agrees to conform with the following:

1. Adhere to the City of Flagstaff's Community Priorities and Objectives, Climate Action and Adaptation Plan, and Water Services Master Plan.
2. Integration of grazing, ecosystem health, and land management best practices.
3. Support Lessor's efforts to integrate a variety of initiatives that include, but are not limited to, renewable energy development, carbon sequestration, research, and pilot sustainability projects. Any exploration of helium or hydrocarbons or similar testing or drilling on or near the Leased Premises is strictly prohibited and any such activity shall be considered a material breach of the Lease Agreement and subject to immediate termination.
4. Support wildlife restoration projects on the Patented Lands property.
5. Participate in scientific studies and/or work with institutions of higher learning.
6. Utilize wildlife friendly fencing and harvest practices (if harvesting is considered in the bid).
7. Implement and test new methods to reduce livestock and wildlife conflicts.
8. Implement grazing practices that support wildlife, water quality, and ecosystem health.
9. Provide a Livestock Grazing Management Plan (LMGP)
10. Meet the requirements of Arizona State Land Department for holding a sublease for grazing on Arizona State Lands; the Lessor shall hold the grazing lease on all State Lands within the boundary of the Patented Lands. Requirements for the sublease are outlined in the Sub-Lease Application (Exhibit D).
11. Manage all livestock to avoid the BNSF railroad. Lessee shall be responsible for all livestock management costs and operations on the Leased Premises.
12. Lessee will not drill new water supply wells (for stock or other uses) or construct stockponds or stock tanks on or near the Leased Premises without the Lessor's express written consent.
13. If Lessee has a grazing operation that will be operated in conjunction with the Leased Premises, Lessee agrees to manage all grazing operations in the best interest of the Lessor.

C. Possession.

Subject to **Article I(B)** above, Lessee shall take possession of the Leased Premises upon the later of the effective date of this Lease Agreement or receipt by Lessor of written permission for such sublease from the Commissioner of the State Land Department.

II. TERM

A. Term.

The term of this Lease Agreement shall be for an initial (3) three-year period. The initial (3) three-year term shall commence on _____, 2021 and end on _____, 2024.

B. Extension.

Upon the expiration of the initial term of this Lease Agreement, the parties may, upon mutual agreement, extend this Lease Agreement for two (2) additional one (1) year term. Lessee shall request extension of this Lease Agreement by giving the City written notice at least ninety (90) days prior to the expiration of the initial term of this Lease Agreement. All terms and conditions of this Lease Agreement not changed by mutual agreement of the parties shall apply to the renewal term of this Lease Agreement.

III. RENT

A. Definitions. For purposes of computing rentals, Lessor and Lessee agree to the following definitions:

1. "Livestock Grazing Period" means the grazing period shall be treated as 185 days per contract year during the term of this Lease or any extensions thereof, and for rental purposes each year of lease shall be reassessed by Lessor and Lessee. Any adjustments shall be approved by State and Lessor.
2. "Adult Livestock" means any livestock one year old or older; provided, however, that no rentals shall be computed or charged on rams.
3. "Lambs" means any sheep six months to one year of age, and, for purposes of this Lease Agreement, the grazing costs of lambs shall be fifty percent (50%) of the basic rentals for adult sheep, as hereinafter computed. Two (2) lambs shall equal one (1) adult sheep for grazing rental purposes. "Calves" means any bovine animal that's age is less than one year. Lease Agreement, the grazing costs of calves shall be sixty percent (60%) of the basic rentals for adult bovine, as hereinafter computed. "Steers/heifer" means any bovine animal that's age is greater than one year, but less than two years. Lease Agreement, the grazing costs of calves shall be eighty percent (80%) of the basic rentals for adult bovine, as hereinafter computed.
4. "Animal Unit (A.U.);" means the annual feed requirement to maintain one mother cow or the equivalent in thrifty condition.
5. "Animal Unit Month (A.U.M.);" is one-twelfth of an Animal Unit or the feed requirement to maintain a mother cow in thrifty condition for an average month of the year.
6. "Minimum Numbers of Livestock" means adult livestock or its equivalent.

7. For purposes of calculating “minimum numbers of livestock”, “basic rentals” and “carrying capacity,” “one (1) adult cattle” shall equal “five (5) adult sheep.” Lessee may reference the U.S. Department of Agriculture definition at the following website: <https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/plantsanimals/livestock/afo/>

8. “Basic Rentals” means the total grazing rental reserved under this Lease Agreement based upon the actual number of head of livestock sheep for each annual livestock grazing period under this Lease Agreement computed on the following monthly basis: \$14.00 per animal unit per month, 12 months per year during the lease term.

B. Rentals.

1. Numbers of adult livestock grazed shall be charged and pay the same cash rental of **\$14.00** per animal units monthly (181), 12 months per year. Total rentals for livestock grazed during the term of this Lease Agreement or extensions thereto, as computed on the foregoing formula, shall be paid by Lessee to Lessor as follows:

(a) At the beginning of the Grazing Period, the base annual rental sum of **twenty thousand dollars (\$20,000.00)** cash;

(b) Monthly, the animal units per month as stated above;

(b) At the end of the Grazing Period, cash equal to the balance owing on the livestock rental account for the livestock grazing period ending at the term of contract specified 365 days.

2. In addition to the rentals reserved above, Lessee shall pay to Lessor all applicable privilege, sales and excise taxes which may be legally levied or imposed upon rent now or later by any governmental agency.

3. All rentals shall be paid by Lessee to Lessor at the address of Lessor as provided below for the giving of notices.

4. Lessor shall have a lien for unpaid rent on all livestock owned by Lessee ranging upon the leased property as of the date any rental delinquency shall occur.

IV. LESSEE’S OPERATION

A. Lessor’s Operation.

The business to be conducted by Lessee upon the range lands, Patented Lands and State Lands embraced by this Lease Agreement shall be that of a livestock operation, and Lessee agrees to conduct and manage said livestock operation at its sole cost and expense and in a good and livestock manlike manner. The operation shall include, by way of illustration but not necessarily by way of limitation, the production of mutton by breeding, growing, fattening, pasturing or grazing.

