

RESOLUTION NO. 2015-05

A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF AGRICULTURAL LEASE AND HOLD HARMLESS AGREEMENT BETWEEN FOUTS AND SON FARMS 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, the City desires to enter into an agreement to farm with the approval of a new lease between the City and Fouts and Son Farms, 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:

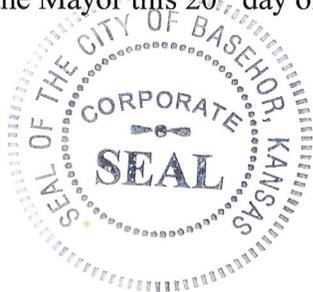
Section 1. That the Governing Body approves and hereby authorizes the Mayor to execute the Lease, Indemnification and Hold Harmless Agreement, attached as Exhibit A.

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

ADOPTED by the Governing Body this 20th day of April, 2015.

SIGNED by the Mayor this 20th day of April, 2015.

SEAL




David K. Breuer, Mayor

ATTEST:


Katherine M. Renn, City Clerk

APPROVED AS TO FORM:


Shannon M. Marciano, City Attorney

EXHIBIT A

Agricultural Lease and Hold Harmless Agreement

CASH FARM LEASE
(Kansas, Leavenworth County)

This CASH FARM LEASE (the "Lease") is entered into effective March 1st, 2015 (the "Effective Date") by and between City of Basehor ("Landlord") and Fouts & Son Farms ("Tenant").

1. **Leased Premises.** Landlord hereby leases to Tenant, to occupy and use for agriculture purposes the real property legally described on Exhibit A attached hereto and incorporated herein by this reference (the "Leased Premises"). The Leased Premises consists of approximately thirty-five (35) tillable acres located in Leavenworth County, Kansas. (Actual acres to be determined by USDA Farm Service Agency.)

2. **Term.** The term ("Term") of this Lease shall begin on the Effective Date and shall expire on the earlier of (i) February 28, 2016 or (ii) the date that Tenant has harvested all crops from the Leased Premises (the "Expiration Date"). The Lease may be renewed for additional one (1) year periods not to exceed five (5) additional years upon the agreement of both parties. Should the lease be extended, the rent may be renegotiated as determined by Landlord. The Lease will terminate when Landlord begins development of the land or needs the land for any reason.

3. **Use of Leased Premises.** The Leased Premises may only be used for the planting of crops which must be fully harvested on or before the Expiration Date. In the event that Tenant uses the Leased Premises for any purpose other than for agricultural purposes, then such use shall constitute an "Event of Default" as defined below.

4. **Harvesting of Crops.** Tenant agrees to harvest all crops in a timely fashion. Tenant also agrees to make every effort to be as considerate as possible to surrounding landlords yet still perform farming duties in a timely fashion. Landlord agrees to allow Tenant to harvest crops planted or compensate Tenant for mature crops fair market value in the event that Landlord destroys any or all the planted crop.

5. **Rent.** This Lease is a "cash lease". Tenant shall pay to Landlord \$90 per acre annually, or \$3150.00, as rent (the "Rent") for the Leased Premises. Rent is due on or before March 1st, 2015.

6. **Operation and Maintenance of Leased Premises.**

a. **General Maintenance.** Tenant shall provide the labor necessary to maintain the Leased Premises and the improvements thereon during the Term in as good condition as it was as of the Effective Date, normal wear and depreciation are accepted. Tenant shall at its own cost and expense, repair any damage to the Leased Premises arising from Tenant's exercise of its rights under this Agreement by restoring the Leased Premises to a condition comparable to its condition immediately prior to Tenant's entry pursuant to this Agreement, or to a condition mutually agreeable to Landlord and Tenant. Tenant also agrees to mow roadways that border the property in a timely fashion. Further, Tenant agrees to control weeds, remove invasive plants, and prevent unauthorized entry to the Leased Premises. Tenant agrees to provide other activities, including but not limited to cutting brush, removing volunteer trees, seeding disturbed areas and trimming trees for visibility as mutually agreed upon by Landlord and Tenant.

b. **Timber.** Tenant will not cut any timber (live or dead) on the Leased Premises without the consent of Landlord.

c. **New Seed.** Tenant may not plant any seed that must be harvested after January 1, 2016 without the consent of Landlord.

d. **Insurance.** Tenant may not house automobiles, trucks, equipment or tractors on the Leased Premises or do any other action which is restricted by Landlord's insurance policies without the consent of Landlord.

Tenant shall secure and maintain throughout the term of this Agreement insurance of such types and minimum amounts as described herein. Tenant will be required to provide a certificate of insurance naming Landlord as an additional insured and confirming the required protection, in the minimum amounts designated below, prior to commencement of this Agreement. Landlord shall be notified in writing at least thirty (30) days prior to any material modification or cancellation of any policy listed on the certificate.

