

# FARM AND RANCH LEASES

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## CHAPTER 6



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## FARM AND RANCH LEASES

### I. INTRODUCTION

Leasing agricultural land is common across Texas. Many producers have leased farm or ranch land for decades and even for generations. Leasing offers benefits to both the landowner and tenant. For landowners, lease payments can serve as an added income source. It is a particularly attractive option for absentee landowners who may want to the land to remain in agricultural production, but are not in a position to farm or ranch it themselves. For tenants, the option of a lease allows them to expand their operation, but avoid the financial commitment that comes with purchasing property. This strategy is frequently utilized by younger operators getting started in the farming or ranching business.

### II. TEXAS A&M AGRILIFE EXTENSION LEASE EDUCATION

Recognizing the need for educational information on this topic, Texas A&M Agrilife Extension developed a program for landowners and drafted a handbook, the *Ranchers Agricultural Leasing Handbook* to provide information to landowners and tenants alike related to the legal issues surrounding agricultural leases. Over the past three years, we have held eight Ranchers Leasing Workshops across Texas and had over 400 participants attend. Of those, the vast majority, over 75%, are landowners. Through evaluations, we determined that over 1/3 of attendees have only oral lease agreements. Of those with lease agreements, both farm and ranch, nearly all were structured on a cash basis. Only 7% of respondents with leases had a crop share lease and only 3% had a flex lease structure in place.

### III. SETTING LEASE RATES

Determining how best to structure a lease and what rate to charge is one of the most important decisions facing tenants and landowners.

#### A. Cash Versus Crop Share Lease Arrangement

Traditionally, rental agreements fell into two categories: a “cash rent” arrangement in which the tenant paid a specific dollar amount in rent or a “share rent” arrangement in which the tenant gave the landlord a share of the crop produced from the land (usually with the landlord and tenant sharing in the input costs for growing the crop). Recent years have seen the development of many varieties of these two basic arrangements. Before committing to either category of arrangements, though, both landlords and tenants need to consider the potential advantages and disadvantages of each arrangement.

#### 1. Cash Rental Agreements

Cash rental arrangements are generally considered the most straightforward rental arrangements since the tenant makes a pre-determined lease payment on a regular basis, and the landlord provides little or no input into the management decisions for the land during the period of the lease. Even in a cash rental agreement, though, there are a number of considerations to ponder for both landlord and tenant.

##### a. *Advantages of Cash Renting for Landlords*

Perhaps the most easily-identified advantage of cash rental agreements for landlords is their simplicity. As mentioned above, the landlord does not have to involve him- or herself in production or marketing decisions. This can be an important advantage for a landlord with little or no experience in operating agricultural land (note, though, that this does not mean the landlord should be uninterested in the management of the property and just wait on the “mailbox money” to come in). Fixed cash rental payments also shifts virtually all of the price, cost, and production risk of the crop to the tenant, leaving the landlord only with the financial risk of the tenant’s ability to pay. Landlords relying on lease payments to support them in retirement may find this an important benefit. Further, income under fixed cash rental arrangements is not considered self-employment income (and thus is not subject to self-employment tax) and does not reduce Social Security benefits if the landlord is retired.

##### b. *Disadvantages of Cash Renting for Landlords*

Although cash rental agreements can be simple, determining a rental rate can be difficult, as discussed below. Further, once that rate is set, psychological factors may make it difficult to change the rate even though a number of market forces may suggest a change is needed. The transfer of risk to the tenant means the tenant not only bears “downside” risk (risk that input costs might increase, commodity prices might decrease, or that production may be low) but that they get all the advantages of “upside” risk (input costs decrease, commodity prices increase, or production increases). There may also be fewer alternatives for tax management compared to a share lease (the reason for this is discussed below with share rental agreements). Finally, there are some incentives for tenants to “mine” the land’s nutrients – especially under a short-term lease – since the tenant’s profits under a fixed cash lease come from increasing yields while minimizing costs such as fertilizer or soil amendments. However, longer term leases and well-written leases can significantly reduce these risks.

c. *Advantages of Cash Renting for Tenants*

Tenants in a cash rental agreement have significant freedom in their management decisions, since there is little or no requirement for management input from the landlord. The pre-determined nature of the rental payment makes that cost of operation fixed, which provides more stability in projecting costs for the year(s) ahead. Since they bear the majority of risk in production, the tenant can reap all the “upside” risk in crop production if prices and/or production conditions are favorable.

d. *Disadvantages of Cash Renting for Tenants*

Bearing virtually all of the risk in a cash rental arrangement, the tenant may have difficulty making rental payments if economic conditions have been difficult. Psychologically, even if conditions have been difficult for a number of consecutive years, landlords may not adjust rental rates downward. Finally, the tenant faces the cash-flow issues of bearing all costs of crop inputs (compared to a share arrangement where the landlord participates in the purchase of crop inputs).

## 2. Share Rental Agreements

In a share rental agreement, the landlord and the tenant are both actively involved in the production of the crop. Both parties participate in the management decisions and the costs of growing and marketing the crop. The rent paid is a proportion of the crop produced, which can be paid either by turning over part of the physical commodity itself or paying the landlord that proportion of the revenue from the sale of the crop by the tenant.

a. *Advantages of Share Renting for Landlords*

Share rental agreements naturally result in the sharing of risk between the landlord and tenant. As a result, the benefits of a “good year” are shared by both parties. This enables the landlord to capture some of the “upside risk” involved in production. If the landlord is an experienced producer, they can use that experience to aid the tenant in management decisions, which hopefully increase the returns to the landlord. Since the landlord is actively involved in the agricultural operation of the land, they can use that participation to build Social Security base since their income from the rent is subject to self-employment tax, and the landlord can also take advantage of Internal Revenue Code Section 179 depreciation on capital investments made in the agricultural operation.

b. *Disadvantages of Share Renting for Landlords*

Risk of a “bad year” means the landlord’s returns are subject to the same variability as those of the tenant. This can mean share leases may provide too much risk for landlords depending on rents for their primary source of income. Depending the nature of the

landlord’s involvement, the income from the lease may also reduce the amount of Social Security benefits for which the landowner is eligible if he or she is retired. The amount of involvement required for a share lease agreement may also make these agreements unsuitable for landlords without significant experience in operating a farm or ranch.

c. *Advantages of Share Renting for Tenants*

Perhaps the two greatest advantages of a share rental agreement for tenants is the reduction in operating capital requirements and the sharing of risk with the landlord. Since the landlord and tenant both share in the operating costs of the land, the tenant is not required to finance the entire cost of those inputs as he or she would be under a fixed cash rental agreement. Similarly, the cost of rent is reduced (in cash equivalent terms) in “bad” years. The ability to tap into the expertise of the landlord through shared management decisions can be another important advantage, particularly for beginning producers.

d. *Disadvantages of Share Renting for Tenants*

The risk-sharing features of a share rental agreement means the tenant has less ability to capture “upside” risk since that upside must be shared with the landlord. Determining and delivering shares also involves more work on the part of the tenant since he or she may have to make multiple deliveries of product to multiple locations. Finally, the management input of the landlord may conflict with the desired decisions of the tenant.

## **B. Published Texas Lease Rate Information**

One of the most frequent questions from landowners, tenants, and attorneys working to draft agricultural leases is what the going rate for land is in a particular area. Of course, there is no one-size fits all answer to this question. An agreeable lease rate for any property will depend upon a number of factors such as the amount and quality of forage, availability of water, commodity prices, land values, existence of fences, and the like. There are, however, a number of useful sources of information related to average lease rates in Texas.

### 1. Texas A&M Agrilife Extension Resources

First, Texas A&M Agrilife Extension has County Extension Agents in every county in the state. These agents are trained to assist Texas landowners on a variety of issues, and helping to evaluate and set lease rates is one of those areas. Additionally, Texas A&M Agrilife Extension has Range Specialists and Agronomists stationed throughout the state. These Specialists, most of whom have a Ph.D. in Range and Ecological Sciences or in Agronomy, are knowledgeable about forage quality and lease rates and



can be very helpful to landowners and attorneys analyzing the proper price for a farm or grazing lease.

Additionally, the Texas A&M Agricultural Economics Department publishes crop and livestock budgets for each of the various Extension Districts across Texas. These budgets, which are broken down not only by district, but by crop as well, include a line item for rental costs. This number is based on average lease rates paid for land to grow the specific crop or raise the specific livestock for each budget. For example, the budgets for District 1, which includes the Panhandle include options for forage crops such as hay and silage; field crops such as corn, cotton, and wheat (both irrigated and dryland); and for livestock, including cow-calf and stockers. For a cow-calf operator in District 1, the 2018 budget includes a projected cost of \$7 per acre per year. These budgets may be found in Excel form on the Texas A&M Agricultural Economics Department website.

## 2. USDA – NASS Survey Reports

Second, the United States Department of Agriculture – National Agriculture Statistics Service conducts yearly surveys and publishes reports of average lease rates throughout the country. The report breaks rates down by state, regions within the state, and by county. Further, lands are divided into three categories: irrigated cropland, non-irrigated cropland, and pastureland.

In 2017, nationwide averages were reported as \$212 per acre per year for irrigated cropland, \$123 for non-irrigated cropland, and \$12.50 for pastureland. In Texas, the average lease rates were \$87 for irrigated cropland, \$28 for non-irrigated cropland, and \$6.60 for pastureland. At least every other year, NASS breaks down this data further by reporting data by district within a state and by county. This report is available in September of even-numbered years. Texas is divided into 15 districts, and average cash rent values reported for each one. A map showing the NASS districts is included in *Appendix I*, Figure 1-1.

For example, for the Northern High Plains in 2016, cash lease rates were reported as \$113 for irrigated cropland, \$22 for non-irrigated cropland, and \$7.80 for pastureland. Further, looking at Dallam County, which is included in the Northern High Plains Region, for 2016 are \$97.50 for irrigated cropland, \$55.50 for non-irrigated cropland, and \$6.10 for pastureland. This type of data is available on the USDA NASS website for every county across the United States.

## 3. Texas Rural Land Value Trends

Each April, the Texas Chapter of the American Society of Farm Managers and Rural Appraisers publishes a report, the *Texas Rural Land Value Trends*, a report that includes an analysis of land prices throughout the state and reports on the average range for

land lease rates. The report breaks Texas into seven regions and each region into sub-regions and provides land value and average lease rates for each. A copy of the report may be downloaded from the Texas Chapter of the American Society of Farm Managers and Rural Appraisers website.

For example, for Region 1, which includes much of the Panhandle and South Plains, the 2016 report shows land value ranges and rental ranges for several classes of property: irrigated cropland (good water), irrigated cropland (fair water), dry cropland (east), dry cropland (west), rangeland, and Conservation Reserve Program. For rangeland in the North Panhandle area, the report shows a rental range that has been stable with activity at \$7 to \$12 per acre. For the same area, irrigated cropland with good water shows stable rental rates from \$150 to \$250 per acre.

