

South Dakota Department of Transportation Office of Air, Rail, and Transit**Railroad Property Management Guidelines****Effective , 2018**

These guidelines address the use and disposal of property for purposes other than railroad operations. These guidelines do not address the terms and conditions that may apply to leases or other arrangements for property used directly in rail operations. The Department of Transportation (the "Department") reserves the right to refuse any request for licenses or leases.

I. Licenses:

A. Utility Licenses. The applicant will obtain a license application form from the Department and complete and submit the form to the Department's Office of Air, Rail, and Transit by certified mail return receipt.

1. Underground and overhead crossing of cables or pipes.

Licenses for utility crossings will be issued according to South Dakota Codified Law ("SDCL") § 49-16A-100.1 to 100.10. The completed application must include an insurance certificate and any applicable fee. The Department will have thirty (30) days from receipt of the application to review and either approve or deny the application. If the Department fails to act within the allotted time frame, the application is automatically approved. Below are the applicable fees for the specified installations. There is no application fee for these licenses.

- i. If the proposed installation is not in a public right of way, i.e. state highway, county road, city street, or township road, there will be a one-time fee of Seven Hundred Fifty Dollars (\$750.00) per crossing.
- ii. If the proposed installation is in the public right of way, there will be no fee charged.

2. Longitudinal utility installations.

Longitudinal utility installations will be assessed an annual rate of Fifty Cents (\$0.50) per linear foot or minimum of Two Hundred Twenty-five Dollars (\$225.00), whichever is greater.

3. Other utility installations.

Fees for other utility installations will be determined on a case by case basis.

If a utility license is not approved, any fee will be remitted to the applicant. If the Department approves the application, the applicant will be required to execute a crossing agreement containing terms and conditions satisfactory to the Department, including provisions addressing insurance, indemnification, and termination.

B. Road Crossings. The applicant will obtain a road crossing application form from the Department.

1. Private Road Crossings.

The completed application will include a non-refundable fee of One Hundred Seventy-five Dollars (\$175.00) submitted to the Department's Office of Air, Rail, and Transit. Successful applicants will also be required to pay an annual fee of Seventy-five Dollars (\$75.00).

2. Public Road Crossings.

There is no fee for public road crossings.

If the Department approves a road crossing application, the applicant will be required to execute a road crossing agreement containing terms and conditions satisfactory to the Department, including provisions addressing insurance, indemnification, and termination.

- C. Temporary Right of Entry.** If an applicant wishes to temporarily enter, alter, or use the right of way, the applicant will obtain a temporary right of entry application form from the Department. The period of occupancy may not exceed sixty (60) days, unless an extension of time is granted by the Department. The applicant will submit the completed application and a non-refundable fee of One Hundred Seventy-five Dollars (\$175.00) to the Department's Office of Air, Rail, and Transit. If the Department approves a temporary right of entry application, the applicant will be required to execute a temporary right of entry agreement containing terms and conditions satisfactory to the Department, including provisions addressing insurance, indemnification, and termination. No temporary or permanent structures will be allowed to be placed on State of South Dakota ("State") property using the Temporary Right of Entry process.

II. Leases:

The Department reserves the right to request proposals or solicit bids for the use and occupancy of property for non-railroad purposes. Areas that are currently under lease will not be considered until such time as the lease expires, and/or the Department elects to not extend the lease agreement with the active lease holder.

In the alternative, a party interested in using or occupying property for non-railroad purposes may submit a lease application on a form obtained from the Department. The completed application will include a map depicting the area the applicant wants to lease. The application will submit the completed application to the Department's Office of Air, Rail, and Transit. Applications for leases will be considered on a first-come first-served basis.

- A. Haying.** Use of property for haying will be at an annual rate. No lease for haying will be granted on any portion of the rail line necessary for rail operations and the minimum distance set for rail operations is five feet (5') from centerline of rail or toe of slope, whichever is greater. The toe of slope is defined as a point where the embankment slope intersects the natural ground. The lease rate will be Twenty-five Dollars (\$25.00) per mile per side of the track with a minimum being no less than Twenty-five Dollars (\$25.00).

- B. Grazing.** Use of property for livestock purposes will be at an annual rate. No lease for grazing of livestock will be granted on any portion of the rail line necessary for rail operations with a minimum distance for rail operations being set at twenty-five feet (25') from centerline of rail or toe of slope, whichever is greater. The grazing lessee will install

a temporary fence to retain livestock if the leased area is within the twenty-five feet (25'). The lease rate will be Twenty-five Dollars (\$25.00) per mile per side of the track with a minimum being no less than Twenty-five Dollars (\$25.00).

- C. **Farming.** Use of property for farming purposes will be at an annual rate of One Hundred Sixty Dollars (\$160.00) per acre. No lease for farming will be granted on any portion of the rail line necessary for rail operation and a minimum distance set for rail operations is twenty-five feet (25') from centerline of rail or toe of slope, whichever is greater.
- D. **Other non-railroad uses.** Use of property other than agricultural purposes will be at an annual rate using the rates set forth in Attachment A.

The annual rate will be derived by multiplying the population rate by the area parcel rate values and then multiplying by 1.59 as shown in Attachment A. The minimum lease rate will be Two Hundred Dollars (\$200.00) per year, except that a rental rate of Forty Dollars (\$40.00) per year may be charged for any lease entered into with another state agency or with a political subdivision when deemed appropriate by the Department Secretary.

III. **Disposition of Excess Property:**

Any property the Department deems to be excess to the needs of the State will be presented to the South Dakota State Railroad Board (the "Board") for consideration of disposal. If disposal is authorized by the Board and the Governor, the property will be disposed of on the terms and conditions set by the Board and consented to by the Governor. The Department, the Board, and the Governor reserve the right to refuse any request for disposition of excess property.

- A. **Excess Real Property.** Excess real property will be disposed of according to SDCL § 1-44-28. Prior to any sale, the Department will provide the lessee and, if there is no lessee, the abutting landowner with the written notice of the proposed sale. The lessee or abutting landowner will have sixty (60) days from the date of notice to purchase the property at not less than its appraised value. If lessee or abutting landowner chooses not to purchase, the property will then be sold at public auction or through a sealed bid process. The Board and the Governor have the right to reject any and all bids. The conveyance of real property will be made by Quit Claim Deed. No vacation, change, relocation, or sale of State owned railway property will diminish any existing right to use enjoyed by any public utility, municipally owned utility, or cooperative utility which provides electricity, gas, water, or telephone service.
- B. **Excess Property Other than Real Property.** Excess property other than real property will be sold at public auction or through a sealed bid process, unless the asset has been deemed as having no value. The Board and the Governor have the right to negotiate or reject any and all bids. If the property is deemed to have no value, the property may be disposed of by the Department in the manner authorized by the Board and consented to by the Governor. Sales to other state agencies, department, or political subdivisions will not require notice or advertisement for bids.

Attachment A
To Railroad Property Management Guidelines

Formula for calculating lease rate for non-railroad uses other than haying, grazing and farming:

$$\text{Amount of lease} = \text{Area Rate} \times \text{Population Rate} \times 1.59$$

Where:

$$\text{Area Rate} = \$251 + \text{Area (per 1000 SQFT)} \times \$25$$

$$\text{Population Rate} = 0.2935 + \text{Population (Per 1000 People)} \times 0.015$$

Example:

Area is 9200 sqft, Population is 3500

$$\text{Amount due} = (\$251 + 9.2(\$25)) \times (0.2935 + 3.5(0.015)) \times 1.59 = \$264.62$$