

**RESOLUTION NO. 2015-04**

**A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF  
LEASE, INDEMNIFICATION AND HOLD HARMLESS AGREEMENT  
BETWEEN ANDREW BREUER AND THE CITY OF BASEHOR,  
LEAVENWORTH COUNTY, KANSAS**

**WHEREAS**, the City of Basehor (the "City") is the owner of certain real property located in Basehor, Leavenworth County, Kansas (the "Land"); and

**WHEREAS**, Andrew Breuer ("Farmer") has previously farmed and performed farming related activities on the Land under that certain Indemnification and Hold Harmless Agreement between the City and Farmer; and

**WHEREAS**, the City desires to extend the agreement to farm with the approval of a new lease between the City and Farmer, under the conditions more fully set out in the Lease, Indemnification and Hold Harmless Agreement, attached as Exhibit A.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF BASEHOR, KANSAS:**

**Section 1.** That the Governing Body approves and hereby authorizes the Mayor to execute the Lease, Indemnification and Hold Harmless Agreement, attached as Exhibit A.

**Section 2.** That this resolution shall become effective upon passage.

**ADOPTED** by the Governing Body this 16<sup>th</sup> day of March, 2015.

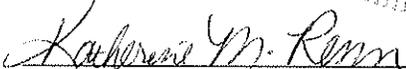
**SIGNED** by the Mayor this 16<sup>th</sup> day of March, 2015.

**SEAL**

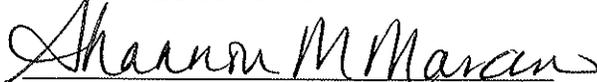


  
\_\_\_\_\_  
David K. Breuer, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Katherine M. Renn, City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Shannon M. Marcano, City Attorney

**EXHIBIT A**

Lease, Indemnification and Hold Harmless Agreement

## LEASE, INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

KNOW ALL PERSONS BY THESE PRESENTS:

THIS LEASE, INDEMNIFICATION AND HOLD HARMLESS AGREEMENT ("Lease Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between Andrew Breuer ("Farmer") and the City of Basehor, Kansas ("City").

WITNESSETH THAT:

WHEREAS, the City is the present owner of certain real estate located in Basehor, Leavenworth County, Kansas, as described in the legal description attached as Exhibit A (the "Land"); and

WHEREAS, the Farmer was under lease with Basehor Prairie Farms, L.L.C., the former owner of the Land ("Former Owner"), to farm and perform farming related activities and to harvest the crops grown on the Land during the current growing season and to share one-third (1/3) of the profits with Former Owner ("Prior Lease"); and

WHEREAS, such Prior Lease was negotiated prior to the City's purchase of the Land; and

WHEREAS, the City previously entered that certain Indemnity and Hold Harmless Agreement to allow the Farmer to proceed with farming related activities through the harvest of the crop of the then current growing season (2014) under the Prior Lease with the intent that the agreement to farm would be extended with a new lease between the Farmer and the City for 2015; and

WHEREAS, the City desires to enter a new lease with the Farmer to allow the Farmer to perform farming related activities in 2015 and thereafter, and receive an annual lease payment of seventy-five dollars (\$75) per acre of actively farmed land ("New Lease"); and

WHEREAS, the Farmer, his heirs, successors and/or assigns is willing to obtain insurance and indemnify, defend and hold harmless the City against any claims, damages, liability, losses, costs and expenses including reasonable attorney's fees, arising out of or resulting from any acts or omissions in connection with this Agreement and/or use of the Land for farming activities under the Prior Lease and/or the New Lease.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, IT IS AGREED AS FOLLOWS:

1. That the term of the New Lease with Farmer shall be for the period beginning January 1, 2015 and ending December 31, 2015.

2. That the New Lease may be renewed for additional one-year periods not to exceed five additional years upon the agreement of both parties.

3. That the New Lease will terminate when the City begins development of the Land or needs the Land for any reason.

4. The Farmer covenants and agrees to pay the City as rent for the Land an annual lease payment of seventy-five dollars (\$75) per acre of land actively farmed. Should the New Lease be extended, the rent may be renegotiated as determined by the City. The rent is due on or before December 31 of the year in which the Land is being leased.

