CUSTOM FARMING:

AN ALTERNATIVE TO LEASING

. ADVANTAGES/DISADVANTAGES

. DEVELOPING AN AGREEMENT

. CUSTOM FARMING AGREEMENT WORKSHEET

by

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INTRODUCTION

Are you a farm operator with the labor and machinery capacity to farm more acres, but do not want to lease more land? Would you like to reduce the financial risk exposure that you are carrying on leased land? Are you a landowner who wants to take a more active role in the management of your farm, but does not want to invest in a full line of machinery?

An alternative to leasing farmland is custom farming. The custom operator agrees to perform selected machine operations on the owner’s land in exchange for a set fee or rate. The landowner pays for all of the seed, fertilizer, chemicals and other inputs, and keeps all of the crop.

ADVANTAGES/DISADVANTAGES

Custom farming appeals to the farm operator who (1) needs or wants to farm additional acres, (2) is short of operating capital, (3) prefers a guaranteed income and less risk, and (4) government payment limits may also cause a farm operator to consider custom farming. It requires little additional operating capital. Fuel, lubrication and repairs are usually the only added costs. Any return above these costs would be available to meet family living, debt repayment and to improve his/her financial position. In a good year, of course, profits from custom farming will be smaller than under a conventional cash rent lease. But this is a common trade off for reducing risk.

Landowners may find advantages to custom farming as well. Owners with small acreages can make most of the production and marketing decisions without investing in a full line of machinery. There are no lease payments to collect, since the owner receives all of the crop. Profits can be 20-40 percent higher when comparing custom farming to crop sharing. But the risks are also greater. The owner would usually be considered a material participant for tax purposes, and would be entitled to all government payments. Material participation will likely cause retired people to lose some or all of their social security benefits.

Since the landowner is now managing his/her farm, he/she will need to study and attend meetings to stay on top of the latest production practices. Marketing management can be a problem. (One of the duties of the custom operator could be to consult with the landowner on seed varieties, fertilizer rates, herbicide programs for an extra charge. The custom operator could also assist in marketing and understanding government programs.) The landowner will also need to manage people well - your custom operators and others. Likewise, careful selection of a custom operator is important. Timeliness is so important in crop production that the landowner will need to select a custom operator with machine capacity to farm your land and the management skills to get the job done in a timely and effective manner.
DEVELOPING A CUSTOM FARM AGREEMENT

In all cases it is advisable to prepare a written contract. This should include (1) Parties and their Relationships, (2) Scope of the Agreement, (3) Agreements Relative to Responsibilities of the Parties, (4) Payment Plan and (5) Provision for Default, Acts of God and Settlement of Disputes.

The attached worksheet (pages 4 to 7) contains example clauses that might be included in such an agreement. However, it should be viewed merely as a guide. You should have your attorney review your proposed agreement. The following are some comments and suggestions that may be helpful as you prepare your agreement.

**Parties And Their Relationship**

The first part of your agreement should include the date the agreement was entered into and the names and addresses of the landowner and the custom operator. It should then be noted that the custom operator is to be termed an independent contractor and not as an employee or tenant of the owner. This limits the liability of the landowner and places the responsibility for payment of wages and other benefits with the custom operator.

**Scope of the Agreement**

You should first note that the agreement is for a given crop year and the date the agreement ends. An accurate legal description of the location of the property should be noted in the agreement. Including a map of the area and farm as an attachment to the agreement would be desirable. (See Exhibit A, page 8) Accurate measurement as to the acreages of each crop to be custom farmed is a must. Measurements by the ASCS office or a monitor on the planter can be used to estimate the number of tillable acres involved. Any changes in the acreages of each crop or overall acreage should be noted in writing and signed by both parties.

**Custom Services Expected of the Operator**

The custom services expected of the operator should be spelled out in detail, including the operations to be performed and the number of times over. Example charges are noted on page 9 of the worksheet. These should be modified to fit your situation.