## C. Setting a Cash Lease Rate for Farmland

Although cash rents are quite simple once established, establishing that amount can be one of the most complicated and contentious pieces of negotiating a rental agreement. Determining the rental rate depends not only on the local land market, but on the land itself and the parties as well. Markets matter, and all other things being equal, an active local market for land will drive rental rates upward just as relatively little demand for agricultural land will drive rental rates down. The characteristics of the land itself, including its soils, drainage, size, shape, location, and facilities drive values, as do the production history of the tenant and the lease provisions desired by the parties. All of these factors combine in different ways to create several different approaches to establishing a cash-rent value.

### 1. Cash-Rent Market Approach

The cash-rent market approach is the standard against which all other methods are measured; if another method yields a rental rate significantly above or below the market rate, there should be significant justification for that difference. This is probably the approach coming first to mind for landowners and tenants, and may sound like the most straightforward – simply ask around for rates paid for similar land.

However, that simplicity can be deceptive for two primary reasons. First, it can be difficult to get objective information about rental rates. Rates may be subject to exaggerations or from transactions that are not the result of arms-length transactions between unrelated parties. The quality of information obtained is thus very important. Good sources of published information on average lease rates in your area are set forth in Section IIIB above. A good place to start are lease surveys conducted by your state Extension service or the National Agricultural Statistics Service (USDA-NASS), but also remember that these surveys generally present averages of values and may not be specific to your very

local area. That leads to the second reason market data can be deceptive – it reflects values paid for land other than the land actually in question. Numerous adjustments must be made from market rates to reflect the unique traits of the land at hand.

Despite these challenges, the cash-rent market approach should be the starting point of any rental rate calculation. Start with the best data available, and think carefully about any adjustments that need to be made from the prevailing rates to take into account the positive or negative production characteristics of the land to be leased.

### 2. Landowner's Ownership Cost Approach

The landowner ownership cost approach does just what its name implies – calculates the cost of ownership to the landlord – and uses that cost to determine a base for the rental amount. Put another way, the rental amount should at least exceed the ownership cost of the land and provide a measure of profit to the landowner while also providing the tenant the opportunity to make a profit.

The first piece of information needed for this approach is the fair-market price of the land (valued for agricultural use, and not for some other use such as residential development). Second, an “interest charge” (meaning the “opportunity cost” of owning the land – in other words, if the land were sold and placed into an investment with similar risk, what rate of return would it yield?) must be calculated. This is often done by using the “rent to value” ratio reported by USDA-NASS for various regions in the United States. Together, the price and interest rate provide an annual charge for the land itself. Next, the real estate taxes paid on the land by the landowner are incorporated as an ownership cost. Finally, land improvement costs such as treatments for soil pH, building or maintaining conservation structures, etc. are included. Adding these costs together on an annual basis provides a starting point for the landowner's asking price in rents. An example of this calculation method is included in *Appendix II* as Figure 2-1.

### 3. Landowner's Adjusted Net-Share Rent Approach

This approach works to calculate the cash-rent equivalent of a share lease. The general assumption is that a cash rent should be slightly less than a share lease amount since under a cash lease, the tenant bears almost all the risk. To calculate a cash rent under an adjusted net-share rent approach, the landlord and tenant must first determine the prevailing shares for the crop in question – these shares vary significantly from crop to crop and region to region, and frequently occur as 1/3-2/3 shares, 1/2-1/2 shares, or 40%-60% shares. Next, historical data for the yields of the land in question and for input and product costs should be gathered to determine what the average share rent would have been

for the property. Finally, an adjustment should probably be made to reflect the additional risk that the tenant will take under a cash rental approach. An example of this calculation method is included in *Appendix II* as Figure 2-2.

### 4. Operator's Net Return to Land Approach

The operator's net return to land approach is something of a counterpoint to the landowner's ownership cost approach in that it is a calculation of what the tenant (or operator) can afford to pay given the productivity of the land. This approach takes into account the productivity of the land and the costs of inputs, fixed costs, and returns to labor and management. Per-acre costs are deducted from per-acre returns to determine how much rent can be paid at a break-even level given the assumptions made. An example is provided in Figure 2-3 in *Appendix II*.

### 5. Percent of Land Value Approach

Perhaps the most straightforward of all the cash rental approaches discussed here, the percent of land value approach simply consists of calculating the “opportunity cost” of the land. In other words, if the landowner sold the land and invested the proceeds in a similar investment (in the case of land, a long-term investment with similar risks), what would that investment yield on an annual basis? For agricultural land, the best way of calculating an opportunity cost is the rent-to-value ratio (the average ratio in a region of agricultural land's rent to the total value of the land). The per-acre value of the land in question is then multiplied by the “opportunity cost” interest rate – in this example, the rent-to-value ratio – to determine the desired per-acre rent. Note, though, that this approach may not reflect the market realities in the area, and that rent-to-value ratios may be slow to change over time and thus may be further off in years where there have been significant changes in returns to agricultural land. *Appendix II* includes an example in Figure 2-4.

### 6. Percent of Gross Revenue Approach

Another angle of attack to determine a rental amount would be to calculate the percent of gross revenues a landowner would be entitled to under a share rental agreement. This requires collection of data on the average production of the land in question, historical commodity prices, and the percentage of gross income received by landowners under share leases in the region. Note that there is an important distinction to be made in determining the landlord's percentages under this method – the percentages used should be from leases in which the tenant pays all of the input costs for the leased land, since the landlord will be paying no input costs under this method. An example of this calculation is provided in Figure 2-5 of *Appendix II*.

### 7. Dollars per Bushel of Production Approach

A method that can take into account the specific productivity of a piece of land is the dollars per bushel of production approach. With this approach, historical rents and crop production records in the area are reviewed to determine how much rent has been paid per bushel of production. Once this has been calculated, the landowner and tenant have two options: they can use the historical average productivity of the specific parcel and this per-bushel amount to set a rent in advance, or they can make the rent variable based on the actual production of the land that year (though it should be noted that making the rent variable affects a number of factors in the advantages and disadvantages of the lease, as well as potentially impacting the tax implications of the lease). A calculation example of this approach may be found in *Appendix II*, Figure 2-6.

### 8. Fixed Bushel Rent Approach

The fixed bushel rent approach is something of a variation on the dollars per bushel of production approach in that the fixed bushel rent approach uses the historical average production of the land and an agreed price to calculate a rental rate. It also relies on information from share rental rates in the region to determine what share of production would be paid to the landlord (assuming the landlord pays no other expenses other than land). Assuming that a dollar-per-bushel amount is fixed at the time the lease is entered, the lease is considered to have a fixed cash rent, but if that number is flexible, the lease is considered a variable rent, with all that implies. *Appendix II* contains an example in Figure 2-7.

### 9. Flexibility in Cash Leases

A common theme throughout this discussion has been the allocation of risk to the tenant under almost all cash rent forms. In some cases, tenants may be willing to accept that risk allocation, but may want some protection if either input or product prices get so far away from averages as to make the cash rent payments extremely difficult. By the same token, landlords may want to take advantage of some “upside risk” when times are exceptionally good. Thus, both parties may want to introduce some flexibility into the lease by providing for a baseline rate of cash rent that is adjusted by some formula based on either input costs, product prices, the productivity of the land, or even some combination of all elements. A number of these methods are discussed in the NCFMEC publications referenced at the end of this chapter. To keep this discussion relatively brief, any adjustments need to have very clear triggers and calculations that can be objectively determined by both parties. For example, if one variable is the price of a commodity, the lease should be very clear about both *when* that price is determined (for example, at a set date, when harvest is

commenced, when harvest is completed, etc.) and *how* that price is determined (by local elevator cash price, by USDA market report, by nearby futures contract price, etc.). Consider also that it may be inequitable for only one party to have the benefit of flexibility – a tenant may be uncomfortable signing a lease wherein the landlord gets the advantage of upside risk but the tenant bears all downside risk. Further, the more variable a lease becomes, the more potential tax implications are triggered and the more the lease looks like a share lease. At some tipping point, a share lease may be more desirable.

### 10. Combining the Methods to Calculate a Fair Cash Rent

This discussion examined a number of methods used to calculate a cash rent amount. Which method is the right one? The answer might be one, more, or all of them. Neither landlord nor tenant may have the time or resources to pull together the information needed to calculate a rental rate under all the methods, but calculating two or more methods might help both parties get some different perspectives on what a fair rental amount could be. Additionally, calculating the rent under different methods can trigger some important insights – if all of the methods used arrive at roughly similar amounts, it is a strong suggestion that a rent in that range is fair to the parties. If one or more methods are sharply different, it may be cause to examine why those differences arise, as they may indicate something about the market or the land that justifies a different lease rate.

Discussing the calculation methods can not only help landlord and tenant arrive at a mutually-agreeable rental rate, but can also help them discuss the risk factors faced by both, which can lead to a better rental agreement itself.

### **D. Setting Shares under a Share Rental Agreement**

At a fundamental level, share leases focus on sharing both the costs of operating the agricultural land and the profits from its production. This means both upside and downside risk are shared by the parties as well. But how does one set the appropriate shares to be paid and received by landlord and tenant? The North Central Farm Management Extension Committee has proposed five principles to help set shares:

#### 1. Variable expenses that increase yields should be share in the same percentage as the crop is shared.

The principles of agricultural economics demonstrate that using this principle will make sure the incentives for both the landlord and the tenant will guide them to use the most efficient levels of inputs. Conversely, not following this principle will create incentives for one party to use too much of an input to

capture more revenue while shifting costs to the other party.

2. Share arrangements should be adjusted to reflect the effect new technologies have on relative costs contributed by both parties.

New technologies can cause substitutions of inputs, which can shift the economics of the lease arrangement. For example, when a farm is shifting from conventional tillage to a low- or no-till system, chemical weed control may be used as a substitute for mechanical weed control through cultivation. So, should the cost of chemical weed control be paid by the landlord, the tenant, or shared? Another example is seed (such as corn seed) that is frequently bundled with other inputs such as herbicide, insecticide, and perhaps even fertility products. If the seed product affects the need for other inputs, who should pay for the seed? The answers to these questions depend on the nature of the substitution.

- If the input is a yield-increasing input, the landowner and operator should share the costs in the same proportion as the crop is shared, as discussed in principle 1.
- If the input is a true substitution, the party responsible for the item substituted in the original lease should pay for the input.
- If the input is both yield-increasing and a substitute, the lease needs to address this situation after discussion of how the cost should be shared by the parties.