1. Livestock placed on the leased range area shall be owned or controlled by Lessee and shall bear one of the irons or brands of Lessee.
2. Lessee shall, at its sole expense, promptly comply with all laws, ordinances, rules, regulations, requirements and orders whatever, present or future, of any governmental authority having applicable jurisdiction, which may in any way apply to the maintenance, operation or use of the Leased Premises as herein described.
3. The Lessor encourages sustainability with all of its operations. It is pertinent to uphold the City of Flagstaff Key Communities Priorities and Objectives.

V. CARRYING CAPACITY

A. Rental Basis.

All rentals reserved under this Lease Agreement shall be based upon the actual number of adult livestock actually pastured, from time to time, during the grazing period as defined within the Grazing Management Plan provided by the Lessee. The parties agree to negotiate annually the stocking rates allowed for each season upon the range as provided below in accordance with **Article VI**.

B. Maximum Number of Livestock.

The maximum number of livestock to be grazed on the range (both Patented and State Lands) embraced by this Lease Agreement shall not exceed the then current annual carrying capacity appraisal per section of land as promulgated by the Arizona State Land Department on those State Lands included within the leased range area (currently rated at 0.41 AUM's per section) unless favorable range conditions allow for excess grazing. If Lessee wishes to exceed such appraised carrying capacity, it shall first obtain written permission of the Lessor and the State Land Commissioner. Based upon the current carrying capacity appraisal effective upon date of this Lease Agreement, the parties acknowledge and agree that the maximum carrying capacity on the Leased Premises is **181** animal units. Notwithstanding the carrying capacity, only Lessee's livestock, appropriately marked with a registered brand, are authorized to inhabit the Leased Premises. Lessee shall not contract with or permit any third parties to use the Leased Premises for grazing or any other purpose.

VI. COOPERATION

A. Reservation of Rights.

Lessee acknowledges that Lessor has reserved its rights to enter into other leases, permits and licenses with respect to the Patented Lands, in accordance with **Article I** above.

B. Meetings.

Lessee agrees to cooperate with Lessor by attending quarterly meetings to be arranged and scheduled by Lessor on or about the dates of February 15, May 15, August 15 and November 15, throughout the term of this Lease at a location convenient to the parties. Such meetings shall include, by way of example but not by way of limitation, consideration of stocking rates, grazing schedules, new range improvement construction, improvement maintenance and repair schedules, and range or improvement enhancement programs.

VII. PEACEABLE POSSESSION

A. Possession of Patented Lands and State Lands.

Lessor agrees to furnish to Lessee peaceable possession of the Patented Lands and the State Lands upon commencement of the term of this Lease, subject, however, to the prior written approval for sublease of State Lands under existing State Land Department Grazing Lease Number 05-3321, which shall be the obligation of Lessor to obtain. Should such approval not be obtained by Lessor after exercise of reasonable diligence within three months from the date hereof, this Lease Agreement shall immediately terminate.

B. Compliance with Applicable Leases and Agreements.

Lessee agrees to abide by and comply with all of the terms, covenants, conditions and obligations under this Lease Agreement and State Land Department Grazing Lease Number 05-3321, except, however, that Lessor shall be responsible for payment of rentals under Grazing Lease Number 05-3321. In addition, Lessee agrees to abide by and comply with all of the terms, covenants, conditions and obligations under EQIP Contract No. 2002 7494572A047.

VIII. IMPROVEMENTS

A. Lessor shall not be required to make any improvements on the leased range during the term of this Lease. Subject to Lessor's consent as provided below, Lessee shall have the right, at Lessee's sole cost and expense, to make any and all improvements, additions or alterations on the Leased Premises, as in its sole discretion may be deemed necessary for Lessee's Operations. All improvements, additions or alterations placed by Lessee on the Leased Premises during the term hereof or any renewal of this Lease Agreement shall be and become the property of the range owner (Lessor or the State of Arizona, as the case may be) immediately when placed upon the Leased Premises, and shall not be removed by Lessee upon termination of this Lease, unless otherwise agreed upon in writing by Lessor and Lessee.

B. Before placement, installation, alteration or construction of any improvement upon the Leased Premises, Lessee must first obtain the written consent of Lessor for the placement, installation, and construction of such improvement. Furthermore, before placement, installation, alteration or construction of any improvement upon State Lands included within the Leased Premises, Lessee agrees to furnish to Lessor, for execution, the proper application to obtain prior approval from the Commissioner of the Arizona State Land Department for the placement, installation and construction of such improvement. Upon completion of the construction of any

such improvement upon State Lands, Lessee agrees to give Lessor, for execution, a Report of Improvement which shall be filed with the Arizona State Land Department.

C. During the term of this Lease Agreement, Lessee shall, at its sole cost and expense, keep all improvements upon the Leased Premises in as good condition as the same areas of the commencement of this Lease Agreement, ordinary and usual wear and tear, acts of God, violence, vandalism or any other causes beyond the control of Lessee excepted.

D. In an effort to prevent erosion, Lessee agrees to conform to the best practices of the area in which the Leased Premises are located. Lessee shall not commit or permit or suffer the commission of any waste upon, or do or permit or suffer any damage to be done to the Leased Premises or any improvements thereon, or allow the range to be overgrazed, or cut or removed, or allow any timber or standing trees that may be upon the Leased Premises to be cut or removed, except such trees or timber as may be necessary for the maintenance of existing fences and improvements.

E. Notwithstanding anything to the contrary in this Lease Agreement, Lessor agrees that Lessor will perform such tank, dam and reservoir work, whether by way of repairs, clean-out or new construction, as may be required because of destruction as set forth below, or that may be desired through mutual consent of the parties. Further, Lessor agrees to perform, at Lessor's expense, such cedar or juniper eradication work or reseeded programs as may be mutually agreed upon by the parties.