The rate of payment for these operations should be noted in an attachment (see Exhibit B, page 9). This might include an overall custom rate for a given crop as well as the custom rate for each individual operation, should circumstances require more or fewer operations.

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1 The attached Custom Farming Agreement Worksheet was adapted from an agreement form developed and used by Land Resource Management and Realty, Inc., Grand Meadow, MN. The authors are indebted to them for permitting them to use their agreement format.
Landowner's Obligations/Negotiable Items

The agreement should also note any obligations of the landowner to the agreement. This might include provisions relating to desired rates of seed, fertilizer and chemicals to apply and field plans to follow. The landowner would likely pay for the application of herbicide and dry broadcast fertilizer. For potential liability reasons, the landowner may want to hire herbicide application by a local elevator or farm supply company.

Certain other operations and activities need to be considered and an agreement reached. These might include provisions for the landowner paying a portion or all of the cost of rock picking, care of waterways, buildings and fencelines, and the replanting of a crop.

Payment Plan

The agreement should include statements as to how payment is to be determined and when payments are to be made. If an incentive plan is to be incorporated into the plan, details as to how the amount of incentive is to be determined should be specified.

Default, Acts of God, Disputes

The agreement should also include provisions as to what happens if the custom operator fails to perform agreed upon operations or "Acts of God" which make it necessary to discontinue operations. Provision for arbitrating disagreements relative to operations to be performed, quality of performance, etc., needs to be made.

Signatures

The agreement should be signed by both parties. The address and social security number of the custom operator should be included so that the Landowner can present a Form 1099 to the custom operator for tax purposes.
CUSTOM FARMING
AGREEMENT WORKSHEET

Farm Name __________________________ Acres in Farm ____________
Location ___________________________ Tillable Acres ____________

Parties and Their Relationship

This agreement, made and entered into this ___ day of ______, 19__, by and
between ______________________ of ______________________ Landowner, and
____________________ of ______________________ Custom Operator.

The custom operator shall be considered an independent contractor and shall be
solely responsible for his/her employee's wages, payroll taxes and other
benefits. The custom operator agrees to indemnify and save the landowner
harmless for any loss or claims arising out of the custom operator's service.

Scope of Agreement

It is mutually agreed by both parties that this agreement is for the crop year
___ and under no circumstance does it continue beyond _____.

The purpose of this agreement is to set forth the understanding of the parties
relative to the custom operations on the property described below and on the
noted terms and conditions. The property on which the services are to be
performed is situated in the county of __________, State of ____________,
legally described as follows: _______________________________

____________________________________________________

A map of the property, including the fields and acreages of each crop to be
custom operated, is contained in Exhibit A.

Custom Services Expected of the Operator

The custom operator agrees to furnish all necessary labor, equipment and fuel to
perform the agreed upon services for the total price per acre or per operation
as agreed upon. The operator shall have the right to hire another party to do
the custom service when necessary for the best interest of both parties. Work
performed on an acre basis shall be considered tillable acres.

The custom operator also agrees to procure the seed, fertilizer, chemicals and
any other products and supplies needed at the Landowner's requested location
within a reasonable distance of the farm. All crop field worksheets are to be
completed on time and returned to the Landowner. Operator will be responsible
for reconciling all delivery receipts with the cropfield worksheets.
The Custom Operator - shall perform the following services as season, weather and good farming practices dictate. The Landowner reserves the right to specify particular times for services to be performed and the general manner in which it shall be accomplished. (The following clauses are examples and should be modified to fit your situation.)

1. **Preparation of Seed Bed** - May consist of two or more tillage trips depending upon the need, with exception of ridge tilled acres where preparation of the seeded bed is completed with the planter.

2. **Planting** - Plant the crop within a reasonable time period, doing the best of his/her ability to keep straight and respectable looking rows at the proper seed depth and rate.

