

**CITY OF FAIRHOPE**  
**BID INVITATION**                      **October 18, 2011**

**Sealed proposals will be received by the City of Fairhope of Baldwin County, Alabama, in the City of Fairhope offices, 555 South Section St. Fairhope, Alabama, until 2:00P.M. November 14, 2011 and then publicly opened thereafter, for leasing the following property owned by the City of Fairhope and described as follows:**

**Bid Number 003-12, REQUEST FOR PROPOSALS (RFP) TO LEASE MANLEY ROAD  
PROPERTY**

Questions or comments pertaining to this RFP must be presented in writing, sent as e-mail to the attention of the Purchasing Manager, Daniel P. Ames, P.O. Drawer 429, 555 South Section St., Fairhope, Al 36532, e-mail: dan.ames@cofairhope.com, Seventy Two (72) hours prior to the RFP opening or will be forever waived.

All proposals must be on bid forms provided in the RFP Documents. **BID BOND IS WAIVED.**  
**THERE WILL BE NO PRE-BID MEETING**

The City of Fairhope is an Equal Opportunity Employer and requires that all Lessees comply with the Equal Employment Opportunity laws and the provisions of the Contract Documents in this regard. The City also encourages and supports the utilization of Minority Business Enterprises on this and all public bids.

All proposals, with their guarantee (when required), must be enclosed in a sealed, opaque envelope, clearly identified on the outside as a "**Sealed Bid**" with **Item Name, Bid Number, City of Fairhope's Name and Address and Bidder's Name and Address**. Each proposal must be in a separate envelope. Proposals made out in pencil will not be accepted.

Failure to observe the instructions contained herein will constitute grounds for rejection of your proposal. The City reserves the right to accept or reject all proposals or any portion thereof whichever is in the best interest of the City of Fairhope.

An awarded bidder with three or more employees must have Workman's Compensation Insurance on all of its employees if work is done on City premises. General Liability Insurance must be maintained to hold the City harmless in the event of an accident. If work is done on City premises, proof of acceptable insurance coverage must be submitted prior to starting work. See Instructions below for details.

No proposals will be considered unless the bidder, whether resident or non-resident of Alabama, is properly qualified to submit a proposal for this type of work in accordance with all applicable laws of the State of Alabama. Where applicable, this shall include evidence of holding a current license from the State Licensing board for General Contractors, Montgomery, Alabama, as required by Chapter 8 of Title 34, of the Code of Alabama, 1975. In addition, non-residents of the State if a corporation, shall show evidence of having qualified with the Secretary of State to do business in the State of Alabama.

Daniel P. Ames,  
Purchasing Manager

Posted 10-18-2011  
Opens 11-14-2011  
Advertise Fairhope Courier

**CONTRACT DOCUMENTS  
BID FORM AND SPECIFICATIONS  
for  
BID NO. 003-12  
Request for Proposals**

**RFP To Lease Manley Road Property**

**City of Fairhope Public Works Department**

FAIRHOPE CITY COUNCIL

Timothy M. Kant, Mayor  
Lonnie Mixon, Council President

Set Number \_\_\_\_\_

DATE BID POSTED: 10-18-2011

DATE BID OPENED: 11-14-2011

## **INSTRUCTIONS TO BIDDERS**

1. PREPARATIONS FOR PROPOSALS:
  - a. Forms furnished, or copies thereof, shall be used, and strict compliance with the requirements of the invitation, these instructions, and instruction printed on the forms is necessary. Special care should be exercised in the preparation of proposals. Bidders must make their own estimates of the facilities and difficulties attending the performance of the proposed lease, including local conditions, uncertainty weather, and all other contingencies. All designations and prices shall be fully and clearly set forth. The proper space in the bid form shall be suitably filled in.
  
2. LABOR AND MATERIALS NOT TO BE FURNISHED BY CITY OF FAIRHOPE:
  - a. The City of Fairhope, Alabama, will not furnish any labor, material, or supplies unless specifically provided for in the Lease documents.
  
3. SIGNATURE TO PROPOSALS:
  - a. Each proposal must give the full business address of the Bidder and must be signed by him with his usual signature. Proposals by partnerships must furnish the full names of all partners and must be signed with the partnership name by one of the members of the partnership, or by an authorized representative, followed by the signature and designation of the person signing. Proposals by corporations must be signed with the legal name of the corporation followed by the name of the State of Incorporation and by the signature and designation of the president, secretary, or other person authorized to bind it in the matter. The name of each person shall also be typed or printed below the signature. A proposal by a person who affixes to this signature the word "president", "secretary", "agent" or other designation without disclosing his principal, may be held to be the proposal of individual signing. When requested by the City of Fairhope, Alabama, satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished.
  
