



CONSERVATION LEASING TEMPLATES

To encourage adoption of conservation lease provisions when managing public farmlands the toolkit offers a conservation lease framework. Furthermore, this section provides specific leasing language and legal language lease templates as a starting point to incorporate into the lease agreements.

SPECIFIC CONSERVATION PROVISIONS

Following are specific provisions that can be included in a lease to promote and/or require conservation practices. We have noted where the provision fits in the framework laid out in the conservation lease framework.

Preamble

A preamble could be added to the beginning of the lease to explain the fundamental purpose. This could be important if the farmer does not comply with the conservation provisions in the lease, and the agency wishes to claim a breach of contract or not renew the lease. It could make it clear that a purpose of the lease is to build soil health by engaging in conservation practices. For example:

Whereas the parties wish to be stewards of the land and use sustainable farming practices to build soil health.

Term

To incentivize farmers to engage in better land management practices, a term of at least three years is preferred. In addition, automatic renewal can give farmers more secure land tenure as an incentive. For example:

The term of this Agreement shall run for 36 months, beginning on [DD MMM YYYY] and ending on [DD MMM YYYY].

After the initial term, the lease may be renewed for a term of [X] years.

Unless either the Lessor or Lessee gives notice to terminate at least [X] days before end of lease term, lease will be automatically renewed for [X] years.



Conservation

Conservation Plans

A conservation plan could include many of the provisions that follow in this section.

Lessee and Lessor agree to meet with a Natural Resources Conservation Service (NRCS) Conservationist to develop a specific conservation plan for the land, which shall be implemented upon approval by Lessor and Lessee.

Tillage

Options	Language
Reduced-till	Lessee shall till the land such that [X%] of crop residue remains on the farmland.
One-time till	Lessee shall only till the leased land once. No fall tillage is allowed.
No-till	Lessee shall not till the leased land.
With consent	Fall tillage is only allowed with the express consent of the Lessor.
Reporting	Lessee shall submit an annual report documenting the amount of tillage.

Pesticides

Options	Language
Restrictions on products	Lessee shall not use any of the following pesticides: X, Y... Lessee shall not use pesticides that contain: X,Y... Lessor and Lessee shall agree on any pesticide use.
Restrictions on timing	Lessee shall not use any herbicides that will have any residual carry over effect on any grasses or broadleaf plants beyond the last year of the lease.



Pesticides (continued)

Options	Language
Nothing synthetic	Lessee shall only use organic and naturally sourced pesticides.
Reporting	Lessee shall submit an annual report documenting the use of pesticides. This report will include the type of pesticide used, the amount, and the date used.

Cover Crops

Options	Language
Winter-kill	Lessee shall plant cover crops in the fall that are not expected to survive the winter but will provide sufficient biomass to protect the soil. (Ex: oats)
Over-winter	Lessee shall plant cover crops that are expected to survive the winter.
Lessee determination	Lessee shall use best efforts to plant a cover crop by (date) on xxx acres or xxx% of the leased acres. Specifics regarding species, planting method, termination method and date will be determined by Lessee.
Reporting	Lessee shall submit an annual report documenting the use of cover crops. Report will include type of cover crop and [other requirement].
Cost	<p>Lessor shall compensate Lessee at \$xx/acre for the purchase of seed, planting, management and termination of cover crops. Payment shall be made within 120 days after cover crops are established.</p> <p>Rental rate shall be reduced by \$xx/acre in each year of the lease to compensate for the cost of cover crop implementation and management.</p>



Options	Language
Cost (cont.)	The cost of implementing the cover crops (the purchase of seed and planting) shall be borne by Lessor and the cost of maintaining the cover crops shall be borne by Lessee.