F. In the event any tank, dam or stock pond shall be destroyed by flood, then, in that event, Lessee agrees to restore such tank, dam or stock pond at Lessee's sole cost and expense to the capacity of such tank, dam or stock pond before destruction. Lessee shall undertake such restoration within a reasonable period after receiving written notice of such destruction from the Lessor, weather conditions permitting and with due regard to the availability of labor and equipment. Lessee shall, at the latest, restore such tank, dam or stock pond within one (1) year following receipt of written notice of destruction from Lessor. The Lessee shall be responsible for maintaining the designated earthen tanks if the tanks are within one mile of a functioning well used for grazing and wildlife purposes.

IX. MAINTENANCE AND SERVICES

A. Lessee shall, at Lessee's sole risk and expense, provide and promptly pay for all labor, implements, tools, fuels and water and other materials and services of whatever kind or nature which may be used in the conduct of Lessee's Operation and in performance of Lessee's obligations under this Lease Agreement, and Lessor shall not be liable for any part thereof, including management of livestock around the BNSF railroad.

B. Lessee shall hold Lessor harmless from all charges of any kind or character which could or which become the subject of a lien on the Leased Premises.

C. The Lessor shall supply the Lessee with any materials necessary to repair the perimeter fence and gates in order to properly secure the Ranch (i.e. fencing wire, poles, stakes etc.)

- D. Cross fencing throughout the Leased Premises shall be maintained by the Lessee. The fencing plan as provided shall be a guide to be used in the installation, and maintenance of the cross fencing. Cross fencing shall be 4-wire. Lessee shall provide at their expense, a minimum of one (1) fence miles to be installed or replaced per year during the period of this lease.
- E. All cross-fencing work shall be submitted to and approved by the Lessor.

X. INSPECTION AND LIVESTOCK TALLY

- A. Lessor or its authorized agents, at all reasonable times during the term of the Lease Agreement or any renewal, may enter upon the Leased Premises for the purpose of inspection of the range and improvements or conducting or supervising range improvements and determining range improvement decisions.
- B. The parties mutually agree that Lessor shall have a right to tally numbers of livestock on the range at any time and to tally livestock on or off the range at mutually agreed times and methods; provided, however, that Lessor agrees to give Lessee not less than 14 days' written request of its desire to tally livestock.

XI. HORSES AND MULES

Without the payment of additional rentals, Lessee shall be entitled to keep and maintain upon the Leased Premises sufficient number of saddle horses, mules and/or pack burros as are necessary and required in the judgment of Lessee for the livestock operation. The number of saddle horses, mules and/or pack burros kept and maintained on the Leased Premises, when counted with the other livestock on the range, shall not exceed the then current annual carrying capacity appraisal per section of land as promulgated by the Arizona State Land Department on those certain State Lands included within the Leased Premises, unless the Arizona State Land Commissioner shall waive the carrying capacity limitation in writing.

XII. WATER AND RANGE RESOURCES

- A. Lessee acknowledges that Lessor has reserved all water rights to the Leased Premises.
 - a. All water developed or obtained by Lessee from any source located on the Leased Premises shall be used only on such range in connection with the Lessee's Operation authorized under this Lease, and such water shall not be removed or exported to any other land without the prior written consent of Lessor.
 - b. The Lessor shall be responsible for the maintenance and repair of the pump and motor for all stock water wells on site.
 - c. The Lessee shall be responsible for supplying the portable generator (s) to operate any of the operating stock wells at Outpost, Cedar, Twin Tanks and Sunshine.
- B. Lessor makes no warranties or representations to Lessee, express or implied, as to the adequacy of water, regardless of source, for use on the Leased Premises, or as to the adequacy of forage for grazing purposes situated on the Leased Premises.

XIII. TAXES AND ASSESSMENTS

Lessor shall, at its own cost and expense, pay and keep current all real property (ad valorem) taxes, State grazing rentals and any other assessments or taxes upon the Leased Premises. All taxes upon personal property including, but not limited to, livestock, feed, supplies, fuel, tack, machinery or equipment placed on the range area embraced by this Lease Agreement by Lessee, shall be the sole obligation and expense of Lessee.

XIV. CONDEMNATION

If the whole or a substantial part of the Leased Premises shall be taken or condemned by any competent authority for any public or quasi public use or purpose, then and in that event, the term of this Lease Agreement shall cease and terminate from the date when possession of the part so taken shall be required for such use or purpose, and without apportionment of the award. If less than the whole or a substantial part of the Leased Premises shall be taken or condemned by any competent authority for any public or quasi public use or purpose and, as a result thereof, Lessee believes the carrying capacity of the ranch unit leased has been reduced, the question of carrying capacity reduction and rental reduction shall be submitted to dispute resolution in accordance with **Article XXVII**, should Lessor and Lessee be unable to resolve the dispute.

XV. BANKRUPTCY

If at any time during the term of this Lease Agreement, there shall be filed by or against the Lessee in any court pursuant to any statute, a petition of bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Lessee's property, or if Lessee makes an assignment for the benefit of creditors, this Lease Agreement, at the option of the Lessor, may be cancelled and terminated. In such event, neither Lessee nor any person claiming through or under Lessee by virtue of any statute or of any order of court shall be entitled to possession or to remain in possession of the Leased Premises but shall immediately quit and surrender the Leased Premises. Lessor, in addition to the other rights and remedies Lessor may have at law or in equity, may retain as liquidated damages any rent, security, deposit or moneys received by Lessor from Lessee or others on behalf of Lessee.

XVI. REPRESENTATIONS AND WARRANTIES

A. Lessor has made no representations or promises to Lessee with respect to the Leased Premises, Lessee has inspected the Leased Premises, and Lessee leases the Leased Premises **AS IS**. Lessee's examination of the Leased Premises and taking of the Leased Premises shall be conclusive evidence as against Lessee that the Leased Premises are in a good and satisfactory condition at the time of possession by Lessee.

