

## Flexible-Cash Crop Lease Agreements

### Quick Notes...

The tenant produces crops on the land and makes general management decisions as if the land were owned by the tenant.

Flexible-cash lease agreements involve the tenant paying the landowner a predetermined cash fee adjusted for changes in prices and/or yields.

The landowner has increased opportunities to share in additional income under a flexible-cash lease agreement when compared to a fixed-cash agreement.

The types of land lease agreements vary widely in each locality and from one farming area to another, and are often based on long-standing traditions. Landowners and tenants can choose from three primary types of lease agreements for crop production: crop share, fixed-cash, or flexible-cash agreements.

The purpose of this publication is to help landowners and tenants make informed decisions and to develop "fair" flexible-

cash lease agreements concerning crop production. A sample flexible-cash lease agreement can be found at the end of this document.

### What Is A Flexible-Cash Lease Agreement?

A lease is basically an agreement that gives the use of an asset to a lessee for a specific period of time at a specified rate. A lease does not transfer title of ownership nor an equity interest in the asset.

Labeling a document as a lease does not necessarily mean it is a lease according to the Internal Revenue Service (IRS). Questions concerning the IRS treatment of a lease should be addressed by your tax management professional. Also, the legalities of the lease should be addressed by professional legal counsel.

A flexible-cash lease agreement is a rental arrangement in which the landowner receives a predetermined cash fee from the tenant adjusted for changes in prices and/or yields. The tenant produces crops on the land and makes general management decisions as if the land were owned by the tenant.

Advantages of a flexible-cash lease agreement over other types of agreements include:

1. The landowner has opportunities to share in the additional income resulting from unexpected increases in crop prices and extra-normal yields.
2. The tenant has less risk than with a fixed-cash lease. Rent expense is lower if prices and/or yields are below normal.

Disadvantages of a flexible-cash lease agreement over other types of agreements include:

1. Flexible-cash rent increases risk for both the landowner and tenant.
2. The tenant may have to give up some benefits from higher yields due to the tenant's management input, thus reducing incentive to do the best possible job.
3. Flexible-cash rents are more difficult to calculate than are fixed-cash rents.

### **Developing A Fair Flexible-Cash Lease Agreement**

There are three primary methods that can be used to establish a flexible-cash rent for a particular farm: (1) flexing for price changes only; (2) flexing for yield changes only; and (3) flexing for both price changes and yield. Few, if any, methods for flexing cash rents concern unexpected changes in the cost of purchased inputs. Consequently, flexible rents should be periodically re-examined for possible adjustments due to input costs.

Flexing For Price: This method calls for flexing the cash rent for changes in price only. It is best used in areas where crop yields are quite stable. A base rent is multiplied by the ratio of current year's price to base price. The landowner and tenant must agree on a base rent base price and what current year's price to use (i.e., Jones Elevator closing price on December 31st).

$$\text{Flexed Cash Rent} = \text{Base Rent} \times \frac{\text{Current Year's Price}}{\text{Base Price}}$$

A variation of this method is to flex the base rent for prices outside a specified range. Adjustments are made for incremental changes (up or down) in the price. The landowner and tenant must agree on the base rent, what prices to use, and the incremental changes. For example, cash rent will be \$55 per acre if the current year's price is within a \$3.00 to \$3.50 range; for each \$0.20 change in price above or below the stated range of prices, the rent would increase or decrease \$2.00 per acre.

Flexible-cash rents may also be adjusted when the current year's price is not exactly equal to the stated base price. No range of prices is permitted before a change in rent occurs. Lease arrangements may allow for adjustments to be made for any price change, for only an increase in price, or for only a decrease in price.

Flexing For Yield: This method calls for flexing the cash rent for changes in yield only. A base rent is multiplied by the ratio of current year's yield to base yield. The base yield could be each field's proven/historical yield, the farm's proven/historical yield, or some other agreeable yield.

