

BOARD OF COUNTY COMMISSIONERS
SARPY COUNTY, NEBRASKA

RESOLUTION APPROVING FARM LEASE AGREEMENT FOR EXCESS LAND
SURROUNDING THE JUVENILE JUSTICE CENTER

WHEREAS, pursuant to Neb. Rev. Stat. §23-104(6) (Reissue 2007), the County has the power to do all acts in relation to the concerns of the County necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. §23-103 (Reissue 2007), the powers of the County as a body are exercised by the County Board; and,

WHEREAS, Sarpy County has excess land surrounding the Juvenile Justice Center located at 9701 Portal Road; and,

WHEREAS, LeRoy Keller is desirous of leasing the land to plant, maintain and harvest a crop for the purpose of weed control.

NOW, THEREFORE, BE IT RESOLVED, by the Sarpy County Board of Commissioners that the attached Farm Lease is hereby approved and the Chairman of such Board is authorized to sign the same.

NOW, THEREFORE, BE IT RESOLVED, by the Sarpy County Board of Commissioners that this Board's Chairman, Clerk, and Fiscal Administrator are hereby authorized and directed to execute such ancillary documents as may be required to evidence the contract and take any and all steps necessary or required in order to carry out the terms of such contract after said documents have been reviewed by the Attorney, Fiscal Administrator, and County Administrator.

The above resolution was approved by a vote of the Sarpy County Board of Commissioners at a public meeting duly held in accordance with applicable law on the 13th day of December, 2011.

Tom Rich

Sarpy County Board Chairman

ATTEST:



Debra J. Houghtaling

Sarpy County Clerk

FARM LEASE

This Lease is by and between the County of Sarpy, in the State of Nebraska, a body politic and corporate (hereinafter "Lessor,") and LeRoy Keller (hereinafter "Lessee.") (collectively "the Parties").

WHEREAS, County owns certain property (hereinafter, the "Property") located south of Portal Road and immediately west of 96th Street in Sarpy County, Nebraska, legally described as follows:

PT 9B1 & E1 in Papillion City Limits 21-14-12 (27.43 AC); and,

WHEREAS, a portion of the Property is being used for the purposes of the Lessor's Juvenile Justice Center; and,

WHEREAS, Lessor desires to lease the remaining portion of the Property consisting of farmland, as more particularly described on Attachment A, for purposes of weed control, and Lessee desires to farm such land.

WHEREAS, NOW, THEREFORE, IT IS AGREED BY AND BETWEEN THE PARTIES as follows:

I. TERM OF LEASE:

A. This lease shall be in full force and effect from March 1, 2012 to March 1, 2013. Such term may be extended in one-year increments for up to five years, upon written acknowledgement of the Parties. If extended, such agreement must be agreed upon no later than February 1st of the current contract term and must include the amount of rent due in the subsequent lease year.

II. LESSEE'S DUTIES:

A. Lessee shall plant, maintain and harvest crops from the Property using generally acceptable and appropriate agriculture methods. Lessee shall furnish all the labor and equipment necessary to cultivate in a proper manner all the tillable land on said premises and as described on Attachment A so as to control weeds and erosion as completely as possible. Said work shall be completed during the term of this Lease as further defined herein.

B. Lessee shall keep the premises free of weeds including adjoining fence lines and highway right-of-ways and shall cut, pull, spray or plow under all weeds before they mature, provided that such weed control measures shall not interfere with or damage

the landscaping or other vegetation in the land immediately surrounding the Juvenile Justice Center. Any damage is the responsibility of the Lessee.

C. Unless prior written consent is obtained from Lessor, Lessee shall not plant any crops or prepare any portion of the Property for the planting of any crop if the crop will not mature until after expiration of this Lease.

D. Upon prior written consent by Lessor, Lessee may build temporary fences around the Property, at Lessee's sole cost, so long as such fencing does not interfere with the Juvenile Justice Center or operation thereof. Such temporary fencing must be removed at the request of Lessor at the end of the Lease term.