3. **Replanting** - The Operator will be obligated to perform all necessary tillage and replanting operations. Payment for replanting shall be ___% of custom rate as described on Exhibit B Custom Rate per Trip.

4. **Hoeing or Dragging** - Must be available in case of crusting of seed beds, incorporation of chemicals, threat of wind erosion, or any other unexpected problems.

5. **Cultivation** - Should consist of a minimum of once for corn and twice for beans depending upon the need.

6. **Side Dressing Liquid Nitrogen** - If requested by the Landowner, application would be the responsibility of the Operator. The Landowner shall pay $____ per acre applied with the exception of ridge till farming where the Operator is responsible for all application costs.

7. **Harvesting and Trucking** - Weather permitting, crops are to be harvested in a moisture range requested by the Landowner and delivered within a reasonable distance of the farm. Reasonable meaning not more than ___ miles. Trucking beyond this distance shall be reimbursed as follows:

8. **Stalk Chopping** - All corn acres under ridge till farming are to be chopped. Corn acres under conventional farming are to be chopped whenever necessary for the completion of fall tillage.
9. Fall Tillage and Ridging - Unless otherwise specified, all corn acres are to be mold board plowed, chisel plowed (soil saver) or ridged at the discretion of the Landowner. Soybean stubble will be left untouched, unless otherwise specified by the Landowner. Fall tillage and ridging of soybean stubble is not included in the rate per acre, therefore would be paid at the normal custom rate determined shown in Exhibit B. Any fall tillage unable to be completed will be deducted from the Operator's final payment at the current custom rate (Exhibit B).

Landowner's Obligations/Negotiable Items

1. The Landowner shall:
   . Provide the Operator with the desired rate of seed, fertilizer and chemicals to apply on each crop and the field plan to follow
   . Pay for the application of any herbicide and dry broadcast fertilizer. These operations shall be performed by __________________________.
   . Pay for weed pulling for soybeans, if needed
   . Handle all details relating to ASCS.

2. The Landowner and custom operator have made the following additional agreements:
   Rock Picking __________________________
   Care and Maintenance of Waterways, Building Sites and Fence Lines __________________________

Payment Plan

The Operator shall be paid the following rate per acre for each individual crop with the exception of set aside acres. Set aside acres will be paid on a per trip basis at a normal custom rate as specified in Exhibit B.

<table>
<thead>
<tr>
<th>Crop</th>
<th>Established Yield</th>
<th>Rate</th>
<th>Acres</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corn</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Beans</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Small Grain</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Estimated costs for set aside:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total $
An incentive plan will be included as follows:
For each 1% deviation from the established yield, the custom rate per acre will be increased or decreased ¼ percent, with a maximum range of plus or minus ____ percent yield change. The established crop yield shall be based on average production of the farm as noted above.________________________

Payment Schedule

<table>
<thead>
<tr>
<th>Amount</th>
<th>On or Before</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>$_______</td>
<td>________________</td>
<td></td>
</tr>
<tr>
<td>$_______</td>
<td>________________</td>
<td></td>
</tr>
<tr>
<td>$_______</td>
<td>________________</td>
<td></td>
</tr>
</tbody>
</table>

Final payment may be delayed or altered until completion of fall harvest and tillage. The Landowner may demand evidence that the Operator does not have unpaid labor, gas or equipment bills which might create a lien on the property.

Default, Acts of God, Disputes

The Landowner may terminate this agreement or any portion of it any time that the Operator does not furnish the services agreed upon or it is not economically feasible, due to acts of God, for the Landowner to have the custom services performed, with the decision to be made by the Landowner. Upon such termination the Landowner shall pay for quality services rendered and all further obligations under this agreement shall cease.

Any differences between parties as to their respective obligations, the quality or timing of services that are not settled by mutual agreement shall be submitted for arbitration to a committee of three disinterested parties, one selected by each party, the third by the two thus selected. The committee’s decision shall be accepted by both parties.

Agreed to and accepted this ______ day of _____________, 19__.