County averages are generally not advisable since they may vary tremendously from a particular farm and they may not be finalized until the next year.

$$\text{Flexed Cash Rent} = \frac{\text{Base Rent} \times \text{Current Year's Yield}}{\text{Base Yield}}$$

Flexing For Price And Yield: This method requires the landowner and tenant to agree on a base rent tied to a base yield and a base price for each crop. Any or all of the variations for flexing for prices or yield can be used with this approach to calculating flexible-cash rents.

$$\text{Flexed Cash Rent} = \frac{\text{Base Rent} \times \frac{\text{Curr. Year's Price}}{\text{Base Price}} \times \frac{\text{Curr. Year's Yield}}{\text{Base Yield}}}{1}$$

One variation of this method is to set rent equal to the value of a given quantity of the crop. The price used for determining the value would be based on price quotations at a particular location and period. For example, "the amount of cash rent shall be equal to the value of 5,000 bushels of wheat based on the July 15th closing price at Jones' Elevator."

Another variation of this method is to determine a minimum base rent and then

adjust it upward on a percentage basis as the value of the crop increases due to increases in price and/or yield.

### **Put The Agreement In Writing**

It is highly desirable to put the terms of a lease agreement in writing. A written lease agreement enhances understanding and communication between all involved parties, serves as a reminder of the terms originally agreed upon, and provides a valuable guide for the heirs if either the landowner or tenant dies.

It is especially important to have the details of a flexible-cash lease agreement in writing. The calculations of flexible-cash rent are more complicated to figure and easier to forget than for other lease agreements.

Every lease agreement should include certain items -- the names of the parties involved, an accurate description of the property being rented, the beginning and ending dates of the agreement, the amount of rent being paid and when and how it is to be paid, and the signatures of the parties involved. Furthermore, other provisions (such as the rights and responsibilities of both parties) which provide for most of the concerns of both the landowner and tenant.

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Sources: "Fixed and Flexible Cash Rental Arrangements For Your Farm", North Central Regional Extension Publication 75.

*Notes... Network* (For More Information) Contact: **Jeff Tranel, CSU Cooperative Extension, 2200 Bonforte Blvd., Pueblo, CO 81001 (719) 549-2049**

# Flexible-Cash Crop Lease Agreement

This fixed-cash crop lease agreement form is designed to provide the landlord and tenant with a guide for developing an agreement to fit their individual situation. This form is not intended to take the place of legal advice pertaining to contractual relationships between the two parties.

Section 4, No. 4.8a

## PARTIES INVOLVED

This lease is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2 \_\_\_\_\_ between \_\_\_\_\_, landlord, of \_\_\_\_\_ (address) and \_\_\_\_\_, tenant, of \_\_\_\_\_ (address) hereafter known as the landlord and the tenant, respectively.

## PROPERTY DESCRIPTION

The landlord hereby leases to the tenant, to occupy and use for agricultural and related purposes, the following describe d property: \_\_\_\_\_

\_\_\_\_\_ consisting of approximately \_\_\_\_\_ acres situated in \_\_\_\_\_ County, Colorado with all improvements thereon except as follows: \_\_\_\_\_