3. The landlord and tenant should share total returns in the same proportion as they contribute resources.

This principle sounds simple, but may be the most complex to implement. The parties have to discuss and determine the value of what each is “bringing to the table,” so to speak. The landlord is contributing the production asset, land, and the tenant is likely contributing the majority of operating labor and machinery expense. Both contribute management and bear risk. In many cases, the operator’s primary costs (labor and machinery) are largely the same whether dealing with high-quality or low-quality land, but other input costs may vary considerably. For this reason, shares on high-quality land and/or crops with high variable input costs tend to be more equal, whereas shares on lower-quality land and/or crops with low variable input costs tend to be place larger share values with the tenant, as illustrated below.

4. Tenants should be compensated at the termination of the lease for the undepreciated balance of long-term investments they have made.

In some cases, the parties may need to invest in inputs whose lives could extend beyond the life of the

lease, such as perennial seeds (alfalfa, for example), pH amendments to the soil such as lime, and tiling or other soil drainage. A tenant will likely be unwilling to share in those costs if they are not assured of having access to the land for the entirety of the inputs’ productive life. Thus, it may be wise to include lease language that guarantees the tenant will receive back the undepreciated share of their investment if their lease is terminated before the end of the investment’s life.

5. Good, open, honest communication should be maintained between the landowner and tenant.

Communication is vital in any productive lease arrangement, but it is even more important in a share leasing arrangement, since the parties must share in many of the decisions made in the course of agricultural operations on the leased land. Frequent communication between the parties can do much to provide transparency and to make both parties feel that their concerns have been acknowledged and understood by the other.

Subject to these two principles, the first step in determining what shares would be equitable for the leasing arrangement is to form a thorough crop budget for the land in question. The items in the budget will do a great deal to show the value to be contributed by each party, which in turn will help determine the equitable balance of shares for the lease. As noted above in Section III(B)(1), Texas A&M Agrilife Agricultural Economics Department offers sample budgets, which can be customized as needed, on their website. Items that should be considered when formulating a budget include:

- *Land:* The land in question should be valued at its fair market value in agricultural use; non-agricultural uses (such as residential development or recreational uses) should be ignored since they are not relevant to the crop enterprise for the purposes of the budget.
- *Interest on land:* As discussed above, the usual value placed on land interest (“opportunity cost”) for the purposes of lease budgeting is the rent-to-value ratio for the area. One way of determining a land cost for the purposes of the crop budget is to multiply the land value by the rent-to-value ratio.
- *Cash rent on land:* *Cash rent on land can also be a valid measure for the value of the land contributed to the lease.* Here, cash rent represents the cost that would be incurred if the parties had to lease the land on a cash basis.
- *Real estate taxes:* Real estate taxes can be a carrying cost of land, but be careful not to include this value twice, since it is likely imputed to the values for cash rental rates or on interest on land.

- *Land development*: The average cost per year for lime, conservation practices, and other improvements are another land cost. Use caution with these costs to avoid double-counting just as with real estate taxes, though, as they too are often included in cash rental rates.
- *Crop machinery*: The machinery charges should be the average value of a good line of machinery needed to farm the land in question, which is not necessarily the same as the value of *new* machinery.
- *Depreciation*: Use a market rate of depreciation for machinery (often 8 to 12 percent of the average value annually), not a tax-based depreciation rate – tax rates are often far higher and will result in an over-charge of the machinery cost.
- *Machinery repairs, taxes, and insurance*: Research data suggests annual repairs average between 5 to 8 percent of the machinery’s original value. Taxes and insurance costs can be obtained from actual costs in farm records.
- *Machinery interest*: The prevailing local interest rate for machinery loans (or operating capital loans) can be used to determine the opportunity cost for machinery).
- *Custom rates*: Rates for activities that the parties intend to hire out, such as fertilizer application or harvesting can be entered using bids from local providers.
- *Irrigation equipment, depreciation, repairs, taxes, insurance, and interest*: These costs for irrigation systems can be determined and calculated in much the same fashion as machinery costs, as discussed above.
- *Labor*: Labor may be contributed solely by the tenant, or may be joint between the tenant and landlord. However, the contribution of significant labor by the landlord can make the share lease look much more like a joint venture or partnership, and that may not be the desired legal outcome of the parties. When valuing labor, use prevailing wage rates for comparable agricultural labor in the area. Note that the value contributed by the management skills of the tenant may make them far more valuable than the average farm laborer in the area, but that value is captured separately.
- *Management*: The management contributions of the landlord and tenant can vary significantly depending on their operational experience. In most cases, management charges may simply be a function of the bargaining power of the parties. There are a number of ways this can be valued, but two possible rules of thumb are:
  - One rule is that management should be valued at 1 to 2.5 percent of the average capital

managed in the business, measured as the market value of the land, machinery, and irrigation equipment. This rule is probably more stable since it will not fluctuate as much as the next rule on year-to-year basis.

- Another guide can be the management fees charged by professional farm managers. These managers commonly charge between 5 to 10 percent of adjusted gross receipts.

Once these costs have been compiled and a budget for the production of the crop has been estimated, the parties can use one of two methods to determine the appropriate shares for landlord and tenant.

- The Contribution Approach

In the contribution approach, the percentage of overall costs contributed by each party are calculated, as well as those costs that are shared by some pre-determined proportion. The remaining costs – which should be the “yield-increasing inputs” as discussed above – and the income should be shared in the same proportions. Consider a worksheet containing a corn-soybean rotation example found in *Appendix III*.

In the example, the costs contributed by the landlord equal \$247.50 per acre or 53.3 percent of the total costs, and the costs contributed by the tenant are \$216.75 or 46.7 percent of the total costs. Note also that the worksheet has assumed that costs for fertilizer, herbicides, and insecticides/fungicides have not been included since the landlord and tenant intend to share those costs among themselves. The shares calculated suggest something close to a 50/50 share arrangement. With this approach, the budget has led the way to suggested shares.

- The Desired-share Approach

Conversely, the desired share approach works backward from a desired share arrangement. For example, with the same corn-soybean rotation, the parties may want to target a 50/50 share arrangement. In such a case, they would simply adjust their contributions so that the end result is a 50/50 share of the expenses. This approach is much less common, but may be desirable based on the circumstances of the parties.

## E. Setting a Lease Rate for Range Land

The calculation of pasture lease rates can borrow from a number of the principles discussed above of leases primarily involving cropland.

As with the methods above, some homework on the part of the landowner is involved in collecting information on the price of land, an applicable interest rate for the land, land taxes, land development costs

(such as conservation practices) the costs of facilities such as pens, loading docks, etc. (and the depreciation, interest, repairs and taxes on the same). Any labor and management costs on the part of the landlord should also be included.

Another important piece of information is the desired stocking rate for the land. The long-term productivity of the land is dependent upon maintaining a proper stocking rate and not “over-mining” forage species or depleting soil nutrients. Understanding how many animal units can be grazed on the property can help in setting guidelines for the lease in terms of stocking rate; it can also help in selecting the method of rent payment. For example, setting pasture rent on a per-acre basis or share-of-gain basis creates incentives for the tenant to over-stock the property. Thus, restrictions on stocking rates as well as properly calculated rent terms are important. Stocking rates can be expressed as an average stocking number (taking into account the fact that herd numbers may change over the course of the lease), or can be based on animal-days or animal-unit days.

An example cost estimate worksheet for a landowner interested in leasing pastureland is included in *Appendix IV*, Figure 4-1.

Likewise, the livestock owner must also estimate their net returns from grazing operations on the land. Generally, the livestock owner will estimate costs on a per-head basis, which is likely the most useful format since marketing revenues will also be calculated on a per-head basis. The estimated market value of the animal less the non-land costs of production, equals the livestock owner’s net returns to pasture, as illustrated in *Appendix IV* Figure 4-2.

As you can see from comparing the values calculated by the landowner and tenant on the worksheets in *Appendix IV*, the contributions by the landowner are greater than the returns to grazing on the part of the livestock owner. Thus, the landowner will likely want a higher rate of rent than the livestock owner is willing to pay. This means that the parties will have to negotiate, with one or both parties taking a lower rate of return (or otherwise, both parties would walk away from the leasing opportunity). Below are some examples of how a compromise can be found.

- **Fixed Per-Acre or Per-Head Rent**

As with crop leases, a simple fixed per-acre or per-head rental amount could be charged. Given the example discussed above and illustrated in *Appendix IV*, the landowner would likely want at least \$27 per acre, while the livestock owner would like to pay approximately \$15 per acre. The parties would have to negotiate for an amount somewhere between the two values. If a fixed per-acre rent is used, negotiated limits on stocking rates are

important to include in the lease, as discussed above. This arrangement shifts risk away from the landowner and to the livestock owner.

- **Fixed Charge per Pound of Gain**

Livestock production faces two major risks – price risk in the amount received for the animal at market, and the gain of the animal (production risk). Weight gain is a function of the animal’s inherent productivity (often dictated by the animal’s genetics and health) and the productivity of the pasture land. The productivity risk associated with land (although it is also tied to the productivity of the animal) can be shifted back toward the landowner through a fixed charge per pound of gain. For example, the lease could specify a cost of \$0.45 per pound of gain. Since this arrangement does shift risk to the landowner, they may insist on a higher rate to offset this risk.

- **Share of Gain**

One potential method of distributing the income from the grazing operation is to value the contributions made by the landlord and livestock owner to determine the shares of that income. The landowner and livestock owner can agree to share this proportion of the proceeds when the livestock are sold. Under this arrangement, the actual rental is not known until the end of the lease when the final value of gain is known (not unlike in a crop share lease). An example of this calculation method is included in *Appendix IV*, Figure 4-3.

#### IV. GRAZING LEASE CHECKLIST

The following checklist includes many of the most common terms found in grazing lease agreements. Certainly, the list is neither exhaustive, nor will every term be needed in every lease agreement.

- **Names of the parties:** The lease should include the name and address of the parties, both the landowner and the lessee.
- **Duration of lease:** The length of the lease should be specified with particularity and may range from a matter of months to several years. It is important to note that leases of certain durations may be required to be in writing in order to be enforceable. For example, pursuant to the Statute of Frauds, Texas requires a lease of real property lasting for more than 1 year to be in writing. *See Texas Business & Commerce Code §26.01(5)*. Generally, grazing leases are classified either as a “tenancy for a term of years” or a “periodic tenancy.” A tenancy for term of years simply refers to any set lease term (whether months or years) that terminates upon the conclusion of the term. *See Thomas W. Merrill and Henry E. Smith, Optimal Standardization in the Law of Property: The*

*Numerus Clausus Principle*, 110 Yale L.J. 1, 11 (2000). Conversely, under a periodic tenancy, the precise length of the lease is not included in the lease itself, but is at the will of the landlord and tenant. See *Panola County Appraisal Review Board v. Pepper*, 936 S.W.2d 10, 12 (Texarkana Ct. App. 1996). In this instance, the lease will automatically renew at the end of the initial term unless a specific notice of the intent not to renew is given by either party. For leases containing periodic tenancies, it is important to determine the amount of notice that will be required. It is likely in the best interest of both the landowner and tenant to require a lengthy notice period so that in the event the lease will not be renewed the landowner has time to secure a new tenant and the lessee has time to find alternative arrangements for his or her livestock. It is advisable that notice be required to be given in writing.