E. Without charge or cost to Lessor, Lessee agrees to keep in good repair the Property and every part thereof, including but not limited to fences, highway or road access, buildings, structures, terraces and waterways. Any damage to fences, temporary or otherwise, highway or road access, buildings, structures, terraces or waterways must be repaired at Lessee's sole cost. No repairs, alterations or changes of any kind or character will be made to the Property by Lessee without prior written consent of Lessor or its agent. Lessor shall not be liable for any loss or damage that may result from any destruction or defective condition of the land or buildings, structures or equipment thereon. No buildings or structures shall be built upon the Property without prior written consent of Lessor and, if built, shall become part of the real property.

F. Lessee shall keep the Property free from trash and debris. Lessee's activities on the Property shall be consistent with appropriate soil conservation methods, and Lessee shall not maintain a nuisance on the Property.

G. Lessee shall not use manure as a means of fertilizing without prior written consent of Lessor.

H. Lessee shall not burn excess corn stalks, straw, grass or any other substance from or on the Property without written consent of Lessor.

I. In consideration of the potential value of any crops removed and of Lessor's performance under this Agreement, Lessee shall pay rent to Lessor in the amount of \$4,221.82 with \$2,110.91 due upon Lease execution and \$2,110.91 due November 1, 2012. Such rent is effective for the term of the Lease, ending on March 1, 2013. Rent due for subsequent years is subject to the provisions of paragraph I, subsection A herein.

J. Lessee shall be entitled to such crops or profits that Lessee may inure from his use of the Property, subject to the limitations stated herein.

K. Lessee shall not hinder Lessor's access to any portion of the Property and shall vacate or cease activity on any portion thereof as may be designated by Lessor from time to time. Should such activities by Lessor result in the destruction of crops or loss of profits, Lessee shall be entitled to reasonable compensation therefore.

L. Lessee agrees to comply with the residency verification requirements of Neb. Rev. Stat. §4-108 through §4-114. Lessee is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

III. DUTIES OF LESSOR:

A. Lessor shall allow Lessee reasonable access to the Property at points designated by Lessor from the time of the execution of this Lease.

B. Lessor shall not be liable for any compensation or consideration for Lessee's efforts, Lessee being limited to such crops or profits he may receive from activities on said property that fulfill Lessee's duties herein and compatible with the restrictions of this agreement.

IV. COMPLIANCE WITH LAWS:

A. Pursuant to Neb. Rev. Stat. §13-804(5)(Reissue 2007), the Parties hereto acknowledge, stipulate, and agree that this Contract shall not relieve any public agency of any obligation or responsibility imposed upon it by law.

B. Lessee warrants that it has neither employed nor retained any company or person, other than a bona fide employee working for Lessee, to solicit or secure this Agreement, and that Lessee has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, Lessor shall have the right to annul this Lease without liability, or in its discretion, to recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee from Lessee.

C. The Parties hereto promise and agree to comply with all Federal and State laws and County ordinances, and such rules and other regulations which may apply to this Lease, including but not limited to those set forth herein.

D. Pursuant to Neb. Rev. Stat. §23-3113 (Reissue 2007), the Parties hereto declare and affirm that no officer, member, or employee of Lessor, and no member of its governing body and no other public official of Lessor who exercises any functions or responsibilities in the review or approval of the undertaking described in this Lease, or the performing of either Parties' obligations pursuant to this Lease, shall participate in any decision relating to this Lease which affects his or her personal interest, or any partnership, or association in which he or she is directly or indirectly interested: nor shall any employee of Lessor, nor any member of its governing body have any interest, direct or indirect, in this Lease or the proceeds thereof.

V. TERMINATION:

A. This Lease may be terminated by either party for any reason with ninety days written notice to the other. If immature crop exists on the Property, Lessee shall be entitled to reasonable compensation therefore.

VI. HOLD HARMLESS:

A. Each party agrees it is responsible for its own officers, agents, and employees in performing this agreement, and hereby agree to indemnify and hold harmless, to the full extent allowed by law, the other party, its officers, agents, and employees, from and against all losses, claims, damages, and expenses, that may result from any intentional or negligent acts or omissions of the parties, their agents, or employees in performing this agreement.