B. Lessor makes no warranty of title whatsoever, and this Lease Agreement is subject to easements, rights-of-way, restrictions and reservations of record or which may be observed upon an inspection of the Leased Premises and is subject to all reservations and restrictions contained in governmental patent or patents embracing any of the lands described in this Lease Agreement. and the lands described in this Lease Agreement is also subject to all rules and regulations of the

State Land Department of the State of Arizona insofar as this Lease Agreement includes a sublease of State Lands.

XVII. RELATIONSHIP OF PARTIES

Notwithstanding any joint decision arrangements provided for in this Lease Agreement, the parties agree that nothing in this Lease Agreement shall be deemed or construed to constitute a co-partnership or joint venture between Lessor and Lessee. The relationship created under this Lease Agreement is that of landlord and tenant and no other. Lessor and Lessee shall not be mutually liable for any debts or obligations incurred by the other, nor shall they be mutually entitled to any benefits accruing to the other.

XVIII. COMPLIANCE WITH LAWS, RULES AND REGULATIONS

Lessee, its employees, representatives and agents, shall comply at all times with all present or future applicable laws, rules, ordinances and regulations, and all amendments or supplements thereto, governing or relating to the use of Patented Lands or the Leased Premises, as may from time to time be promulgated by federal, state or local governments and their authorized agencies.

XIX. INDEMNIFICATION AND WAIVER OF CLAIMS

A. Indemnification

1. Lessee shall indemnify, defend and hold harmless Lessor, its officers, officials, agents, employees and volunteers (“Indemnitee”) from and against all claims, demands, actions, liabilities, damages, losses, or expenses, including court costs, costs of claim processing, investigation, and litigation, and reasonable attorney’s fees (collectively referred to hereinafter as “Claims”) whether or not meritorious, for bodily injury or personal injury, including death, or property damage, caused by or arising from, in whole or in part, the acts, errors, omissions, negligence, or alleged negligence of Lessee, or any of Lessee’s directors, officers, agents, employees, volunteers, contractors or subcontractors. This indemnification includes all Claims arising or recovered under the Workers’ Compensation laws, or arising out of the failure of Lessee to comply with any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the Parties that the Indemnitee shall, in all instances except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Lessee from and against all Claims. Lessee shall be responsible for all primary loss investigation, defense, and judgment costs where this indemnification is applicable. This indemnification by the Lessee shall extend, but not be limited to, the following:

- (a) Construction by or through Lessee of any improvements or any other work or thing done in, on or about the Leased Premises or any part thereof;
- (b) Any use, nonuse, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Leased Premises, areas adjacent

thereto or improvements thereon by or through Lessee, or any nuisance made or suffered thereon, or any failure by Lessee to keep the Leased Premises or space comprising a part thereof in a safe condition;

(c) Any fire, accident, injury (including death) or damage to any person or property occurring in, on or about the Leased Premises, areas adjacent thereto or improvements thereon, or any part thereof;

(d) Any lien or claim which may be alleged to have arisen against or on the Leased Premises, or improvements thereon, or any part thereof, or any of the assets of, or funds appropriated to, Lessor, or any liability which may be asserted against Lessor with respect thereto;

(e) Any acts or omissions of Lessee, Lessee's assignee or subtenant or any of its or their respective agents, contractors, servants, employees, licensees or invitees;

(f) Any failure on the part of Lessee to pay rent or landing fees, or to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease Agreement, and the exercise by Lessor of any remedy provided in this Lease Agreement with respect thereto;

(g) Any tax which Lessee is obligated to pay or cause to be paid, including any tax attributable to the execution, delivery or recording of this Lease Agreement.

2. The foregoing provisions shall survive the expiration or earlier termination of this Lease Agreement to the extent that the act, error, omission, negligence or alleged negligence arose prior to such expiration or termination.

3. Lessee shall hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on the Leased Premises at the sole risk of Lessee, and, to the extent set forth above, hold Lessor harmless from any loss or damage thereto by any cause whatsoever.

4. The obligations of Lessee under this Lease Agreement shall not in any way be affected by the absence of covering insurance, or by the failure or refusal of any insurance carrier to perform any obligation on its part to be performed under insurance policies affecting this Lease Agreement.

5. In the event that any Claims are made or brought against Lessor by reason of any event, specified or unspecified, which is the subject of Lessee's foregoing indemnification, then, upon demand by Lessor, Lessee, at its sole cost and expense, shall defend such Claims in Lessor's name. Notwithstanding the foregoing, Lessor may engage its own attorneys to defend it or to assist in its defense, and Lessee shall pay the reasonable fees and disbursements of such attorneys.

6. Lessor recognizes the broad nature of this indemnification and hold harmless

clause and voluntarily makes this covenant and expressly acknowledges that the terms and conditions of this Lease Agreement constitute good and valuable consideration provided by Lessee in support of this indemnification in accordance with laws of the State of Arizona.

B. Waiver of Claims

Lessee hereby waives all claims or causes of action against Lessor, its officers, officials, agents, employees and volunteers which it may have now or later for losses associated with alternative land use development plans or activities described in Article I or for losses or damages to any property on, about, or related to the Leased Premises, and for injuries or death to persons on, about or related to the Lease Premises, from any cause or causes arising at any time, except from the negligent or willful act or omission of Lessor, its officers or employees.

XX. INSURANCE

A. Insurance Requirements

In addition to such insurance as may be required by law or regulation, Lessee, at its sole cost and expense, shall maintain in full force and effect throughout the term of this Lease Agreement the insurance coverages, limits and endorsements required in this Lease Agreement. These insurance requirements shall be minimum requirements for this Lease Agreement and in no way limit the indemnification covenants contained in Section XXII. Neither the insurance requirements, nor the City's review or acceptance of insurance, shall in any manner limit or qualify the liabilities and obligations assumed by Lessee under this Lease Agreement.