- **Description of the land:** The land need be described so that both parties (and a judge or jury if there ever were to be a dispute over the lease) can understand exactly what land was being leased. This can be done by legal metes-and-bounds descriptions, a photograph or diagram showing the specific location, or simply by words if a specific description can be conveyed. Further, if there are any areas that are to be excluded from the lease, this limitation must be included in detail in the lease agreement. For example, if there is an apple orchard in the back corner of the property and the landowner does not want the lessee's cattle in that area, this must be addressed in the lease.
- **Stocking limitations:** A grazing lease should set forth stocking limitations that address the number of head, breed, and species of animal permitted. For example, the stocking rate may differ if the lessee intends to run 1,000 pound Angus cattle on the land versus if he or she intends to run 1,600 pound Charolais cattle on the land. Similarly, the weight of stocker calves on the property may well change the stocking limitations needed. A landowner may want to address this issue and specify the breed or size of cattle permitted. *Appendix V* includes a chart from the Natural Resource Conservation Service<sup>1</sup> is useful in calculating animal units for various species.
- **Price:** The price for grazing leases varies based upon a number of factors including the number of acres of land, the available forage, the number of livestock that may be grazed per acre, the type of livestock to be grazed, etc. Price may be based upon any formula that the parties desire, although

most commonly, grazing leases are priced either per acre, per head, or per animal unit. Additionally, although less common in grazing leases than farming leases, the parties could agree to a sort of "crop share" lease based upon a percentage of the calf crop sold. For more information on this topic, refer to Section III above.

- **Payment method:** Payments may be made in any manner agreed upon by the parties. Grazing leases frequently require a pre-payment of at least some portion of the lease, although some parties agree to a monthly payment system. A landowner should consider including details on exactly how and when rent is due and including penalties and interest for late payments.
- **Failure to pay:** In addition to imposing penalties and interest on late payments, a landowner may want to provide that once the total amount owed in late payments, interest, and fees reaches a certain amount, the landowner has the right to terminate the lease. Further, landowners should be aware of any statutory lien rights available to unpaid landowners in their state, including understanding any action that must be taken by the landowner for such rights to be enforced. In Texas, the Texas Agricultural Landlord's Lien provides an agricultural landlord a preference lien for rent that becomes due and for the money and value of the property that a landlord furnishes to a tenant to grow a crop on the lease premises. See Texas Property Code Section 54.001 - 54.007.
- **Security deposit:** A landowner may want to consider requiring a security deposit to cover any damage caused to the property, improvements, fences, crops, or livestock while the lessee is in possession of the property.
- **Access to land:** The lease should provide how the lessee is to access the property, including designating the points at which the lessee may enter the property, any gates that the lessee may utilize, and the roads on the property the lessee is permitted to use.
- **Use of vehicles or ATVs:** The lease should state whether the lessee is permitted to use vehicles or ATVs on the property and, if so, whether there are any areas where such vehicles are prohibited.
- **Requirement gates be kept closed:** A landowner may wish to require that all gates be kept closed at all times. Additionally, if other livestock is present or in adjacent pastures, a landowner may also include a requirement that the lessee is liable for the death or injury of any livestock or damages to

<sup>1</sup> Chart developed by Steve Nelle and Stan Reinke, NRCS with input from literature and other specialists from TCE and TPWD.

a third party caused by any livestock that escape due to a gate being left open by the lessee or his employees.

- **Use and repair of facilities on property:** The lease should discuss the right of the lessee to use any facilities on the property including corrals, buildings, barns, and houses. If any repairs are necessary, the lease should describe who will be responsible for undertaking repairs and paying for both parts and labor. Common items of concern during a grazing lease include fences, windmills, and pumps.
- **Inspection of fences:** It is important that a lease address who will be responsible to inspect and repair fences, particularly where the leased property abuts a highway. The lease should set forth which party will make these inspections and the frequency at which they should be made.
- **Right to erect improvements on property:** The lease should address whether the lessee has the right to erect any improvements on the property during the lease. Generally, permanent improvements will stay on the land after the termination of the lease. Consequently, the landowner may want to have an input on the location and building specifications for any such improvements. Some leases require the lessee to obtain written permission from the landowner before taking any such action. In order to avoid confusion or conflict, the lease should specify whether the lessee has the right to remove any improvements at the end of the lease and set a deadline for such removal.
- **Landowner's rights to the property:** Unless reserved, the landowner grants exclusive possession of the property to the lessee, meaning that the landowner may not enter the property. The landowner may want to reserve the right to enter the property for various reasons during the lease, including to care for crops and to inspect the premises. Importantly, a landowner should discuss this issue with his or her attorney to determine if the right to inspection might be outweighed by liability concerns that such right might impose. Further, if the landowner wants to retain rights as to the property, including the right to hunt, this should be expressly set forth in the lease agreement.
- **Other surface uses:** There may be other surface users of the property during the lease term. Examples include oil and gas companies who may have a mineral estate lease, hunters that may have a hunting lease with the landowner, and the landowner himself. The lease should expressly identify all such surface users so the lessee is aware of these uses and should require that the lessee will

act in good faith to accommodate and cooperate with these other surface owners. With regard to a potential mineral lessee, it is important to understand that under Texas law, a mineral owner is considered a dominant estate holder, meaning he or she has the right to use as much of the surface estate as is reasonably necessary to produce oil and gas. *See Plainsman Trading Co. v. Crews*, 898 S.W.2d 786 (Tex. 1995). The same is true for a severed groundwater owner. *See Coyote Lake Ranch v. City of Lubbock*, 498 S.W.3d 53 (Tex. 2016). This may mean an oil rig showing up in the or gathering lines being laid in the middle of a leased pasture. A lessee may wish to include a provision allowing the lessee to terminate the lease in the event oil or gas production occurs on the property. Additionally, alternative energy leases such as solar or wind lease agreements are becoming increasingly common in Texas. Parties may need to address this issue in their lease agreement and determine what will happen if the surface owner wishes to enter into this type of agreement during the term of the grazing lease.

- **Care of livestock:** Under some lease agreements, a landlord may not only offer grazing land, but may also agree to provide care for the livestock. In this event, it is extremely important that the landowner and lessee be specific with regard to their expectations for care. For example, requiring "adequate hay" is insufficient as it is almost a certainty that the landlord's definition of "adequate" differs from the livestock owner's definition of the same term. In order to avoid this type of dispute, a lease should spell out the expectations of the landowner providing care of livestock, including the type and amount of hay and feed to be provided, the type of mineral that should be available, the frequency with which the livestock should be checked by the landowner, etc. Finally, an interesting term found in some of these types of leases provides an incentive for a landowner who provides superior care for the livestock. For example, the lease might provide that if calves reach a certain average daily gain or a set weaning weight goal, the landowner receives a bonus from the lessee. Similarly, there could be a provision if the landowner is set to care for first-calf heifers that would include a bonus if there was a low death loss percentage. This type of incentive may help to ensure better care for livestock.
- **Proof of vaccination:** Some leases require that the lessee provide the landowner with a health certificate declaring that cattle have received certain vaccinations, such as blackleg shots for calves or Bang's vaccinations for cows and bulls.



- **Breacy livestock:** Many grazing leases involving cattle include a provision whereby any animal known to be “breacy” (i.e. frequently escaping the pasture by jumping or breaking through fences), must be removed from the premises.
- **Disaster contingencies:** The parties should consider how disasters such as drought or fire may impact the landlord/lessee relationship. In the event that all or some of the grazing land is destroyed, how will a determination regarding the lease be made? Who will determine if it is necessary to lower the number of livestock permitted to be on the property, or whether it is necessary to terminate the lease all together? Parties may want to consider agreeing on a neutral third party, such as a county extension agent, or another livestock operator in the area, to help with this determination. In the event that the lease is limited or cancelled, the lease agreement should address whether a refund of any pre-paid rent will be made.
- **Payment of property taxes.** Parties should address who will be responsible for paying property taxes on the land during the lease term. Commonly, a landowner will continue to pay property taxes on the land. Parties should make clear in the lease who is responsible for making the required tax payment.
- **Transferability:** The lease should address the rights of the parties as to assignment or sublease. May the lessee sublease or assign his rights to a third party without the landowner’s permission? Under Texas statute, a sublease may not be entered into without prior consent of the landlord. *See* Texas Property Code Section 91.005. Including this clause in a lease agreement ensures both parties are aware of this requirement. Similarly, parties should address what will happen to the lease if the property changes ownership during the lease term. The parties may want to provide a clause stating that the lease shall be binding upon heirs or assigns, or, conversely, that the lease shall terminate upon the death of either of the parties.
- **Lease does not create a partnership:** Unless the landowner and lessee intend to create a partnership, the lease should expressly state that it does not do so. This provision is important because generally, one partner is liable for the obligations and debts of the other partner. Although this type of provision, alone, will not prevent a partnership from being created in all circumstances, it does provide evidence that the parties did not intend to create a partnership arrangement. *See, e.g., Ingram v. Deere*, 488 S.W.3d 886 (Tex. 2009).
- **Effect of breach:** Many leases include a clause stating that the violation of any term, covenant, or condition of the lease agreement by the lessee allows for the landowner, at his option, to terminate the lease upon notice to the lessee. This provision allows the landowner the option of terminating the lease of any term is violated, rather than merely having the right to sue the lessee for damages. If included, this clause should address the type of notice required to the lessee and whether any refund of payment or security deposit will be available.
- **Damages to property:** The lease should prohibit damage to the property and require the lessee to repair or pay for any damage caused including the destruction of crops, death or injury to livestock, harm to fences, gates or improvements, and trash or other debris left on the premises.
- **Liquidated damages:** A lease may provide for certain liquidated damages, which essentially mean contractually agreed upon damage amounts. These damages are often used in situations where the calculation of actual damages might be difficult. Instead, the parties agree up front to a set amount of damages for certain actions.
- **Attorney’s Fees:** Generally, a successful litigant is not entitled to recover his or her attorney fees from the other party absent a contractual agreement or a statute so authorizing. A landowner should consider including a provision providing that if the landowner is successful in a dispute (whether in arbitration or in court) with the lessee, the lessee will be responsible for the landowner’s reasonable costs and attorney’s fees. The lessee will likely request a reciprocal clause requiring payment of his or her attorney fees if the lessee is successful.
- **Lessee Insurance:** A landowner may require the lessee to acquire liability insurance that will be maintained throughout the lease term. If so, the landowner should also require that the lessee include the landowner as an “additional insured.” This should offer insurance coverage to the landowner pursuant to the lessee’s policy in the event of a claim made by a third party against the lessee and landowner. The landowner may also want to require a specific minimum level of coverage.
- **Liability and Indemnification:** A landowner should consider including liability and indemnification clauses in case the landowner is sued as a result of the lessee’s conduct. These terms simply provide that the landowner is not liable for any action or inaction of the lessee, his agents, or employees and that, in the event the landowner is sued for the lessee’s actions or inactions, the lessee will hold the landowner harmless as to any attorney’s fees or judgment.