Buffers, filter strips, and field borders

Options	Language
Existing buffer	<p>Lessee shall maintain the buffer put in place by Lessor.</p> <p>Lessee shall implement and maintain the buffer required by the Lessor. The cost of implementing the buffer shall be borne by Lessor and the cost of maintaining the buffer shall be borne by Lessee.</p>
No existing buffer	<p>Lessee shall maintain [specific buffer].</p> <p>Lessee shall implement and maintain [type of buffer].</p> <p>Lessee shall monitor [type of buffer] for noxious weeds and spot mow or apply appropriate herbicides.</p>
Filter strips	Lessee shall plant a strip of native vegetation at least [X] feet wide [specify location]
Field borders	Lessee shall plant indigenous vegetation at least [X] feet wide along the border of the tillable land where practicable.

Grassed Waterways

Lessee shall mow grassed waterways to no less than [X inches] in height.
Grassed waterways must be maintained to at least [X] feet wide.
Lessee shall monitor grassed waterways for noxious weeds and spot mow or apply appropriate herbicides.



Nurtient Mangement Plans

Lessee and Lessor agree to develop a nutrient management plan in accordance with NRCS standards.

Lessee will submit an annual soil test report to Lessor.

Rental Rate

A monetary incentive encourages farmers to engage in better land management practices and allows Lessor and Lessee to share the cost. For example:

If [grassed waterway or buffer] reduces the tillable acres, the rent will be reduced by [\$X] per acre lost.

The total rent amount shall be reduced by [X%] each year to compensate for the adoption and maintenance of cover crops [and any other practice added to the lease].

Lessee will be compensated [\$X or %Y of rent] per acre for the implementation of conservation practices set forth in the lease.

Enforcement

Some of the public agencies Delta is working with already have provisions in their leases that specifically require the farmer to comply with conservation provisions. All the agencies could include these types of provisions. For example:

Lessee shall comply fully with the provisions in this lease and failure by Lessee to so comply, unless weather or other events beyond the control of Lessee occur, shall result in the nonrenewal of this lease.

Lessee shall comply fully with the Conservation Plan and failure by Lessee to so comply shall be considered as a default under this agricultural Lease.

Lessor may terminate this agreement if Lessee fails to comply with the provisions of this agreement and after notice of non-compliance, fails to cure the default within [X] days.



In addition, the best method of enforcement includes conversation between Lessor and Lessee, so it may be advisable to include a provision that requires them to meet. For example:

Lessee will lead Lessor on an annual tour of the property, and the parties shall discuss management practices including specific conservation practices required by the lease.

LICENSES V. LEASES

We note that certain agencies use license agreements instead of lease agreements with farmers. A license may give the public agency more freedom and ability to enforce conservation provisions. A license permits a farmer to use the land for farming but does not transfer any interest in the real property.¹ A license may be terminated without a “material breach” by the licensor and is usually for a shorter amount of time.² Therefore, a license is easier to terminate and there are more chances to decide not to renew for another term.³ However, this type of arrangement may be contrary to the agencies’ stated desire to incentivize better management practices on the land.

CONCLUSION

Public agencies could revise their leases to require and incentivize more sustainable farming practices that build soil health. The above provisions are just samples for leasing language to be used in a conservation lease template. Delta Institute would again like to acknowledge that this product is the result of a collaborative effort with the Center for Agriculture and Food Systems at Vermont Law School.

ACKNOWLEDGEMENTS

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Additionally, CAFS has produced the Farmland Access Legal Toolkit (farmlandaccess.org) with support from the National Agricultural Library of USDA. The toolkit helps farmers access, transfer and conserve farmland. It includes free tools, such as the web-based Farm Lease Builder, that help make complex legal processes easier and save farmers and landowners time and money on legal fees. The Farm Lease Builder allows farmers and landowners to go to an application on the website, answer questions related to their leasing situation, and produce a free farmland lease, which they can then take to an attorney for finalizing. The conservation provisions we discuss here will be added to the Farm Lease Builder.



ENDNOTES

1 Land for Good, Farm Access Methods, (last viewed Dec. 8, 2019) <https://landforgood.org/wp-content/uploads/LFG-Farm-Access-Methods-Guide.pdf>.

2 *Id.*

3 *Id.*