Operator Signature __________________________________________
Address _____________________________________________________
Social Security # _____________________________________________
Landowner Signature __________________________________________
Address _____________________________________________________
EXHIBIT A

- Map of Farm

- Identify fields
  - Crops to be grown
  - Acreage in field
### Exhibit B

#### Custom Rate (per acre)²

<table>
<thead>
<tr>
<th>Crop Type</th>
<th>Suggested Range</th>
<th>Agreed Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Conventional</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Corn</td>
<td>($65-80)</td>
<td>$</td>
</tr>
<tr>
<td>Soybeans</td>
<td>(55-70)</td>
<td>$</td>
</tr>
<tr>
<td>Small Grain</td>
<td>(35-50)</td>
<td>$</td>
</tr>
<tr>
<td>Set Aside (Estimate)</td>
<td>(15-25)</td>
<td>$</td>
</tr>
</tbody>
</table>

| **Ridge Till**             |                   |             |
| Corn                       | ($62-75)          | $           |
| Soybeans                   | (52-65)           | $           |
| Set Aside (Estimate)       | (15-25)           | $           |

#### Custom Rates (per trip)²

<table>
<thead>
<tr>
<th>Service</th>
<th>Suggested Range</th>
<th>Agreed Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Field Cultivator</td>
<td>($5.00-6.25)</td>
<td>$</td>
</tr>
<tr>
<td>Disk - Tandem</td>
<td>(5.50-6.00)</td>
<td>$</td>
</tr>
<tr>
<td>- Offset</td>
<td>(7.25-8.75)</td>
<td>$</td>
</tr>
<tr>
<td>Corn &amp; Soybean Planting</td>
<td>(7.00-8.00)</td>
<td>$</td>
</tr>
<tr>
<td>Corn &amp; Soybean Ridge Planting</td>
<td>(9.00-10.00)</td>
<td>$</td>
</tr>
<tr>
<td>Grain Drill</td>
<td>(5.00-6.50)</td>
<td>$</td>
</tr>
<tr>
<td>Rotary Hoe</td>
<td>(3.00-4.00)</td>
<td>$</td>
</tr>
<tr>
<td>Dragging</td>
<td>(1.30-1.75)</td>
<td>$</td>
</tr>
<tr>
<td>Cultivating</td>
<td>(4.00-4.50)</td>
<td>$</td>
</tr>
<tr>
<td>Ridge Cultivating</td>
<td>(6.50-7.50)</td>
<td>$</td>
</tr>
<tr>
<td>Spraying</td>
<td>(3.00-3.75)</td>
<td>$</td>
</tr>
<tr>
<td>Anhydrous Application</td>
<td>(5.00-6.50)</td>
<td>$</td>
</tr>
<tr>
<td>Combine Small Grain</td>
<td>(15.00-20.00)</td>
<td>$</td>
</tr>
<tr>
<td>Combine Soybeans</td>
<td>(17.00-22.00)</td>
<td>$</td>
</tr>
<tr>
<td>Combine Corn</td>
<td>(20.00-25.00)</td>
<td>$</td>
</tr>
<tr>
<td>Small Grain &amp; Soybean Trucking</td>
<td>(1.50-2.75)</td>
<td>$</td>
</tr>
<tr>
<td>Corn Trucking</td>
<td>(3.50-5.00)</td>
<td>$</td>
</tr>
<tr>
<td>Clipping or Stalk Chopping</td>
<td>(5.00-6.00)</td>
<td>$</td>
</tr>
<tr>
<td>MB Plowing</td>
<td>(10.00-13.00)</td>
<td>$</td>
</tr>
<tr>
<td>Chisel Plow or Soil Saver</td>
<td>(9.50-12.00)</td>
<td>$</td>
</tr>
<tr>
<td>Ridging</td>
<td>(11.00-13.00)</td>
<td>$</td>
</tr>
</tbody>
</table>

² Custom rates include fuel and operator.