- **Choice of law:** A choice of law provision in a lease allows the parties to determine which state's law will govern the lease in the event of a dispute. Generally, choice of law clauses are enforced by a court so long as they are not against public policy and are reasonably related to the contract. Because many laws vary by state and a choice of law provision could significantly impact rights under a lease, a landowner should consult with an attorney with regard to this provision to determine the potential options available and to determine which would be most advantageous to the landowner.
- **Forum clause:** A forum clause provides that a dispute over a lease will be heard in a particular location or court. For example, a lease could require that any dispute over the lease be filed in the county where the land is located. This clause may be important for a landowner by requiring suit to be filed in his or her county, particularly if the lessee lives some distance away.
- **Dispute resolution:** A landowner should consider the inclusion of a dispute resolution clause. The purpose of these types of clauses is to limit the time and expenses of a court action in the event of a dispute. There are two primary types of dispute resolution: arbitration and mediation. In arbitration, a third-party arbitrator (usually an attorney) will hear evidence and render a decision. If the arbitration is "binding" that judgment is final on the parties absent evidence of fraud by the arbitrator. Mediation, on the other hand, involves a neutral third party who will work with the landowner and lessee to attempt to reach a mutually-acceptable resolution. If both parties refuse to agree to settle, the case will then proceed on to court. A dispute resolution clause should identify how the arbitrator or mediator will be selected. It is important to understand the difference between these options and determine which option is best in consultation with an attorney.
- **Confidentiality clause:** The landowner may want to consider the use of a confidentiality clause if there is any information that he or she does not want made public. For example, a landowner may not want the fee charged to one party disclosed if the landowner intends to charge an increased fee to another party or in the future.

There are numerous sample forms available online for grazing leases. A list of several form leases available for free are included in *Appendix VI*.

## V. FARM LEASE CHECKLIST

Just as was the case with the grazing lease checklist, the following checklist includes many of the most common terms found in farm lease agreements, but the list is neither exhaustive, nor will every term be needed in every lease agreement.

- **Names of the parties:** The lease should include the name and address of the parties, both the landowner and the lessee.
- **Duration of lease:** The length of the lease should be specified with particularity and may range from a matter of months to several years. It is important to note that leases of certain durations may be required to be in writing in order to be enforceable. For example, pursuant to the Statute of Frauds, Texas requires a lease of real property lasting for more than 1 year to be in writing. *See* Texas Business & Commerce Code §26.01(5). Generally, farm leases are classified either as a "tenancy for a term of years" or a "periodic tenancy." A tenancy for term of years simply refers to any set lease term (whether months or years) that terminates upon the conclusion of the term. *See* Thomas W. Merrill and Henry E. Smith, *Optimal Standardization in the Law of Property: The Numerus Clausus Principle*, 110 Yale L.J. 1, 11 (2000). Conversely, under a periodic tenancy, the precise length of the lease is not included in the lease itself, but is at the will of the landlord and tenant. *See* *Panola County Appraisal Review Board v. Pepper*, 936 S.W.2d 10, 12 (Texarkana Ct. App. 1996). In this instance, the lease will automatically renew at the end of the initial term unless a specific notice of the intent not to renew is given by either party. For leases containing periodic tenancies, it is important to determine the amount of notice that will be required. It is advisable that notice be required to be given in writing.
- **Right to harvest after lease terminates:** There are a number of reported Texas cases addressing right to a tenant where crops were planted and grown during the term of the lease, but which have not been harvested and removed by the time the agreement terminates. The common law "doctrine of emblements" provides relief for a tenant under narrow circumstances. *See* *Dinwiddie v. Jordan*, 228 S.W. 126 (Tex. Ct. App. 1921). In order to succeed in gaining access to the property to harvest growing crops, a tenant must prove: (1) the lease was for an uncertain duration; (2) termination of lease was due to an act of God for the landlord, but was not the fault of the tenant; and (3) the crop was planted during the right of occupancy. *See id.* Rather than relying on this narrowly constructed

common law doctrine, parties should address this issue in their lease agreements.

- **Description of the land:** The land need be described so that both parties and anyone later reading the document can understand exactly what land was being leased. This can be done by legal metes-and-bounds descriptions, a photograph or diagram showing the specific location, or simply by words if a specific description can be conveyed. Further, if there are any areas that are to be excluded from the lease, this limitation must be included in detail in the lease agreement. For example, if there is an apple orchard in the back corner of the property and the landowner does not want the lessee's cattle in that area, this must be addressed in the lease.
- **Price:** As discussed in detail in Section III, setting farm lease rates requires a good deal of analysis and investigation. Price may be based upon any formula that the parties desire, although most commonly, farm leases are either structured as a cash or crop share agreement. According to Texas A&M Agrilife Extension Economists DeDe Jones and Mark Welch, there is a trend towards more cash leases throughout much of the country, although in the Texas Panhandle, crop share leases likely remain the norm.
- **Payment method:** Payments may be made in any manner agreed upon by the parties. Frequently, farm lease payments are set up in one of two ways: an upfront payment of half the rent due with the remainder due upon harvest and sale of the crop, or the entire amount due upon sale of the crop. A landowner should consider including details on exactly how and when rent is due and including penalties and interest for late payments.
- **FSA Title I program payments.** Parties to a lease agreement should understand how any Title I program payments (ARC or PLC under the 2014 Farm Bill) will be paid by the agency. Generally, under a cash lease agreement, the tenant receives 100% of any program payments. A landowner may want to take projected payment amounts into consideration when setting lease rates. Conversely, under a crop share lease, the payments will generally be made in proportion to the share of income agreed to in the lease. *See* 7 C.F.R. 1412.54. Although this is how the Farm Service Agency will distribute payments, the parties have the right to contractually agree to deviate from this and divide payments in another manner.
- **Failure to pay:** In addition to imposing penalties and interest on late payments, a landowner may want to provide that once the total amount owed in late payments, interest, and fees reaches a certain amount, the landowner has the right to terminate the lease. Further, landowners should be aware of any statutory lien rights available to unpaid landowners in their state, including understanding any action that must be taken by the landowner for such rights to be enforced. In Texas, the Texas Agricultural Landlord's Lien provides an agricultural landlord a preference lien for rent that becomes due and for the money and value of the property that a landlord furnishes to a tenant to grow a crop on the lease premises. *See* Texas Property Code Section 54.001 - 54.007.
- **Security deposit:** A landowner may want to consider requiring a security deposit to cover any damage caused to the property, improvements, fences, crops, or livestock while the lessee is in possession of the property.
- **Prohibited or required farming practices:** Parties should consider any farming practices that may need to be required or prohibited on the property. For example, a landlord may want to lease to a tenant who will only engage in no-till farming. Any such requirements or prohibitions should be included in the lease document.
- **Access to land:** The lease should provide how the lessee is to access the property, including designating the points at which the lessee may enter the property, any gates that the lessee may utilize, and the roads on the property the lessee is permitted to use.
- **Use of vehicles or ATVs:** The lease should state whether the lessee is permitted to use vehicles or ATVs on the property and, if so, whether there are any areas where such vehicles are prohibited.
- **Requirement gates be kept closed:** A landowner may wish to require that all gates be kept closed at all times. Additionally, if livestock is present or in adjacent pastures, a landowner may also include a requirement that the lessee is liable for the death or injury of any livestock or damages to a third party caused by any livestock that escape due to a gate being left open by the lessee or his employees.
- **Use and repair of facilities on property:** The lease should discuss the right of the lessee to use any facilities on the property including corrals, buildings, barns, and houses. If any repairs are necessary, the lease should describe who will be responsible for undertaking repairs and paying for both parts and labor. For irrigated farm lease agreements, parties should discuss who is responsible for maintaining sprinkler or other irrigation systems.
- **Inspection of fences:** It is important that a lease address who will be responsible to inspect and repair fences, particularly if livestock are to be present at any point during the lease, such as grazing on wheat pasture. The lease should set

forth which party will make these inspections and the frequency at which they should be made.

- **Right to erect improvements on property:** The lease should address whether the lessee has the right to erect any improvements on the property during the lease. Generally, permanent improvements will stay on the land after the termination of the lease. Consequently, the landowner may want to have an input on the location and building specifications for any such improvements. Some leases require the lessee to obtain written permission from the landowner before taking any such action. In order to avoid confusion or conflict, the lease should specify whether the lessee has the right to remove any improvements at the end of the lease and set a deadline for such removal.
- **Landowner's rights to the property:** Unless reserved, the landowner grants exclusive possession of the property to the lessee, meaning that the landowner may not enter the property. The landowner may want to reserve the right to enter the property for various reasons during the lease, including to care for crops and to inspect the premises. Importantly, a landowner should discuss this issue with his or her attorney to determine if the right to inspection might be outweighed by liability concerns that such right might impose. Further, if the landowner wants to retain rights as to the property, including the right to hunt, this should be expressly set forth in the lease agreement.
- **Ownership of farm data:** According to Indiana-based attorney Todd Janzen, there is no case law at this point as to who, between the tenant and the landowner, own farm data obtained from a property. Data generated includes information such as yield information, soil health, crop performance, etc. Given the absence of a well-settled legal approach, parties should agree upon who is the owner of the farm data, and whether such data should be shared with the other party to the lease agreement. *See* Todd Janzen: *Big Data in Farm Leases: When Landlord and Tenant Both Want the Data*, Lexis Legal Newsroom, Real Estate Law (March 25, 2015).
- **Other surface uses:** There may be other surface users of the property during the lease term. Examples include oil and gas companies who may have a mineral estate lease, hunters that may have a hunting lease with the landowner, and the landowner himself. The lease should expressly identify all such surface users so the lessee is aware of these uses and should require that the lessee will act in good faith to accommodate and cooperate with these other surface owners. With regard to a

potential mineral lessee, it is important to understand that under Texas law, a mineral owner is considered a dominant estate holder, meaning he or she has the right to use as much of the surface estate as is reasonably necessary to produce oil and gas. *See Plainsman Trading Co. v. Crews*, 898 S.W.2d 786 (Tex. 1995). The same is true for a severed groundwater owner. *See Coyote Lake Ranch v. City of Lubbock*, 498 S.W.3d 53 (Tex. 2016). This may mean an oil rig showing up in the middle of a leased field or gathering lines being placed across a field. A lessee may wish to include a provision allowing the lessee to terminate the lease in the event oil or gas production occurs on the property. Additionally, alternative energy leases such as solar or wind lease agreements are becoming increasingly common in Texas. Parties may need to address this issue in their lease agreement and determine what will happen if the surface owner wishes to enter into this type of agreement during the term of the farm lease.