## GENERAL TERMS OF THE LEASE

- A. Time period covered. The provisions of this agreement shall commence on the \_\_\_\_\_ day of \_\_\_\_\_ (month), 2\_\_\_\_. This lease shall continue in effect from year to year thereafter unless written notice of termination is given by either party to the other \_\_\_\_\_ days prior to the anniversary date of the lease in any year of continuation.
- B. Amendments and alterations. A written request is required for general review of the lease or for consideration of proposed changes by either party \_\_\_\_\_ days prior to the anniversary date of the lease in any year of continuation. Amendments and alterations to this lease shall be (1) in writing, (2) signed by both the landlord and the tenant, and (3) attached to all copies of this lease.
- C. No partnership intended. It is particularly understood and agreed that this lease shall not be deemed to be nor intended to give rise to a partnership relation. Neither party shall have the right to bind the other without written consent.
- D. Transfer of property. If the landlord should sell or otherwise transfer title to the farm, the landlord will do so subject to the provisions of this lease.
- E. No right to sublet. The landlord does not convey to the tenant the right to lease or sublet any part of the farm or to assign the lease to any person or persons whomever.
- F. Binding on heirs. The provisions of this lease shall be binding upon the heirs, executors, administrators and successors of both the landlord and the tenant in like manner upon the original parties except as provided by mutual written consent.
- G. Compensation for crop expenses. The landlord shall reimburse the tenant at the termination of this lease for field work completed and for other crop costs incurred for crops to be harvested during the following year. Unless otherwise mutually agreed, current custom rates for the operations involved shall be used as a basis for settlement.

**AMOUNT AND PAYMENT OF RENT**

A. Cash rent for non-flexible items are:

- a. Pasture..... \$ \_\_\_\_\_
- b. Hayland..... \$ \_\_\_\_\_
- c. Farmstead..... \$ \_\_\_\_\_
- d. Other..... \$ \_\_\_\_\_

B. Cash rent on flexible items shall be calculated using one of the three methods below (unused methods should be stricken). Any changes to the per acre base cash rent shall be made within \_\_\_\_\_ days of the anniversary date of this lease agreement.

I. Flexing For Price.

Crops	Base Rent	X	Current Price /Base Price	=	Rent Per Acre	X	Acres Grown	=	Adjusted Rent
									\$
									\$
									\$
									\$
Total For All Crops									

- The current price for \_\_\_\_\_ (crop) shall be the price at close of day on \_\_\_\_\_ (day) of \_\_\_\_\_ month at \_\_\_\_\_ (location).
- The current price for \_\_\_\_\_ (crop) shall be the price at close of day on \_\_\_\_\_ (day) of \_\_\_\_\_ month at \_\_\_\_\_ (location).
- The current price for \_\_\_\_\_ (crop) shall be the price at close of day on \_\_\_\_\_ (day) of \_\_\_\_\_ month at \_\_\_\_\_ (location).
- The current price for \_\_\_\_\_ (crop) shall be the price at close of day on \_\_\_\_\_ (day) of \_\_\_\_\_ month at \_\_\_\_\_ (location).

II. Flexing For Yield.

Crops	Base Rent	X	Current Yield /Base Yield	=	Rent Per Acre	X	Acres Grown	=	Adjusted Rent
									\$
									\$
									\$
									\$
Total For All Crops									

- The base yield for \_\_\_\_\_ (crop) shall be \_\_\_\_\_ (amount and units) per acre.
- The base yield for \_\_\_\_\_ (crop) shall be \_\_\_\_\_ (amount and units) per acre.
- The base yield for \_\_\_\_\_ (crop) shall be \_\_\_\_\_ (amount and units) per acre.
- The base yield for \_\_\_\_\_ (crop) shall be \_\_\_\_\_ (amount and units) per acre.

III. Flexing With Other Procedure. The procedure, flexing for price and for yield excepted, for flexing cash rent shall be as follows: \_\_\_\_\_

C. Payments of cash rents for non-flexible items shall be made at \_\_\_\_\_ (location) on or before \_\_\_\_\_ day of \_\_\_\_\_ (month) of each year. Payments of cash rents for flexible items shall be made as follows: \_\_\_\_\_

D. If rent is not paid when due, the tenant agrees to pay interest on the amount of unpaid rent at the rate of \_\_\_\_\_ percent per annum from the due date, including that day, until the date paid.

E. Additional agreements in regard to rental payment are: \_\_\_\_\_.

### **IMPROVEMENTS**

A. The costs of establishing hay or pasture, new conservation structures, or improvements (except as identified in other sections of this lease) shall be divided between the landlord and the tenant as follows: \_\_\_\_\_

B. The tenant agrees to provide the unskilled labor necessary to maintain the farm and its improvements during the tenant's tenancy in as good condition as it was at the beginning. Normal wear and depreciation and damage from causes beyond the tenant's control are excepted.