VII. MISCELLANEOUS PROVISIONS:

A. It is understood and agreed by the Parties hereto that if any part, term, condition or provision of this Lease is held to be illegal or in conflict with any law of this State or the United States, the validity of the remaining parts, terms, conditions, or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Lease did not contain the particular part, term, condition or provisions held to be invalid.

B. Lessee agrees not to assign this Lease or sublet the Property or improvements, or any part thereof, without prior written consent of Lessor. If Lessee fails to operate the Property in a workmanlike manner, Lessor may enter upon the Property to perform or hire the work done at the sole expense of Lessee.

C. Lessor, or its agent, hereby reserves the right to enter upon the Property at any time for the purpose of viewing same or for making repairs, alterations or improvements thereon, or for attending to any business matters pertaining to the Property. In case of termination, Lessee agrees to allow Lessor, or its agent, to direct plowing and preparation and seeding for the next year's crop on any acreage from

which crops have been harvested. In addition to all other remedies provided by law or contained herein, the Lessor may, at its option, upon the failure by Lessee to perform any of the agreements of this Lease, without formal notice or demand, enter upon the Property and repossess the same and hold and enjoy the same as though this Lease had never been in effect.

D. This Lease contains the entire agreement between the Parties, and there are no other written or oral promises, contracts or warrants which may affect it, except as contained herein. This Lease cannot be amended except by written agreement of both parties. Notice to the parties shall be given in writing to the agents for each party named below:

Lessor: Ms. Deb Houghtaling
Clerk of Sarpy County
1210 Golden Gate Dr.
Papillion, NE 68046

Lessee: LeRoy Keller
6504 Platteview Road
Papillion, NE 68133

E. Should Lessee breach, violate or abrogate any term, condition, clause, or provision of this Lease, Lessor may, as its discretion, terminate this Lease forthwith, upon written notice to Lessee. This provision shall not preclude the pursuit of other remedies for breach of contract as allowed by law.

IN WITNESS WHEREOF, we, the contracting parties, by our respective and duly authorized agents, hereto affix our signatures and seals in duplicate this 13th day of December, 2011.

(Seal)



ATTEST:

Debra Houghtaling
Sarpy County Clerk

COUNTY OF SARPY, NEBRASKA,
A body Politic and Corporate

Tom Richard
Chairperson
Sarpy County Board of
Commissioners

Approved as to form and content:

Kerry A. Schmid
Deputy County Attorney

Vendor: *Jeff B. Keller*

By: _____

Title: _____

Attest:

Witness

Sarpy County Purchasing Department

SARPY COUNTY COURTHOUSE
1210 GOLDEN GATE DRIVE
PAPILLION, NE 68046



Brian Hanson, Purchasing Agent
(402) 593-2349

Debby Peoples, Asst. Purchasing Agent
(402) 593-4164

Beth Cunard, Senior Buyer/Contract Administrator
(402) 593-4476

Lois Spethman, Supply Clerk/Purchaser
(402) 593-2102

Memo

To: Sarpy County Board of Commissioners

From: Beth Cunard

Re: JJC Farm Lease

For several years the County has contracted with a local farmer to maintain the land surrounding the JJC. This has been very beneficial for the County for weed control purposes. Recently, we solicited quotes for cash rent from various farmers. Three farmers responded with the best rent proposal from LeRoy Keller. LeRoy is currently farming the new Sheriff's Office and has done very well.

It is recommended that the attached farm lease for land maintenance at the JJC be approved. Should you have any questions, you may contact me at bcunard@sarpy.com

December 7, 2011

Beth Cunard

Cc: Deb Houghtaling
Mark Wayne
Scott Bovick
Brian Hanson



Office of the Sarpy County Assessor

1210 Golden Gate Drive

Papillion, NE 68046

402-593-2122

www.sarpy.com

Memorandum

To: Mike Smith, Sarpy County Attorney
Brian Hansen, Sarpy County Fiscal Administrator
Tom Richards, Sarpy County Board Chairman

Regarding: Lease of county owned land and tax exemption

Gentlemen,

The December 13th agenda has two items listed as 2011-401 and 2011-402 involving the renewal of the contracts/leases for farming the excess land associated with the Sarpy County Sheriff's Office and the Sarpy County Juvenile Justice Center. The stated purpose of the lease contract is for weed control. However, I have some concern over whether the property can be considered as being used for a public purpose and whether the receiving of rental income by the county is a problem when granting a property tax exemption.