- **Disaster contingencies:** The parties should consider how disasters such as drought or fire may impact the landlord/lessee relationship. In the event that all or some of the grazing land is destroyed, how will a determination regarding the lease be made? Who will determine if it is necessary to lower the number of livestock permitted to be on the property, or whether it is necessary to terminate the lease all together? Parties may want to consider agreeing on a neutral third party, such as a county extension agent, or another livestock operator in the area, to help with this determination. In the event that the lease is limited or cancelled, the lease agreement should address whether a refund of any pre-paid rent will be made.
- **Payment of property taxes.** Parties should address who will be responsible for paying property taxes on the land during the lease term. Commonly, a landowner will continue to pay property taxes on the land. Parties should make clear in the lease who is responsible for making the required tax payment.
- **Transferability:** The lease should address the rights of the parties as to assignment or sublease. May the lessee sublease or assign his rights to a third party without the landowner's permission? Under Texas statute, a sublease may not be entered into without prior consent of the landlord. *See* Texas Property Code Section 91.005. Including this clause in a lease agreement ensures both parties are aware of this requirement. Similarly, parties should address what will happen to the lease if the property changes ownership during the lease term. The parties may want to provide a clause stating

that the lease shall be binding upon heirs or assigns, or, conversely, that the lease shall terminate upon the death of either of the parties.

- **Lease does not create a partnership:** Unless the landowner and lessee intend to create a partnership, the lease should expressly state that it does not do so. This provision is important because generally, one partner is liable for the obligations and debts of the other partner. Although this type of provision, alone, will not prevent a partnership from being created in all circumstances, it does provide evidence that the parties did not intend to create a partnership arrangement. *See, e.g., Ingram v. Deere*, 488 S.W.3d 886 (Tex. 2009).
- **Effect of breach:** Many leases include a clause stating that the violation of any term, covenant, or condition of the lease agreement by the lessee allows for the landowner, at his option, to terminate the lease upon notice to the lessee. This provision allows the landowner the option of terminating the lease of any term is violated, rather than merely having the right to sue the lessee for damages. If included, this clause should address the type of notice required to the lessee and whether any refund of payment or security deposit will be available.
- **Damages to property:** The lease should prohibit damage to the property and require the lessee to repair or pay for any damage caused including the destruction of crops, harm to fences, gates or improvements, and trash or other debris left on the premises.
- **Liquidated damages:** A lease may provide for certain liquidated damages, which essentially mean contractually agreed upon damage amounts. These damages are often used in situations where the calculation of actual damages might be difficult. Instead, the parties agree up front to a set amount of damages for certain actions.
- **Attorney's Fees:** Generally, a successful litigant is not entitled to recover his or her attorney fees from the other party absent a contractual agreement or a statute so authorizing. A landowner should consider including a provision providing that if the landowner is successful in a dispute (whether in arbitration or in court) with the lessee, the lessee will be responsible for the landowner's reasonable costs and attorney's fees. The lessee will likely request a reciprocal clause requiring payment of his or her attorney fees if the lessee is successful.
- **Lessee Insurance:** A landowner may require the lessee to acquire liability insurance that will be maintained throughout the lease term. If so, the landowner should also require that the lessee include the landowner as an "additional insured." This should offer insurance coverage to the landowner pursuant to the lessee's policy in the event of a claim made by a third party against the lessee and landowner. The landowner may also want to require a specific minimum level of coverage.
- **Liability and Indemnification:** A landowner should consider including liability and indemnification clauses in case the landowner is sued as a result of the lessee's conduct. These terms simply provide that the landowner is not liable for any action or inaction of the lessee, his agents, or employees and that, in the event the landowner is sued for the lessee's actions or inactions, the lessee will hold the landowner harmless as to any attorney's fees or judgment.
- **Choice of law:** A choice of law provision in a lease allows the parties to determine which state's law will govern the lease in the event of a dispute. Generally, choice of law clauses are enforced by a court so long as they are not against public policy and are reasonably related to the contract. Because many laws vary by state and a choice of law provision could significantly impact rights under a lease, a landowner should consult with an attorney with regard to this provision to determine the potential options available and to determine which would be most advantageous to the landowner.
- **Forum clause:** A forum clause provides that a dispute over a lease will be heard in a particular location or court. For example, a lease could require that any dispute over the lease be filed in the county where the land is located. This clause may be important for a landowner by requiring suit to be filed in his or her county, particularly if the lessee lives some distance away.
- **Dispute resolution:** A landowner should consider the inclusion of a dispute resolution clause. The purpose of these types of clauses is to limit the time and expenses of a court action in the event of a dispute. There are two primary types of dispute resolution: arbitration and mediation. In arbitration, a third-party arbitrator (usually an attorney) will hear evidence and render a decision. If the arbitration is "binding" that judgment is final on the parties absent evidence of fraud by the arbitrator. Mediation, on the other hand, involves a neutral third party who will work with the landowner and lessee to attempt to reach a mutually-acceptable resolution. If both parties refuse to agree to settle, the case will then proceed on to court. A dispute resolution clause should identify how the arbitrator or mediator will be selected. It is important to understand the difference between these options and determine which option is best in consultation with an attorney.

- **Confidentiality clause:** The landowner may want to consider the use of a confidentiality clause if there is any information that he or she does not want made public. For example, a landowner may not want the fee charged to one party disclosed if the landowner intends to charge an increased fee to another party or in the future.

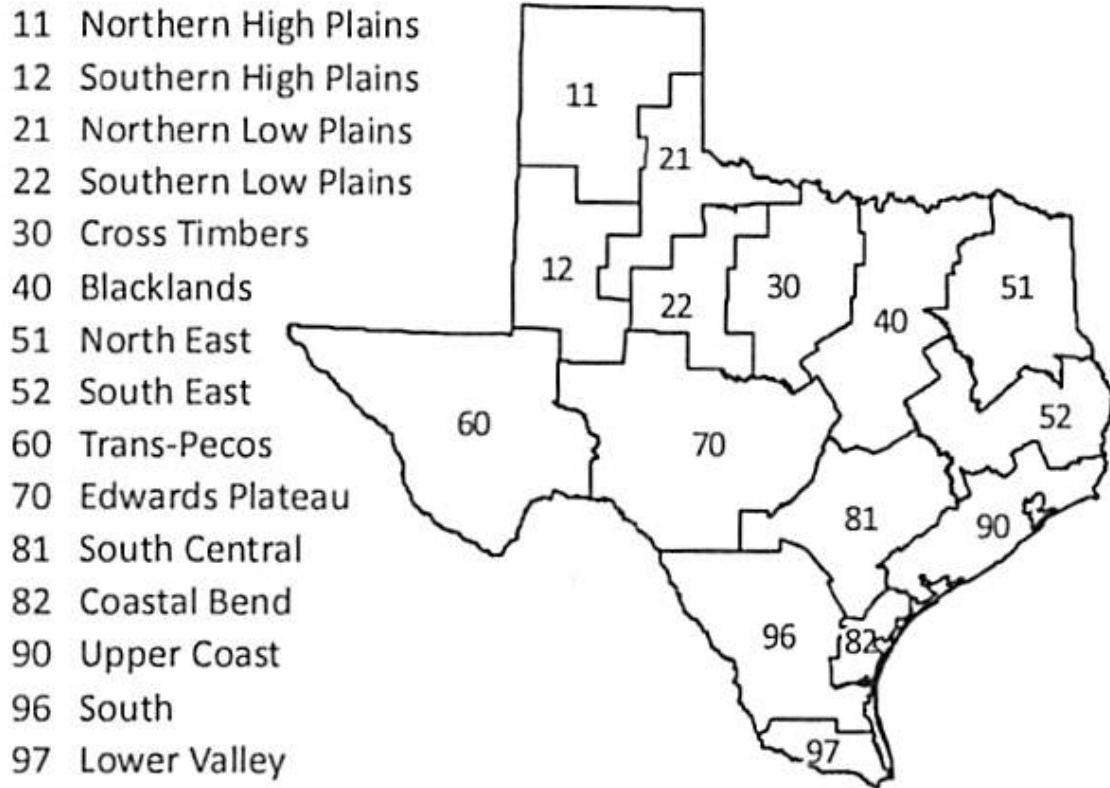
There are numerous sample forms available online for farm leases. A list of several form leases available for free are included in *Appendix VI*.

## **VI. CONCLUSION**

Agricultural landowners and producers have relied upon grazing and farm leases as an important part of their operation for decades. Given the increasing number of absentee landowners in Texas, this is a trend that will likely not only continue, but increase. Thus, many tenants and landowners will need new lease agreements drafted over the coming years, and hopefully will seek legal advice in doing so.

APPENDIX I

Figure 1-1: USDA-NASS Region Map







## APPENDIX II

Source: "Fixed and Flexible Cash Rental Arrangements for your Farm," North Central Farm Management Extension Committee Publication NCFMEC-01.