4. ALTERNATE PROPOSALS:
  - a. Alternate proposals will not be considered unless called for. Each proposal will be proposed separately unless otherwise expressly requested in the lease document. Combination proposals, that is, proposals on separate projects lumped together as a single proposal or on all or none basis, will not be accepted unless the lease document expressly requests or permits same.
  
5. CORRECTIONS:
  - a. Fill in all blanks on the proposal form with non-erasable ink or type. Erasers or other changes must be explained or noted over the signature of the bidder.
  
6. LESSOR:
  - a. Where the word "Lessor" appears herein, the same refers to City of Fairhope, Alabama, and includes the Fairhope City Council, its governing body.
  
7. INSURANCE:
  - a. If work is to be performed by awarded bidder, The insurance policies of any insurance company recognized as an admitted carrier by the State of Alabama, will be accepted as insurance as required for any bid, lease or contract. See the

instructions hereinafter contained with respect to the type, form, and amounts of required insurance policies.

- b. If work is to be performed, Lessee, at its sole expense, shall obtain and maintain in full force the following insurance to protect the Lessee and the City of Fairhope at limits and coverages specified herein. The City of Fairhope will be listed as "additionally insured" on all applicable certificates. These limits and coverage's specified are the minimum to be maintained and are not intended to represent the correct insurance needed to fully and adequately protect the Lessee.

All insurance will be provided by insurers licensed to conduct business in the State of Alabama and shall have a minimum A.M. Best rating of A-VII and must be acceptable to the City. Self-insured plans and/or group funds not having an A.M. Best rating must be submitted to the City for prior approval.

**NO WORK IS TO BE PERFORMED UNTIL PROOF OF COMPLIANCE WITH THE INSURANCE REQUIREMENTS HAVE BEEN RECEIVED AND APPROVED BY THE CITY.**

- c. Worker's Compensation and Employers Liability  
Part One: Statutory Benefits as required by the State of Alabama  
Part Two: Employers Liability                                 \$500,000 Each Accident  
   \$500,000 Each Employee  
   \$500,000 Policy Limit
- d. Commercial General Liability  
Coverage on an Occurrence form with a combined single limit of (Bodily Injury and Property Damage combined as follows:  

Each Occurrence	\$1,000,000
General Aggregate	\$2,000,000
- e. Automobile Liability  
Covering all Owned, Non-Owned, and Hired vehicles with a limit of no less than \$1,000,000 combined single limit of Bodily Injury and property damage per occurrence.
- f. Damage to Rented Premises   \$100,000.00
- g. Certificate of Insurance  
A Certificate of Insurance evidencing the above minimum requirements must be provided to and accepted by the City **PRIOR** to commencement of any work on the lease. Each policy shall be endorsed to provide ten (10) days written notice of cancellation to the City.  
Note: City of Fairhope as additionally insured.

8. MARKING AND MAILING PROPOSALS:

- a. Mark and mail proposals per the instructions above in Bid Invitation.