5. The Farmer agrees to apply best management practices to include erosion practices as set forth in an approved nutrient management program.

6. The Farmer agrees to maintain all areas of the Land not being actively farmed by mowing, controlling noxious weeds and performing similar maintenance activities in accordance with the City's property maintenance code.

7. The Farmer agrees to use all precautions to prevent mud or soil to be transported from adjacent areas to this leased Land in order to prevent infestations and nuisances of any type.

8. That the Farmer shall procure and maintain in effect throughout the duration of this Lease insurance coverage not less than the types and amounts specified below. In the event that additional insurance, not specified herein, is required during the term of this Lease, Contractor shall supply such insurance, if available, at Contractor's cost. Policies containing a self-insured retention are unacceptable to City.

a. Commercial general liability insurance with limits of \$1,000,000 per occurrence and \$1,000,000 aggregate, written on an "occurrence" basis. The policy may not include a contractual liability limitation endorsement, and shall be written or endorsed to include the following provisions:

1. Severability of interests coverage applying to Additional Insureds (defined below);

2. Contractual liability to City, Additional Insured and third parties;

3. Per project aggregate liability limit or, where not available, the aggregate limit shall be \$1,000,000; and

4. Additional Insured endorsement, ISO form CG 20 10 07 04, its current edition, or its equivalent as acceptable to City.

b. Workers' compensation and employer's liability Insurance shall be provided in accordance with statutory limits. Employer's liability insurance shall be

provided in amounts not less than \$100,000 per accident for bodily injury by accident, \$500,000 policy limit by disease, and \$100,000 per employee for bodily injury by disease.

c. Commercial automobile liability insurance with a limit of \$1,000,000 per occurrence, covering owned, hired and non-owned automobiles. Coverage provided shall be written on an "occurrence" basis. The insurance will be written on a commercial business auto form, or an equivalent acceptable to City, and will protect against claims arising out of the operation of motor vehicles by Contractor as to acts done in connection with this Agreement.

d. The policies listed above may not be canceled until after thirty (30) days written notice of cancellation to City, ten (10) days in the event of nonpayment of premium. The commercial general and automobile liability insurance specified above shall provide that City and its agencies, officials, officers and employees, while acting within the scope of their authority, will be named as additional insureds for the services performed under this Agreement (the "Additional Insureds"). Contractor shall provide to City at execution of this Agreement a certificate of insurance showing all required endorsements and Additional Insureds. The certificate shall be on a form acceptable to City.

e. All insurance coverage must be written by companies that have an A.M. Best's rating of "B+V" or better and are licensed or approved by the State of Kansas to do business in Kansas.

f. Regardless of any approval by City, it is the responsibility of Contractor to maintain the required insurance coverage in force at all times. Contractor's failure to do so will not relieve it of any contractual obligation or responsibility. In the event of Contractor's failure to maintain the required insurance in effect, City may order Contractor to immediately stop work, and upon ten (10) days notice and an opportunity to cure, may pursue its remedies for breach of this Agreement as provided for herein and by law.

9. That the Farmer and his heirs, successors and assigns shall indemnify, defend and hold harmless the City and any of its agencies, officers or employees from and against all claims, damages, liability, losses, costs and expenses, including reasonable attorney's fees, arising out of or resulting from any acts or omissions in connection with this Agreement and/or use of the Land for farming activities under the Prior Lease and/or New Lease, caused in whole or in part by the Farmer, its employees, agents or subcontractors, or caused by others for whom the Farmer is liable, regardless of whether or not caused in part by any act or omission of the City, its agencies, officials, officers or employees.

10. That no hunting fishing, trapping, dumping or storing of other materials is permitted by the Farmer or any other person on the Land.

11. That in the process of using farm machinery, should the Farmer spill any petroleum or other hazardous products on the Land, the Farmer shall be responsible for the cleanup of same. Should the Farmer not clean up the spills in a timely and satisfactory manner, the City may have the Land cleaned and bill farmer for all costs.

12. That the Farmer accepts the Land for use "AS IS".

13. That the New Lease shall be between the parties hereto and their respective successors in interest and may not be assigned or sublet by the Farmer without written consent from the City.