<http://aglease101.org/DocLib/docs/NCFMEC-01.pdf>

Figure 2-1: Example of Landowner's Ownership Costs Calculation

| <b>Crops Grown:</b> <i>Corn, soybeans, wheat</i> |                       | <b>Acres:</b> <i>150</i> |                      |
|--|-----------------------|--------------------------|----------------------|
| <b>Item</b>                                      | <b>Per Acre Value</b> | <b>Rate</b>              | <b>Annual Charge</b> |
| Land   | \$ <u>4,000</u> ×     |                          |                      |
| Interest   | × <u>4</u> %          |                          | \$ <u>160</u>        |
| Real Estate Tax                                  | × <u>0.5</u> %        |                          | \$ <u>20</u>         |
| <b>Land Improvements</b>                         |                       |                          |                      |
| Tiling   | \$ <u>500</u> ×       | <u>5</u> %               | \$ <u>25</u>         |
| Surface drainage                                 | \$ _____ ×            | _____ %                  | \$ _____             |
| Conservation practices                           | \$ _____ ×            | _____ %                  | \$ _____             |
| Liming   | \$ _____ ×            | _____ %                  | \$ _____             |
| <b>Total Cost</b>                                |                       |                          | \$ <u>205</u>        |

Figure 2-2: Example of Landowner's Adjusted Net-Share Rent Approach

| Landowner's Share of Gross Crop Value |       |                             |                 |                 |                    |             |                |
|---------------------------------------|-------|-----------------------------|-----------------|-----------------|--------------------|-------------|----------------|
| Crops                                 | Acres | Yield per Acre <sup>2</sup> | Percent of Crop | Tons or Bushels | Price <sup>3</sup> | Total Value | Per Acre Value |
| Corn                                  | 75    | 170                         | 50 %            | 6375            | \$ 4.50            | \$ 28,687   | \$             |
| Soybeans                              | 40    | 50                          | 50 %            | 1000            | \$ 11.00           | \$ 11,000   | \$             |
| Wheat                                 | 35    | 65                          | 50 %            | 1138            | \$ 6.00            | \$ 6,825    | \$             |
| Other Income <sup>4</sup>             |       |                             | %               |                 | \$                 | \$          | \$             |
| Totals (A)                            | 150   |                             |                 |                 |                    | \$ 46,512   | \$ 310.08      |

| Landowner's Share of Shared Expenses |                 |                   |                           |                         |                             |            |           |
|--------------------------------------|-----------------|-------------------|---------------------------|-------------------------|-----------------------------|------------|-----------|
| Crops                                | Landowner Share | Seed <sup>3</sup> | Fert. & Lime <sup>3</sup> | Pesticides <sup>3</sup> | Harvest/Drying <sup>3</sup> | Total Cost | Cost/Acre |
| Corn                                 | 50 %            | \$ 3,375          | \$ 4,125                  | \$ 1,312                | \$ 1,688                    | \$ 10,500  | \$        |
| Soybeans                             | 50 %            | \$ 1,160          | \$ 920                    | \$ 400                  | \$ 500                      | \$ 2,980   | \$        |
| Wheat                                | 50 %            | \$ 560            | \$ 1,312                  | \$ 228                  | \$ 438                      | \$ 2,538   | \$        |
| Totals (B)                           | %               | \$                | \$                        | \$                      | \$                          | \$ 16,018  | \$ 106.79 |

|  |           |
|--|-----------|
| Landowner's Crop Rent (A-B)                | \$ 203.29 |
| Less risk shifted to operator <sup>5</sup> | \$ 15.50  |
| Net landowner's share rent per acre        | \$ 187.79 |

<sup>1</sup>If whole farm leased on a cash-rent basis, list all crops grown, income and shared expenses from each crop

<sup>2</sup>Use average yields, allowing for both good and bad years. Incorporate trend in yields

<sup>3</sup>Use current prices and costs.

<sup>4</sup>USDA payments, crop stover, etc.

<sup>5</sup>Example risk value is 5% of total crop receipts. This number will vary depending on the production risk in your area.

Figure 2-3: Example of Operator's Net Return to Land Approach

| Gross Value of Crops Produced |           |                                |                    |                  |                   |
|-------------------------------|-----------|--------------------------------|--------------------|------------------|-------------------|
| Crops                         | Acres     | Yield per<br>Acre <sup>2</sup> | Price <sup>3</sup> | Total Value      | Per Acre<br>Value |
| Corn                          | <u>75</u> | <u>170</u>                     | \$ <u>4.50</u>     | \$ <u>57,375</u> | \$ _____          |
| Soybeans                      | <u>40</u> | <u>50</u>                      | \$ <u>11.00</u>    | \$ <u>22,000</u> | \$ _____          |
| Wheat                         | <u>35</u> | <u>65</u>                      | \$ <u>6.00</u>     | \$ <u>13,650</u> | \$ _____          |
| Other Income <sup>4</sup>     | _____     |                                | \$ _____           | \$ _____         | \$ _____          |
| Totals (A)                    | _____     |                                |                    | \$ <u>93,025</u> | \$ <u>620.17</u>  |

| Total Variable Costs <sup>3</sup> |            |   |                         |                   |
|-----------------------------------|------------|---|-------------------------|-------------------|
| Crops                             | Acres      | Variable Costs<br>per Acre <sup>2</sup> | Total Variable<br>Costs | Per Acre<br>Value |
| Corn                              | <u>75</u>  | \$ <u>340</u>                           | \$ <u>25,500</u>        | \$ _____          |
| Soybeans                          | <u>40</u>  | \$ <u>190</u>                           | \$ <u>7,600</u>         | \$ _____          |
| Wheat                             | <u>35</u>  | \$ <u>180</u>                           | \$ <u>6,300</u>         | \$ _____          |
| Totals (B)                        | <u>150</u> |   | \$ <u>39,400</u>        | \$ <u>262.67</u>  |

| Total Fixed Costs, Labor, and Management <sup>3</sup>                |                  |
|--|------------------|
| Crop machinery: machinery value per acre                             | \$ <u>500.00</u> |
| Depreciation for <u>10</u> years                                     | \$ <u>50.00</u>  |
| Interest on average investment at <u>6</u> percent                   | \$ <u>30.00</u>  |
| Taxes at _____ %   | \$ _____         |
| Insurance at <u>.25</u> %  | \$ <u>1.25</u>   |
| (C) Total machinery fixed costs                                      | \$ <u>81.25</u>  |
| (D) Labor charge <sup>5</sup> ( <u>2.0</u> hrs/ac @ <u>\$13</u> /hr) | \$ <u>26.00</u>  |
| (E) Management charge ( <u>5.0</u> % of total crop values)           | \$ <u>31.01</u>  |
| (F) Total production costs (B+C+D+E)                                 | \$ <u>400.93</u> |
| (G) Amount that can be paid for rent per acre (A-F)                  | \$ <u>219.24</u> |

<sup>1</sup>If whole farm leased on a cash-rent basis, list all crops grown, income from each crop, and variable expenses for each crop.

<sup>2</sup>Use average yields, allowing for both good and bad years. Incorporate trend in yields.

<sup>3</sup>Use current prices and costs. Variable costs include fuel, oil, repairs, fertilizer, herbicide, insecticide, interest on operating costs, custom hire, drying, insurance, and miscellaneous costs.

<sup>4</sup>USDA payments, crop stover, etc.

<sup>5</sup>Labor expense or charge may be included in variable expenses.

Figure 2-4: Example of Percent of Land Value Approach

| Crops Grown: <i>Corn, soybeans, wheat</i> |                 | Acres: <i>150</i> |               |
|---|-----------------|-------------------|---------------|
| Item                                      | Per Acre Value  | Rate              | Annual Charge |
| Land                                      | \$ <u>4,000</u> | ×                 |               |
| Typical Rent to Value                     |                 | ×                 | <u>5 %</u>    |
| Total Cost or Desired Return              |                 |                   | \$ <u>200</u> |

Figure 2-5: Example of Percent of Gross Revenue Approach

| Crop   | Expected Yield | Expected Price  | Expected Gross Revenue | Rent as % of Gross Revenue | Cash Rental Rate |
|--|----------------|-----------------|------------------------|----------------------------|------------------|
| Corn   | <u>170 bu.</u> | \$ <u>4.50</u>  | \$ <u>765</u>          | <u>33 %</u>                | \$ <u>252.45</u> |
| Soybeans   | <u>50 bu.</u>  | \$ <u>11.00</u> | \$ <u>550</u>          | <u>40 %</u>                | \$ <u>220.00</u> |
| Wheat  | <u>65 bu.</u>  | \$ <u>6.00</u>  | \$ <u>390</u>          | <u>45 %</u>                | \$ <u>175.55</u> |
| Weighted Average:<br>Based on Corn: <u>75</u> acres, soybeans: <u>40</u> acres, wheat: <u>35</u> acres |                |                 |                        |                            | \$ <u>225.85</u> |

Figure 2-6: Example of Dollars per Bushel of Production Approach

| Crops Grown: <i>Corn</i> |                            | Acres: <i>150</i>             |   |
|--------------------------|----------------------------|-------------------------------|---|
| Item                     | Average Yield <sup>1</sup> | Price per Bushel <sup>2</sup> | Annual Charge                               |
| <i>Corn</i>              | <u>170</u>                 | ×                             | \$ <u>1.20</u> × <u>150</u> = \$ <u>204</u> |

<sup>1</sup> Certain states have a productivity rating that may be used

<sup>2</sup> Based on a percent of observed historical rents

Figure 2-7: Example of Fixed Bushel Rent

| <b>Crops Grown:</b> <i>Corn</i> |                                | <b>Acres:</b> <i>150</i> |                      |
|---------------------------------|--------------------------------|--------------------------|----------------------|
| <b>Item</b>                     | <b>Bushel Rent<sup>1</sup></b> | <b>Price per Bushel</b>  | <b>Annual Charge</b> |
| <i>Corn</i>                     | <i>56 bu. ×</i>                | <i>\$ 4.50</i>           | <i>\$ 252</i>        |

<sup>1</sup> Based on historic rent as a percent of revenue. Based on an equitable crop share percentage (landowner paying no expenses except land) with a discount for production risk.



**APPENDIX III**

“Crop Share Rental Arrangements for Your Farm,” North Central Farm Management Extension Committee Publication NCFMEC-02. <http://aglease101.org/DocLib/docs/NCFMEC-02.pdf>

|                 |  |
|-----------------|--|
| <b>Crop(s):</b> | Corn and soybeans  |
| <b>Acres:</b>   | Approximately 156 tillable acres   |
| <b>Farm:</b>    | NE 1/4 of Brown Place  |
| <b>Comment:</b> | Average costs/acre for c-sb rotation (share fertilizer, chemicals, and crop insurance) |