1. Minimum Scope and Limits of Insurance

(a) Commercial General Liability Insurance – Occurrence Form. Lessee shall maintain Commercial General Liability Insurance at limits of not less than \$5,000,000 Combined Single Limit per occurrence for Personal Injury, Bodily Injury (including death) and Property Damage Liability and shall include, but not be limited to Premises and Operations, Personal Injury, Products-Completed Operations, and Contractual. Fire Damage (Damage to Rented Premises) shall be not less than \$100,000. Coverage shall be provided on a primary basis.

(b) Business Automobile Liability Insurance. Lessee shall maintain Business Automobile Liability Insurance covering all Owned, Hired, and Non-Owned Vehicles used at Patented Lands in an amount of not less than \$1,000,000 Combined Single Limit per occurrence for Bodily Injury (including death) and Property Damage Liability. Lessee shall maintain Business Automobile Liability Insurance in an amount no less than \$5,000,000 Combined Single Limit per occurrence for Bodily Injury (including death) and Property Damage Liability. Notwithstanding the foregoing, if the scope and conduct of Lessee's operations under this Lease Agreement do not involve the operation, ownership or use of any vehicle, then this requirement shall include automobile liability for Hired and Non-Owned vehicles only.

(c) Workers Compensation Insurance. Lessee shall maintain Workers Compensation and Employers Liability insurance written in accordance with the laws of the State of Arizona providing coverage for any and all employees of Lessee. Coverage shall include Employers Liability with minimum limits of \$500,000 each accident, \$500,000 Disease-Policy limit and \$500,000 Disease – Each Employee. Coverage shall include Broad Form All States Endorsement and Waiver of Subrogation in favor of City of Flagstaff. In the event Lessee subcontracts any portion of the work or services under this Lease Agreement to another party, Lessee shall be responsible for ensuring its subcontractors maintain Worker’s Compensation & Employers Liability Insurance.

2. Other Insurance Requirements

All policies shall contain the following provisions:

(a) Additional Insured Endorsement. Except for Workers Compensation/Employer’s Liability Insurance, and Personal Injury Liability:

(i) The City of Flagstaff, its officers, officials, agents, employees and volunteers shall be named as additional insureds with respect to liability arising out of the use and/or occupancy of the Leased Premises subject to this Lease Agreement and activities performed by or on behalf of Lessee, including products and completed operations of Lessee; and automobiles owned, leased, hired or borrowed by Lessee.

(ii) The City of Flagstaff, its officers, officials, agents, employees and volunteers, shall be named as additional insureds to the full limits of liability purchased by Lessee even if those limits of liability are in excess of those required by this Lease Agreement.

(b) Lessee’s insurance coverage shall be primary insurance with respect to Lessor, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by Lessor, its officers, officials, agents, employees or volunteers, shall be in excess of the coverage of Lessee’s insurance and shall not contribute to it.

(c) Lessee’s insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

(d) Coverage provided by Lessee shall not be limited to the liability assumed under the indemnification provisions of this Lease Agreement.

(e) All policies shall contain a waiver of subrogation against the City of Flagstaff, its officers, officials, agents, employees and volunteers for losses arising from Lessee’s operations, occupancy and use of the Leased Premises under this Lease Agreement.

3. Notice of Cancellation

Each insurance policy required by the insurance provisions of this Lease Agreement shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to Lessor. Such notice shall be sent directly to the Utilities Director as provided in Article XXVII(B) below.

4. Acceptability of Insurers

Lessee shall obtain insurance coverage hereunder with insurers duly licensed, or approved unlicensed companies, in the State of Arizona and with a "Best's" rating of not less than A-: VII. Lessor does not represent or warrant that the above required minimum insurer rating is sufficient to protect Lessee from potential insurer insolvency.

5. Verification of Coverage

Lessee shall have a signed Certificate or Certificates of Insurance, evidencing that required insurance coverage(s) has been procured or maintained by Lessee in the types and amount(s) required hereunder, delivered to Lessor before the effective date of Lease Agreement. The Certificate(s) of Insurance shall clearly state that the City of Flagstaff is an "Additional Insured" as required in this Lease Agreement. The certificate(s) of insurance shall also provide for thirty (30) days written notice to Lessor before cancellation (ten (10) days for nonpayment of premium) or non-renewal of coverage. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance.

(a) Required insurance shall be subject to the review, acceptance, and approval of Lessor, at its reasonable discretion, as to form and types of coverage. Lessor's failure to maintain all insurance policies required in this Lease Agreement shall constitute a material default of the Lease Agreement by Lessee, entitling Lessor to exercise any remedies available to it under this Lease Agreement, at law and in equity, including the right to terminate this Lease Agreement. All certificates of insurance shall be sent directly to the Utilities Director as set forth in Article XXVII(B) below.

6. Self-Insurance.

Lessor may allow insurance coverage required in this Lease Agreement to be provided by Lessee's self-insurance plan, subject to prior written approval of Lessor's Risk Manager.

7. Deductibles, Coinsurance & Self-Insured Retention.

Lessee shall be fully and solely responsible for any deductible, or self-insured retention, including any losses, damages or expenses not covered due to an exhaustion of limits or

failure to comply with the policy.

8. Approval

Any modification or variation from the insurance requirements in this Lease Agreement shall have the prior approval of the Lessor's Risk Manager. Such action shall not require a formal Lease Agreement amendment but may be made by administrative action.

9. Policy Review and Adjustment

Lessor, by and through its Risk Manager, reserves the right to periodically review any and all policies of insurance and to reasonably adjust the limits of coverage required from time to time throughout the term of this Lease Agreement. Lessor may reject any insurer or self-insurance plan providing coverage because of poor financial condition or failure to operate legally. In such event, Lessor shall provide Lessee written notice of such adjusted limits or rejection, and Lessee shall comply within thirty (30) days of receipt of notice. Lessee shall be responsible for any premium revisions as a result of any such reasonable adjustment.