Therefore, I am requesting that the county board permit the county attorney to offer an opinion as to the taxable status of both parcels as both parcels are currently exempt from property taxes. I am forwarding to the county attorney a copy of the state regulations used by the assessor's office when reviewing taxable status of real property.

Sincerely,

Dan Pittman
Sarpy County Assessor



Office of the County Attorney

Hall of Justice · 1210 Golden Gate Drive · Suite 3147
Papillion, NE 68046-2889
(402) 593-2230 · FAX: (402) 593-4359

L. Kenneth Polikov
Sarpy County Attorney

MEMO

To: Dan Pittman, Assessor, and the Sarpy County Board of Commissioners

From: Kerry Schmid, Deputy County Attorney

Re: Taxability of County-owned Leased Land

Mr. Pittman asked the County Attorney's Office to provide an opinion concerning whether the leased agricultural land surrounding the Juvenile Justice Center (JJC) and Law Enforcement Center (LEC) should be added to the tax rolls or whether the parcels may remain exempt from taxation. The determinative issue in this situation is whether the use of the leased agricultural land is for a public purpose. If the use is not considered a public purpose under statute and Title 350, Chapter 15 of the Nebraska Administrative Code, the land must be taxed.

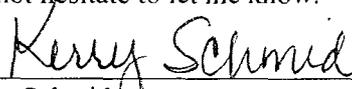
The Nebraska Supreme Court looked at a very similar issue in *City of York v. York Cty. Bd. of Equal.*, 266 Neb. 305, 664 N.W.2d 452 (2003). Much like the situation facing Sarpy County, in the *York* case, the City of York leased land to a private party for agricultural use. As part of this lease, the city received rental payments from the lessee. The leased land was connected to and part of land developed by the city for a community development project. The Tax Equalization and Review Commission determined that the Board of Equalization was proper in finding that the land was not exempt from taxation as its primary use was not that of a public purpose. The city appealed and the Supreme Court determined that the city's renting of the property for an agricultural use was incidental to its primary use as a community development project. The Court further stated that because the leased land has a future use that qualifies as a public purpose, the leased land was exempt, regardless of how distant in the future that public use occurs.

In the present case, the land to be leased to Mr. Keller for agricultural purposes is, first and foremost, land purchased for the JJC and LEC and ultimately to be used by both for either expansion purposes or parking. Thus, under the rationale in the *York* case cited above, the primary purpose of the leased land is that of a civil and criminal justice and not agriculture, regardless of whether money is received as rent under the lease.

It is my opinion based on the caselaw above that the land to be leased to Mr. Keller should be considered exempt and not placed on the tax rolls. In further support of that opinion, no notice of the intent to tax was given to the County for this particular parcel and as the time frame for that notice has passed (notice must be given to the affected political subdivision by March 1), the land cannot be taxed until such notice is given in 2012.

If you have questions or concerns, please do not hesitate to let me know.

December 13, 2011


Kerry Schmid

Deb Houghtaling

Fred Uhe
Chief Deputy

Sarpy County Clerk

Renee Lansman
Assistant Chief Deputy

1210 Golden Gate Drive • Papillion, Nebraska 68046-2895
Phone: 402-593-2105 • Fax: 402-593-4471 • Website www.Sarpy.com • Email: Clerk@sarpy.com

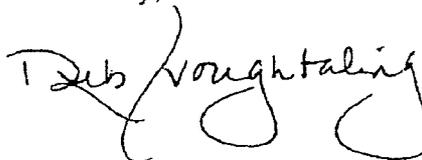
December 15, 2011

LeRoy Keller
6504 Platteview Road
Papillion, NE 68133

Dear Mr. Keller,

Enclosed original Farm Lease which has been approved by the Sarpy County Board and signed by the Chairman on December 13, 2011.

Sincerely,

A handwritten signature in black ink that reads "Deb Houghtaling". The signature is written in a cursive style with a large, looping initial "D".

Deb Houghtaling
Sarpy County Clerk

Enclosures
DJH/sm