The landlord agrees to furnish all materials and skilled labor needed for normal maintenance and repairs to the farm and its improvements. The landlord shall pay for material purchased by the tenant for such maintenance and repairs in the amount not to exceed \$ \_\_\_\_\_ in any one year, except as otherwise agreed upon. Reimbursement shall be made within \_\_\_\_\_ days after the tenant submits the bill to the landlord.

C. The tenant shall not (1) erect or permit to be erected on the farm any non-removable structure or building; (2) incur any expense to the landlord for such purposes; or (3) add electrical wiring, plumbing, or heating to any building without written consent of the landlord.

D. The landlord shall replace or repair as promptly as possible the dwelling or any other building regularly used by the tenant that may be destroyed or damaged by fire, flood, or other cause beyond the control of the tenant.

E. The tenant may make minor improvements of a temporary or removable nature, which do not mar the condition or appearance of the farm, at the tenant's expense. The landlord agrees to let the tenant remove such improvements even though they are legally fixtures at any time this lease is in effect. The tenant shall have no right to compensation for improvements not removed except as mutually agreed.

### **OPERATION AND MAINTENANCE OF THE FARM**

A. In order to operate the farm efficiently and maintain it in a high state of productivity, the tenant agrees to use diligence to prevent noxious weeds from going to seed on the farm. Treatment of noxious weed infestation and cost thereof shall be paid \_\_\_\_\_ percent by the landlord and \_\_\_\_\_ percent by the tenant.

B. The tenant agrees to control soil erosion as completely as practicable; to keep in good repair all terraces, open ditches, and drains; and to preserve all established water sources.

C. The tenant agrees to not plow permanent pasture, cut live trees for sale or personal use, or pasture new seedlings of legumes and grasses in the year they are planted.

D. The tenant agrees to farm the land in such a manner as meets government agency (such as Natural Resource Conservation Services and Consolidated Farm Services Agency) regulations. The farm is covered in a cooperative agreement between the landlord and \_\_\_\_\_ Soil Conservation District, and the tenant agrees to operate the farm in accordance with the complete soil conservation and land use plan prepared under said cooperative agreement.

E. The landlord shall replace or repair as promptly as possible the dwelling or any other building regularly used by the tenant that may be destroyed or damaged by fire, flood, or other cause beyond the control of the tenant.

**ARBITRATION AND DIFFERENCES**

A. Any differences between the parties as to their several rights or obligations under this lease that are not settled by mutual agreement after thorough discussion shall be submitted for arbitration to a committee of three disinterested persons, one selected by each party hereto and the third by the two thus selected. The committee's decisions shall be accepted by both parties.

B. If either party willfully neglects or refuses to carry out any material provision, the other party shall have the right, in addition to compensation for damage, to terminate the lease. Written notice shall be given to the party at fault specifying the violations of the agreement. If violations are not corrected within 30 days, the lease shall be terminated.

**RIGHT OF ENTRY**

The landlord reserves the right, in person or by agent, to enter the farm at any reasonable time to: (1) consult with the tenant; (2) make repairs, improvements, and inspections; and (3) after written notification of termination of the lease agreement, do plowing, seeding, fertilizing, and any other customary seasonal work, none of which is to interfere with the tenant's ability to carry out regular farm operations.

**EXECUTION**

This lease agreement shall be executed in duplicate on the date above written. A copy of this lease agreement and subsequent alteration, each with original signatures, shall be given to the landlord and to the tenant.

\_\_\_\_\_  
Landlord

\_\_\_\_\_  
Date

\_\_\_\_\_  
Landlord

\_\_\_\_\_  
Date

\_\_\_\_\_  
Tenant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Tenant

\_\_\_\_\_  
Date