10. Invalidation of Policies

Lessee shall not knowingly use or permit the use of the premises for any purpose which would invalidate any policies of insurance existing now or written later on Lessee's premises. In the event Lessee's acts or failure to act shall cause cancellation of any policy, then Lessee shall immediately, before notification by Lessor, take such action as is necessary to reinstate or replace the required insurance.

11. No Representation of Coverage Adequacy

Lessee acknowledges the limits, coverages and endorsements required by section XX are intended to minimize liability for Lessor. Lessee agrees that it will not rely upon the requirements of this section XX when assessing the extent or determining appropriate types or limits of insurance coverage to protect Lessee against any loss exposures, whether as a result of this Lease Agreement or otherwise.

XXI. FORCE MAJEURE

The performance of all covenants in this Lease Agreement, other than the covenants to pay rentals or other applicable fees or charges, shall be postponed and suspended during any period in which a Party's performance is prevented by acts of God, accidents, weather and conditions arising from them; strikes, boycotts, lockouts and other labor troubles; riot, fire, earthquake, flood, storm, lightning, epidemic, insurrection, rebellion, revolution, civil war, hostilities, war, the declaration or existence of a national emergency and attendant conditions; the exercise of paramount power by the federal government, either through the taking of the Leased Premises or the imposition of regulations restricting the conduct of business at the Leased Premises; acts of enemies, sabotage, terrorism, interference, restriction, limitation or prevention by legislation,

regulation, decree, order or request of any federal, state or local government or any instrumentality or agency thereof, including any court of competent jurisdiction; inability to secure labor or adequate supplies of materials, products or merchandise; or any other delay or contingency beyond the reasonable control of the Party whose performance is so prevented or delayed. Any Party desiring to invoke force majeure shall provide notice to the other Party no later than fifteen (15) days following such Party's knowledge of the occurrence of such event and prompt notice of the cessation of such event.

XXII. ASSIGNMENT AND SUBLEASING

Lessee shall not at any time, without the prior written consent of Lessor:

1. Assign, sublease or transfer, or permit or participate in any assignment, sublease or transfer of, this Lease Agreement or any of the rights, powers or privileges under this Lease Agreement;
2. Merge, consolidate or combine, either directly or indirectly, with any other person, firm, corporation or entity operating at Patented Lands under any other lease or agreement, whether such uniting, merging, consolidating or combining be through the sale of property or sale of stock or otherwise.

XXIII. CONDITION OF PROPERTY UPON TERMINATION

Lessee covenants and agrees that upon any termination of this Lease Agreement, however caused, Lessee shall quit and surrender the Leased Premises, and perform all repairs of the Leased Premises reasonably necessary to restore the Leased Premises to the same condition it was in at the time this Lease Agreement was entered into, reasonable wear and tear excepted.

XXIV. TERMINATION BY LESSOR

A. Termination

Lessee acknowledges and agrees that Lessor may, at its option, upon the occurrence of any of the following events, immediately or at any time thereafter, terminate this Lease Agreement and, without demand or notice, enter into and upon the Leased Premises or any part, take possession of the Leased Premises, and expel Lessee and any persons claiming by, through or under Lessee. Lessor may remove Lessee's or others' property and effects, if any, forcibly if necessary, from the Leased Premises, without being deemed guilty of trespass and without prejudice to any remedy which otherwise might be available for arrearage of rent or breach of any provision of this Lease Agreement:

1. If Lessee shall be in arrears in the payment of any rent or fee due under this Lease Agreement for a period of ten (10) days or more;
2. The failure or refusal of Lessee to conduct its operations at Patented Lands in compliance with the terms and conditions of this Lease Agreement, and such failure or

refusal continues for a period of at least ten (10) days after Lessor has notified Lessee in writing of such default;

3. The failure or neglect of Lessee to perform any of the covenants, terms and conditions of this Lease Agreement (other than payment of rent or fee and continuous operation of Lessee's business operations), and the failure or neglect continues for a period of at least thirty (30) days after Lessor has notified Lessee in writing of the failure or neglect, or, in the event that the failure or neglect cannot be completely corrected within the thirty (30) day period, if Lessee has not actively begun correcting the failure or neglect within the thirty (30) day period;

4. The voluntary abandonment by Lessee of the Leased Premises or its operations at Patented Lands for a period of thirty (30) days or more;

5. The seizure or taking of possession for a period of fifteen (15) days or more, of all or substantially all of the property used on Patented Lands premises belonging to Lessee by or pursuant to lawful authority of any legislative act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee or liquidator;

6. The filing of any lien against the Leased Premises because of any act or omission of Lessee which is not discharged or contested in good faith (as Lessor shall determine in its sole discretion) by proper legal proceedings within twenty (20) days of receipt of actual notice of the lien by Lessee;

7. Lessee's willful falsification of any of its business records or books with the intent of depriving Lessor of any rents, fees or other rights under the terms of this Lease Agreement;

8. If Lessee shall make or attempt to make an assignment, sublease, transfer, merger or consolidation of its business operations at the Leased Premises in breach of any of the terms and conditions of this Lease Agreement; or

9. Any permanent injunction of Lessee's conduct of business on Patented Lands premises by a court of final jurisdiction; provided, however, that if Lessee is temporarily enjoined from doing business at Patented Lands, any resulting cessation of business by Lessee so long as the injunction remains in effect shall not be considered a breach of this Lease Agreement or cause for termination by Lessor, unless and until the injunction becomes permanent.

F. **Termination for Convenience**

The Lessor reserves the right to terminate, with or without cause, this Lease Agreement upon ninety (90) days written notice to Lessee. If at the time of cancelation, Lessee is purchasing items related to the grazing of livestock on Patented Lands that are truly unique and therefore not saleable or useable for any other application, the Lessor shall reimburse Lessee for actual labor, material, and burden costs, plus a profit not to exceed 8%. Title to all materials,

work in progress, and completed but undelivered goods, shall pass to the Lessor after costs are claimed and allowed. Lessee shall submit detailed cost claims in an acceptable manner and shall permit the Lessor to examine such books and records as may be necessary in order to verify the reasonableness of any claims. Lessor will not reimburse Lessee for purchases of any items or improvements made prior to cancellation.