General Liability:

Each Occurrence \$1,000,000

General Aggregate \$1,000,000

e. **Noxious Weeds.** Tenant is responsible for preventing noxious weeds (as defined by Kansas law) from going to seed on the Leased Premises.

f. **Additional Improvements.** Tenant may not make additional improvements to the Leased Premises without the consent of Landlord.

g. **Damage and Costs of Operation.** Tenant shall be responsible to Landlord for any and all damage to the Leased Premises caused by Tenant. Tenant shall pay 100% of the operations of the Leased Premises during the Term except for real property taxes which shall be the responsibility of Landlord. Tenant shall keep the Leased Premises free and clear of all liens for any work performed on the Leased Premises.

7. **Right of Entry.** Landlord shall, at all times, have the right to enter the Leased Premises and inspect the same. Landlord may place advertising signs on the Leased Premises for profit or to advertise the sale of the Leased Premises. Tenant shall cooperate to the fullest extent in maintaining the Leased Premises in a commercially reasonable manner to enhance the presence and value of the Leased Premises. Tenant agrees that no hunting, fishing, or trespassing is allowed on leased property.

8. **Assignment and Sublease.** Tenant shall not have the right to assign or sublease this Lease or the Leased Premises. Landlord specifically reserves the right to assign this Lease without the consent of Tenant and this Lease shall attach to such new Landlord.

9. **Indemnity.** Tenant hereby agrees to indemnify and hold harmless the Landlord, its employees and agents from any and all losses, liabilities, damages, expenses or claims (hereinafter “loss”) where said loss is caused or incurred in whole or in part as a result of the negligence or other actionable fault of Tenant, its employees or agents, and arises from or is related to any rights or obligations created pursuant to the Lease. Tenant’s obligation hereunder shall not include amounts attributable to the fault or negligence of Landlord or of any third party for whom Tenant is not responsible.

10. **No Third Party Beneficiaries.** Landlord and Tenant specifically agree that the Lease is not intended to create any third party beneficiary relationship nor to authorize anyone not a party to the Lease to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Lease; the duties, obligations and responsibilities of the parties to the Lease with respect to third parties shall remain as imposed by law.

11. **Compliance with Laws.** Tenant agrees to abide by all applicable federal, state and local laws, ordinances and regulations applicable to Tenant and to its use of the Leased Premises pursuant to the Lease.

12. **Notices.** Any notice concerning termination of the Lease shall be in writing and shall be served via certified mail or personal delivery upon the respective party as follows:

City:

Gene Myracle

2620 N. 155th Street

Basehor, Kansas 66007

Tenant:

Fouts and Son Farms

address

13. **Severability.** Should any provision of the Lease be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void, provided, however, that the remaining provisions of the Lease shall be unaffected thereby and shall continue to be valid and enforceable.

14. **Default and Remedies.** Tenant shall be in default if Tenant (i) fails to pay any Rent when such Rent is due and payable to Landlord, (ii) fails to perform on any covenant or promise in the Lease, (iii) defaults under any other agreement with Landlord, verbally or written, (iv) fails to properly maintain the Leased Premises including (without limitation) proper weed control or spraying of the Leased Premises as would be required for the applicable crop planted, (v) causes damage or waste on or to the Leased Premises or (vi) files for bankruptcy or becomes insolvent (each, an “Event of Default”). In the case of an Event of Default for the payment of Rent, Tenant shall have a grace period of five (5) days to pay any such Rent due and payable to Landlord. In the case of an Event of Default for all other matters, Tenant shall have ten (10) days to cure such default or provide proof to Landlord that Tenant is effecting a cure and diligently pursues such cure to completion, all in the absolute and sole discretion of Landlord. Landlord shall have the right to remove the Tenant from the Leased Premises in addition to all other rights in law or in equity in the

instance of an uncured Event of Default. Landlord is entitled to its full damages including loss of rent and loss of opportunity to rent the Leased Premises, Landlord's reasonable costs and expenses and attorney fees.

15. **Waiver of Rights.** Tenant does hereby waive any and all rights under applicable Kansas Exemption Laws. TENANT FURTHER WAIVES THE RIGHT TO A JURY TRIAL IN THE EVENT OF LITIGATION BETWEEN LANDLORD AND TENANT. Tenant waives notice and demand for payment except as otherwise set forth in this Lease.

16. **Miscellaneous Provisions.** Any and all amendments to the Lease shall be in writing and signed by both Landlord and Tenant. The Lease shall be construed under the laws of the State of Kansas. This Lease may be executed in multiple counterparts and by facsimile or PDF scan (electronic) signature. Landlord and Tenant do not intend to form a partnership or joint venture by the Lease. The terms of the Lease shall be binding on the assigns of Landlord and the heirs of Tenant.

LANDLORD:

City Of Basehor

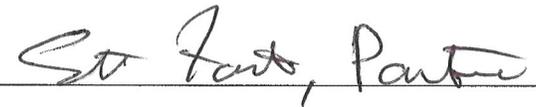


Mayor David K. Breuer

TENANT:

Fouts and Son Farms

Steve Fouts - Partner





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.