| Line  | Value*  | Annual Rate | Annual cost* | Contributor cost* |          |          |
|---|---------|-------------|--------------|-------------------|----------|----------|
|   |         |             |              | Landlord          | Tenant   |          |
| 1. Land <sup>b</sup>  | \$0     | ×           | 4.00%        | \$0.00            |          |          |
| 1a. Real-estate tax   |         | ×           | 0.50%        | \$0.00            |          |          |
| 1b. Land maintenance  |         | ×           | 0.00%        | \$0.00            |          |          |
| 1c. Cash rent (in lieu of lines 1-1c)                                 |         |             |              | \$225.00          | \$225.00 |          |
| 2. Crop machinery   | \$250   |             |              |                   |          |          |
| 2a. Depreciation  |         | ×           | 9.00%        | \$22.50           |          | \$22.50  |
| 2b. Interest  |         | ×           | 7.00%        | \$17.50           |          | \$17.50  |
| 2c. Repairs   |         | ×           | 6.00%        | \$15.00           |          | \$15.00  |
| 2d. Taxes and insurance   |         | ×           | 0.50%        | \$1.25            |          | \$1.25   |
| 2e. Custom rates (in lieu of lines 2a-2d)                             |         |             |              |                   |          |          |
| 3. Irrigation equipment   | \$0     |             |              |                   |          |          |
| 3a. Depreciation  |         | ×           | 5.00%        | \$0.00            |          |          |
| 3b. Interest  |         | ×           | 7.00%        | \$0.00            |          |          |
| 3c. Repairs   |         | ×           | 1.00%        | \$0.00            |          |          |
| 3d. Taxes and insurance   |         | ×           | 0.50%        | \$0.00            |          |          |
| 4. Labor (hours and \$/hour)  | 2.00    | ×           | \$15.00      | \$30.00           |          | \$30.00  |
| 5. Management   | \$5,000 | ×           | 1.00%        | \$50.00           | \$20.00  | \$30.00  |
| 6. Seed   |         |             |              | \$75.00           |          | \$75.00  |
| 7. Fertilizer   |         |             |              |                   |          |          |
| 8. Herbicides   |         |             |              |                   |          |          |
| 9. Insecticides/fungicides  |         |             |              |                   |          |          |
| 10. Crop insurance  |         |             |              |                   |          |          |
| 11. Fuel and oil  |         |             |              | \$18.00           |          | \$18.00  |
| 12. Irrigation pumping expense  |         |             |              |                   |          |          |
| 13. Custom machinery hire   |         |             |              |                   |          |          |
| 14. Drying  |         |             |              |                   |          |          |
| 15. Hauling   |         |             |              |                   |          |          |
| 16. Other <u>Miscellaneous</u>  |         |             |              | \$10.00           | \$2.50   | \$7.50   |
| 17. Other _____   |         |             |              |                   |          |          |
| 18. TOTAL SPECIFIED COSTS (lines 1 through 17)                        |         |             |              | \$464.25          | \$247.50 | \$216.75 |
| 19. Percent of Specified Costs (percent of total costs to each party) |         |             |              | 100.0%            | 53.3%    | 46.7%    |

*Enter charges only for non-yield increasing items (those inputs not shared in the same percentage as the crop).*

**Adjustments to Reach Desired Share**

|     |   |   |          |          |          |
|-----|---|---|----------|----------|----------|
| 20. | Cash transfer between parties to achieve desired split            | <i>Add items previously shared or include a cash transfer between parties to obtain desired shares.</i> | \$0.00   | -\$15.50 | \$15.50  |
| 21. |   |   |          |          |          |
| 22. |   |   |          |          |          |
| 23. |   |   |          |          |          |
| 24. | ADJUSTED TOTAL (lines 19 + lines 20 through 23)                   |   | \$464.25 | \$232.00 | \$232.25 |
| 25. | Percent Crop Share Desired (percent of total costs to each party) |   | 100.0%   | 50.0%    | 50.0%    |

\* Value and annual cost can either be total for farm/field or average per acre.

<sup>b</sup> Land contribution should be either land value × interest rate or cash rent.



## APPENDIX IV

“Pasture Rental Agreements for your Farm,” North Central Farm Management Extension  
Committee Publication NCFMEC-03. <http://aglease101.org/DocLib/docs/NCFMEC-03.pdf>

Figure 4-1: Landowner Cost Estimate for Pasture Leasing

| Land and Facility Investments             | Agricultural Value | Acres | Useful life |
|---|--------------------|-------|-------------|
| Land value                                | \$ 240,000         | 160   |             |
| Fences                                    | \$ 10,000          |       | 25 yrs      |
| Corrals                                   | \$ 0               |       | 25 yrs      |
| Other Investments                         | \$ 0               |       | 25 yrs      |
| Stocking Rate (acres/head or animal unit) | 4                  |       |             |

| Item   | Valuation  | Rate  | Annual Charge |
|--|------------|-------|---------------|
| <b>Land Charges</b>                                      |            |       |               |
| Interest   | \$ 240,000 | 1 %   | \$ 2,400      |
| Land Taxes   | \$ 240,000 | 0.5 % | \$ 1,200      |
| Annual Land Development Costs                            |            |       | \$ 0          |
| <b>Facility Charges</b>                                  |            |       |               |
| Depreciation   |            |       | \$ 400        |
| Interest   | \$ 10,000  | 5 %   | \$ 250        |
| Repairs  | \$ 10,000  | 1.0 % | \$ 50         |
| Taxes  | \$ 10,000  | 0.5 % | \$ 25         |
| Insurance  | \$ 10,000  | 0 %   | \$ 0          |
| <b>Other Contributions</b>                               |            |       |               |
| Fertilizer   |            |       | \$            |
| Labor and Management                                     |            |       | \$            |
| <b>Total Pasture Ownership Charges</b>                   |            |       | \$ 4,325      |
| <b>Landowner's Contribution (\$/head or animal unit)</b> |            |       | \$ 108.13     |
| <b>Landowner's Contribution (\$/acre)</b>                |            |       | \$ 27.03      |

Figure 4-2: Livestock Owner Cost Estimate

|  | Weight<br>(lbs./animal) | Value<br>(\$/cwt) | Value<br>(\$/animal) |
|--|-------------------------|-------------------|----------------------|
| Final Value of Animal                                | 800                     | \$ 110.00         | \$ 880.00            |
| Initial Value of Animal                              | 580                     | \$ 120.00         | \$ 696.00            |
| Value of Gain  |                         |                   | \$ 184.00            |
|  | Units                   | Rate              | Cost<br>(\$/animal)  |
| Livestock Owner's Contribution                       |                         |                   |                      |
| Time on pasture (months/year)                        | 4                       |                   |                      |
| Interest   |                         | 6.5 %             | \$ 15.08             |
| Taxes, vet, insurance, miscellaneous                 |                         |                   | \$ 18.50             |
| Marketing, hauling                                   |                         | %                 | \$ 17.05             |
| Death loss   |                         | 1 %               | \$ 6.96              |
| Supplemental Feed                                    |                         |                   | \$ 39.00             |
| Labor  | 1.5                     | \$ 11.00          | \$ 16.50             |
| Management   |                         |                   | \$ 10.00             |
| Livestock Owner's Contribution (\$/head)             |                         |                   | \$ 123.09            |
| Livestock Operating Cost and Initial Value (\$/head) |                         |                   | \$ 819.09            |
| Net Returns to Grazing (\$/head)                     |                         |                   | \$ 60.91             |
| Stocking Rate (acres/head)                           | 4                       |                   |                      |
| Livestock Owner Net Returns to Pasture (\$/acre)     |                         |                   | \$ 15.23             |

Figure 4-3: Calculating Share of Gain

|  | Landowner | Livestock Owner | Total     |
|--|-----------|-----------------|-----------|
| Value of Gain (\$/head from Worksheet 2)                 |           |                 | \$ 184.00 |
| Estimated Contribution (\$/head from Worksheets 1 and 2) | \$ 108.13 | \$ 123.09       | \$ 231.22 |
| Percent contribution                                     | 47 %      | 53 %            | 100 %     |
| Net Return Allocation (\$/head)                          | \$ 86.05  | \$ 97.95        |           |
| Stocking Rate (acres/head or animal unit)                |           |                 | 4.00      |
| Implied Cash Rental Rate (\$/acre)                       | \$ 21.51  |                 |           |

## APPENDIX V

*Source:* Steve Nelle and Stan Reinke, NRCS with input from literature and other specialists from Texas Cooperative Extension and Texas Parks and Wildlife.

|                                    | <b>Body</b>   | <b>Daily Ave</b> | <b>Annual</b>        | <b>AU per</b> | <b>Head</b>   |
|------------------------------------|---------------|------------------|----------------------|---------------|---------------|
| <b>Kind of Animal</b>              | <b>Weight</b> | <b>Intake</b>    | <b>Forage Intake</b> | <b>Head</b>   | <b>per AU</b> |
|                                    | <b>Pounds</b> | <b>% of BW</b>   | <b>Pounds</b>        |               | (Rounded)     |
| <b>Beef Cattle (Cow)*</b>          | 1000          | 2.6              | 9490                 | 1             | 1             |
| <b>Horse</b>                       | 1100          | 3.0              | 12045                | 1.27          | 1             |
| <b>Domestic Sheep (Ewe)</b>        | 130           | 3.5              | 1661                 | 0.18          | 6             |
| <b>Spanish Goat (Nanny)</b>        | 90            | 4.5              | 1478                 | 0.16          | 6             |
| <b>Boer x Spanish Goat (Nanny)</b> | 125           | 4.0              | 1825                 | 0.19          | 5             |
| <b>Angora Goat (Nanny)</b>         | 70            | 4.5              | 1150                 | 0.12          | 8             |



## APPENDIX VI

### Grazing Lease Forms

- Ranchers Agricultural Leasing Handbook (Chapter 7), *available at* <https://agriflife.org/texasaglaw/files/2016/08/Ranchers-Agricultural-Leasing-Handbook.pdf>.
- Ag Lease 101 Forms: Pasture Lease, *available at* <https://aglease101.org/DocLib/docs/NCFMEC-03A.pdf>.
- University of Wisconsin Extension Pasture Lease – Contract Grazing Agreement, *available at* <https://stcroix.uwex.edu/files/2010/05/Pasture-Lease.pdf>.
- University of Missouri-Kansas City Grazing Lease, *available at* <https://view.officeapps.live.com/op/view.aspx?src=http%3A%2F%2Fdir.umkc.edu%2Fattachments%2FLease-GrazingLease.DOC>.

### Farm Lease Forms

- Ag Lease 101 Forms: Cash Farm Lease, *available at* <https://aglease101.org/DocLib/docs/NCFMEC-01A.pdf> .
- Ag Lease 101 Forms: Crop-Share Farm Lease, *available at* <https://aglease101.org/DocLib/docs/NCFMEC-02A.pdf>.
- University of Maryland Cash Lease of Farm Land, Buildings and Equipment, *available at* [http://extension.umd.edu/sites/extension.umd.edu/files/\\_docs/locations/garrett\\_county/Farm%20Cash%20Lease%20-Fillable%20%20form.pdf](http://extension.umd.edu/sites/extension.umd.edu/files/_docs/locations/garrett_county/Farm%20Cash%20Lease%20-Fillable%20%20form.pdf).
- University of Vermont Sample Lease Agreement, *available at* <http://www.uvm.edu/farmtransfer/LegalGuideAppendix.pdf>.
- USDA Cash Farm Lease, *available at* <https://forms.sc.egov.usda.gov/efcommon/eFileServices/eFormsAdmin/FSA1940-0053.pdf>.
- Oklahoma Farm Lease Agreement, *available at* <http://oces.okstate.edu/kay/ag/Oklahoma%20FARM%20LEASE%20AGREEMENT.pdf>.
- Michigan State University Extension Farm land rental agreements and arrangements, *available at* [http://msue.anr.msu.edu/news/farm\\_land\\_rental\\_agreements\\_and\\_arrangements](http://msue.anr.msu.edu/news/farm_land_rental_agreements_and_arrangements).