C. Additional Remedies

1. Statutory Remedies

In addition to any other remedies provided in this Lease Agreement, Lessor shall be entitled to all of the remedies enumerated in Title 33, Chapter 3, Article 4 of the Arizona Revised Statutes, the provisions of which are hereby incorporated by reference into this Lease Agreement, as if the same were set forth in their entirety, upon the occurrence of any of the events set forth therein.

2. Remedies Cumulative

The remedies of Lessor set forth in this Lease Agreement shall be cumulative and are not intended to be exclusive of any other remedies or means of redress to which Lessor may be lawfully entitled in the event of Lessee's breach of any provision of this Lease Agreement. In addition to any other remedies set forth in this Lease Agreement, Lessor shall be entitled to specific performance and to restraint by injunction of any breach, or attempted or threatened breach, of any of the terms, covenants, conditions or other provisions of this Lease Agreement.

XXV. TERMINATION BY LESSEE

A. Termination

1. Termination for Cause

In addition to any other rights of cancellation it may have under this Lease Agreement or by law, Lessee may, at any time that Lessee is not in default, terminate this Lease Agreement at its option by giving Lessor thirty (30) days' prior written notice of termination, upon the occurrence of any of the following events:

- (a) An order or action by the City or any other governmental authority substantially terminating Lessee's right to conduct its operations at Patented Lands;
- (b) The issuance, by a court of competent jurisdiction, of an injunction of at least thirty (30) days' duration, prohibiting or restraining the use of Patented Lands as a grazing operation;
- (c) A breach by Lessor of any material covenant of this Lease Agreement, which remains uncured for a period of thirty (30) days following written notice of the breach to Lessor, or, in the event that the breach cannot be completely cured within the thirty (30)

day period, if Lessor has not actively begun curing the breach within the thirty (30) day period;

(d) Lessee's inability to use the Leased Premises or to conduct its grazing operations at Patented Lands due to Lessor's failure to maintain Patented Lands, and/or to unsafe conditions at Patented Lands; or

(e) The seizure or other assumption of control of Patented Lands by any governmental entity other than Lessor.

2. Termination Without Cause

In addition to any other rights of termination Lessee may have under this Lease Agreement, Lessee may, at any time that Lessee is not in default, terminate this Lease Agreement without cause by giving Lessor ninety (90) days' prior written notice of termination.

XXVI. TERMINATION POSSESSION AND CONDITIONS

A. Surrender of Possession.

Lessee covenants that at the expiration or termination of this Lease Agreement it will surrender possession of the Leased Premises to Lessor immediately without further demand or notice and in as good order and condition as the same were when entered upon by the Lessee, excepting ordinary and reasonable wear and tear, acts of God, and range conditions, which include water supply and grazing capacity. In the event that Lessor unilaterally terminates this Lease Agreement, except on account of default by Lessee, the Lessor agrees to assume and indemnify Lessee from all liability under the EQIP Contract incurred by Lessee as a direct result of Lessor's termination up to and not to exceed liability that may be imposed under Section 9, Liquidated Damages, of the U.S. Department of Agriculture, Commodity Credit Corporation Appendix to Form CCC-1200 Environmental Quality Incentives Program Contract.

B. Condition of Premises Upon Termination or Abandonment.

Lessee, upon termination or abandonment of this Lease Agreement or termination of the Lessee's right of possession, covenants and agrees as follows:

1. Removal of Property. Lessee shall not remove any alterations, improvements or additions made to the Leased Premises by the Lessee or others without the prior written consent of Lessor. Lessee shall immediately remove, in a good and workmanlike manner, all personal property of the Lessee, and such alterations, improvements and additions made to the Leased Premises by the Lessee during the lease term as Lessor may request in writing to be removed. All damage occasioned by such removal shall be promptly repaired by the Lessee in a good and workmanlike manner. If Lessee fails to remove any such property, the Lessor may accept the title to such property without credit or compensation to the Lessee or remove and store such property, at the Lessee's expense, in any reasonable manner that Lessor may choose.

2. Restoration of the Premises. Lessee shall restore the Leased Premises to the condition existing on the commencement of this Lease Agreement, with the exception of ordinary wear and tear, and alterations, improvements and additions which Lessor has not directed the Lessee in writing to remove.

3. Holding Over. If Lessee fails to deliver actual possession of the Leased Premises to Lessor upon termination of this Lease Agreement, Lessor shall have all remedies available at law or in equity.

XXVII. GENERAL PROVISIONS

A. Conflict of Interest

Notwithstanding anything to the contrary contained in this Lease Agreement, the Parties acknowledge, in accordance with Arizona Revised Statutes § 38-511, that Lessor may terminate this Lease Agreement upon written notice at any time within three (3) years of its execution, without penalty or further obligation, in the event that any person significantly involved in initiating, securing, drafting or creating this Lease Agreement on behalf of Lessor, shall become an employee or agent of Lessee in any capacity or shall render consulting services to Lessee with respect to the subject matter of this Lease Agreement.

B. Notices

Unless otherwise specified herein, any notice or other communication required or permitted to be given under this Lease Agreement shall be in writing and shall be effective and deemed received when hand-delivered or faxed, or if sent by mail, three (3) business days after mailing, to the address given below for the Party to be notified, or to such other address of which notice is given in accordance with this Lease Agreement:

If to Lessor:

City of Flagstaff
Water Services Director
2323 N Walgreens Street
Flagstaff, Arizona 86004
Phone: (928) 213-2400

If to Lessee:

Bar T Bar Ranch, Inc.
Robert Prosser
3110 Crater Ranch Road
Winslow, Arizona 86047
Phone: (928) 289-2619

C. Non-Exclusivity; Competing Uses

Nothing contained in this Lease Agreement shall be construed to grant or authorize the granting of an exclusive right prohibited by federal law. The rights and privileges granted under this Lease Agreement are non-exclusive, and Lessor has the right to grant to others the privilege and right of conducting any and all of the activities listed in this Lease Agreement. Notwithstanding the foregoing, Lessor agrees not to enter into any similar agreement with respect to Patented Lands which contains more favorable terms than are contained in this Lease Agreement, or to grant to

potential competitors of Lessee privileges not authorized in this Lease Agreement, unless the same are also extended to Lessee.