14. That the Farmer agrees that any failure or refusal to perform any material provision of the New Lease shall give the City the right to terminate the New Lease, in addition to damages and all other remedies provided by law. Such termination shall become effective thirty days after written notice of termination specifying that delinquency has been served upon the Farmer by certified or registered mail, unless during the thirty day period the Farmer has cured the delinquency.

15. The Farmer and the City acknowledge that if a major weather event occurs, the City may have the need to deposit fallen trees and other debris on the property. In such event, the City will take reasonable steps to avoid or minimize any damage to the Farmer's crops.

16. That notices shall be in writing and delivered to:

City:

City of Basehor

City Administrator

P.O. Box 406

Basehor, Kansas 66007

Farmer:

Andrew Breuer

17607 198th Street

Tonganoxie, KS 66086

17. That this Lease Agreement shall bind and inure to the benefit of the parties hereto, and their respective heirs, successors and assigns, and be a covenant which runs with the land.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement in Basehor, Kansas on the day and year above written.

Andrew Breuer

City of Basehor

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

David K. Breuer, Mayor

Attest: \_\_\_\_\_

Katherine M. Renn, City Clerk



atlas  
surveyors  
LLC

LEAVENWORTH, KS | 913-530-8422

---

### Surveyors Description:

A tract of land in Fractional Section 03, Township 11 South, Range 22 East of the 6th P.M. Leavenworth County, Kansas being described as follows: Beginning at the Northwest corner of the Southwest Quarter of said Section 3; thence South 88 degrees 25 minutes 31 seconds West a distance of 436.00 feet; thence South 01 degree 47 minutes 25 seconds West a distance of 654.61 feet to a point on the north line of Prairie Gardens 1st Plat a subdivision of land in the City of Basehor, Leavenworth County, Kansas; thence South 88 degree 12 minutes 19 seconds West along said north line a distance of 624.00 feet to the Northwest corner of said Prairie Gardens 1st Plat; thence South 01 degree 47 minutes 41 seconds East along the west line of said Prairie Gardens 1st Plat a distance of 61.37 feet; thence Northwesterly on a curve to the right having a radius of 773.02 feet, a central angle of 43 degrees 53 minutes 10 seconds, whose initial tangent bearing is North 68 degrees 11 minutes 52 seconds West an arc distance of 592.10 feet; thence North 24 degrees 18 minutes 43 seconds West a distance of 112.12 feet; thence Northwesterly and Northeasterly on a curve to the right having a radius of 200.00 feet, a central angle of 172 degrees 29 minutes 10 seconds, whose initial tangent bearing is South 74 degrees 18 minutes 54 seconds West an arc distance of 602.09 feet; thence North 01 degree 26 minutes 37 seconds West a distance of 325.59 feet to a point south line of Prairie Gardens 2nd Plat, a subdivision of land in the City of Basehor, Leavenworth County, Kansas; thence South 89 degrees 59 minutes 53 seconds East along said south line a distance of 58.07 feet: thence South 00 degrees 00 minutes 07 seconds west along said south line a distance of 58.76 feet: thence South 89 degrees 59 minutes 53 seconds East along said south line a distance of 310.00 feet: thence North 52 degrees 52 minutes 16 seconds East along said south line a distance of 638.24 feet: thence South 79 degrees 52 minutes 18 seconds East along said south line a distance of 82.52 feet to a point on the east line of said Prairie Gardens 2nd Plat; thence northerly along said east line on a curve to the left having a radius of 1530.00 feet, a central angle of 11 degrees 42 minutes 18 seconds, a chord bearing of North 04 degrees 16 minutes 32 seconds East, an arc distance of 312.56 feet; thence North 01 degree 34 minutes 36 seconds West along said east line a distance of 155.10 feet; thence South 74 degrees 21 minutes 44 seconds East a distance of 659.86 feet to a point on the east line of the Northeast Quarter of said Section 3; thence South 01 degree 34 minutes 47 seconds East along said east line a distance of 1054.15 feet to the Point of Beginning. Less that part taken for road purposes. Contains: 2,013,347.53 Sq. Ft. or 46.22 Acres more or less.