D. Intention of the Parties

This Lease Agreement is intended solely for the benefit of Lessor and Lessee, and is not intended to benefit, either directly or indirectly, any third party or members of the public at large. Any work done or inspection of the Leased Premises performed by Lessor is solely for the benefit of Lessor and Lessee.

E. Independence of Contract

Nothing in this Lease Agreement is intended or shall be construed as in any way creating a relationship of partners or joint venturers between the Parties, or as constituting Lessee as the agent or representative or employee of Lessor for any purpose or in any manner whatsoever.

F. Waiver

The failure of either Party to insist in any instance upon a strict performance by Lessee of any of the provisions, terms, covenants, reservations, conditions or stipulations contained in this Lease Agreement, shall not imply, constitute or be considered as a waiver or relinquishment of the right to insist upon performance of such condition or covenant, or of any other provision of this Lease Agreement, nor shall any waiver by either Party of any breach of any one or more conditions or covenants of this Lease Agreement constitute a waiver of any succeeding or other breach of this Lease Agreement. No waiver by Lessor of any provision, term, covenant, reservation, condition or stipulation contained in this Lease Agreement, shall be deemed to have been made in any instance unless expressed in the form of a written waiver from Lessor.

G. Prior Agreements; Integration; Modification

The Parties acknowledge and agree that they have not relied upon any statements, representations, agreements or warranties, except as expressed in this Lease Agreement, and that this Lease Agreement, along with all of the terms and conditions of the Invitation for Bids, amendments thereto and Lessee's Bid, constitute the Parties' entire agreement with respect to the matters addressed. All prior or contemporaneous agreements and understandings, oral or written, with respect to such matters are hereby superseded and merged in this Lease Agreement. This Lease Agreement may be modified or amended only by written agreement fully executed by the Parties.

H. Successors and Assigns

All covenants and conditions of this Lease Agreement shall bind and shall inure to the benefit of the legal representatives, successors and assigns of the respective Parties to this Lease Agreement, provided that any such representation, succession or assignment is authorized and permitted under this Lease Agreement and by law. Any and all agreements that Lessee shall make

with any permitted assignee, and/or sublessee of the Leased Premises, or any part thereof, shall include all provisions contained in this Lease Agreement.

I. Severability

In the event that a court of competent jurisdiction holds any part or provision of this Lease Agreement invalid, void or of no effect, the remaining provisions of this Lease Agreement shall remain in full force and effect, provided that continued enforcement of such remaining provisions does not materially prejudice either Lessee or Lessor in their respective rights and obligations contained in any valid provisions of this Lease Agreement.

J. Headings

Headings or captions used in this Lease Agreement shall be used solely for convenience of the Parties, and shall not define, limit, describe, alter or affect the meaning of any provision of this Lease Agreement.

K. Dispute Resolution

1. Mediation

In the event that a dispute arises out of or relates to this Lease Agreement, and the dispute cannot be settled through negotiation, the Parties agree to first try in good faith to resolve the dispute by mediation before resorting to litigation or some other dispute resolution procedure. Mediation shall be self-administered and conducted under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, New York 10017, (212) 949-6490, www.cpradr.org, with the exception of the mediator selection provisions, unless other procedures are agreed upon by the Parties. Unless the Parties agree otherwise, the mediator(s) shall be selected from panels of mediators trained under the Alternative Dispute Resolution Program of the Coconino County Superior Court. Each Party shall bear its own costs in mediation. The Parties shall not be obligated to mediate if an indispensable party is unwilling to join the mediation. This Section shall not constitute a waiver of the Parties' right to arbitrate or initiate legal action in the event that the dispute is not resolved through good faith negotiation or mediation, or if provisional relief is required under the Arizona Rules of Civil Procedure.

2. Litigation and Attorney's Fees

Except as otherwise agreed upon by the Parties, any litigation brought by either Party against the other Party to enforce the provisions of this Lease Agreement, shall be filed in Coconino County Superior Court, Flagstaff, Arizona. In the event that any action at law, or in equity, is instituted between the Parties in connection with this Lease Agreement, the prevailing Party in the action shall be entitled to an award of costs, including reasonable attorney's fees and court costs, from the non-prevailing Party.

L. Governing Law

This Lease Agreement shall be governed, interpreted and enforced in accordance with the laws of the State of Arizona.

M. Non-Discrimination

Lessee for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, or national origin shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination; (3) to ensure compliance with the statutory requirements of current Americans with Disability Act.

N. Authority

The undersigned Lessee warrants that he/she has the capacity and requisite corporate authority to enter into this Lease Agreement and bind [COMPANY] to all the obligations of this Lease Agreement.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have caused this Lease Agreement to be executed as of the _____ day of _____, 2021.

Lessor

Lessee

By: Paul Deasy, Mayor

By:

Attest:

Attest:

City Clerk

Approved as to form:

City Attorney

STATE OF ARIZONA)
)ss:
County of Coconino)

ACKNOWLEDGMENT. On this _____ day of _____, 2021, before me, a Notary Public, personally appeared Paul Deasy, Mayor of the City of Flagstaff, known to be or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same on behalf of the City of Flagstaff, for the purposes therein contained.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss.

County of Coconino)

ACKNOWLEDGMENT. On this _____ day of _____, 2021, before me, a Notary Public, personally appeared _____, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that s/he executed the same on behalf of _____, a _____ corporation, for the purposes therein contained.

Notary Public

My Commission Expires:

EXHIBIT A
Legal Description

EXHIBIT B

State Land Assignment of Grazing Lease