9. TIME FOR RECEIVING PROPOSALS:
- a. Proposals received prior to the time of opening will be securely kept, unopened. The Lessor will decide when the specified time has arrived, and no proposal will be considered if received thereafter, except that when a proposal arrives by mail after time for opening, but before award is made, and it is shown to the satisfaction of the Lessor that the non-arrival on time was due solely to delay in the mails for which the bidder was not responsible, such proposal will be received and considered. No responsibility will attach to the City of Fairhope, or Fairhope City Council for the premature opening of a proposal not properly addressed or identified. Unless specially authorized, telegraphic proposals will not be considered.
10. WITHDRAWAL OF PROPOSALS:
- a. Proposals may be withdrawn on written or telegraph request received from bidders prior to the time fixed for opening. Negligence on the part of the bidder in preparing the proposal confers no right for the withdrawal of the proposal after it has been opened.
11. BIDDERS PRESENT:
- a. At, or shortly thereafter, the time fixed for the opening of proposals, their contents will be made public for the information of bidders and others properly interested who may be present either in person or by representation.
12. AWARD OR REJECTION OF PROPOSALS:
- a. Since this is a reverse bid, the bid will be **awarded to the highest responsible bidder** complying with conditions of the request for proposals, provided his bid is reasonable and it is in the best interest of the Lessor to accept it. The bidder to whom the award is made will be notified at the earliest possible date. The Lessor, however, reserves the right to reject any and all proposals and to waive any informality in proposals received whenever such rejection or waiver is in the best interest of the Lessor. It also reserves the right to reject the proposal of a bidder who has previously failed to perform properly or complete on time Contracts, Leases or Purchase Orders, of a similar nature, or a proposal of a bidder who is not, in the judgment of the Lessor, in a position to perform the Contract, Lease or Purchase Order.
- b. Local vendors, within the city limits of the City of Fairhope, will have a 3% favorable allowance in all proposals.
13. ERRORS IN PROPOSALS:
- a. Bidders or their authorized agents are expected to examine the sites, specifications and all other instructions pertaining to the work, which will be open to their inspection. Failure to do so will be at the Bidder's own risk, and he cannot secure relief on the plea of error in the proposal. In case of error in the extension of prices, the unit price will govern.
14. LEASE AND BOND:
- a. The bidder to whom award is made must, when requested, enter into written lease on the standard form as set out herein, within the period specified, or, if no

period be specified, within 15 days after the required forms are presented to him for signature.

- b. For proposals awarded by Purchase Order, the bidder to whom award is made must fill the Purchase Order within times specified in the bid invitation or Purchase Order.

15. COLLUSION:

- a. If there is any reason for believing that collusion exists among the Bidders, any or all proposals may be rejected, and those participating in such collusion may be barred from submitting proposals on the same or other work with the City of Fairhope.
- b. All bidders must sign and notarize the non collusion statement herein.

16. SUBLETTING OR ASSIGNING OF LEASE:

- a. Limitations: The Awarded Bidder shall not sublet, assign, transfer, convey, sell, or otherwise dispose of any portion of the Contract, Lease, or Purchase Orders, his right, title or interest therein, of his power to execute such Contract, Lease or Purchase Orders, to any person, firm or corporation without written consent of the City of Fairhope, and such written consent shall not be construed to relieve the Awarded Bidder of any responsibility for fulfillment of the Contract, Lease or Purchase Orders. Unless otherwise stipulated in the proposal or special provisions, the Awarded Bidder shall perform with his own Organization, and with the assistance of workmen under his immediate superintendence and reported on his payroll, all Contract, Lease or Purchase Order work.

17. EQUAL OPPORTUNITY

- a. The City of Fairhope is an Equal Opportunity Employer and requires that all Awarded Bidders comply with the Equal Employment Opportunity laws and the provisions of the Contract, or Lease Documents, or Purchase Orders in this regard. The City of Fairhope also encourages and supports the utilization of Minority Business Enterprises on this and all public bids.

18. PROPOSAL INELIGIBILITY

- a. Proposals that contain irregularities of any kind may be declared unacceptable at the discretion of the City of Fairhope. The City of Fairhope reserves the right to waive any irregularities and may reject any or all proposals.
- b. Proposals received after the deadline will be returned to the bidder unopened.

19. CONTRACT TIME

- a. The bidder in submitting an offer accepts the conditions of the Contract or Lease Documents and /or Purchase Orders stated for performing the work.

20. ADDENDA

- a. All Addenda are part of the Contract or Lease Documents. Include resultant costs in the Proposal. Addenda will be issued by FAX or Email to all Bidders on record, and posted to the City of Fairhope website [www.cofairhope.com](http://www.cofairhope.com). It is the responsibility of the bidder to verify that all addenda have been received, and to include all signed addenda in the proposal submission.

21. BIDDERS INTERESTED IN MORE THAN ONE PROPOSAL

- a. If more than one proposal is offered by any one party, by or in a name of his clerk, partner, corporation in which he has a substantial interest, or in which he is an officer, or other person, all such proposals may be rejected. A party who has quoted prices on materials to a bidder is not thereby disqualified from quoting prices to other bidders or from submitting a proposal directly for the materials or work. The City of Fairhope reserves the right to determine in its discretion whether the provisions of this clause have been violated by any bidder.

22. COMPLIANCE

- a. All proposal components will comply with all Federal, State and Local laws, ordinances, codes and regulations.
- b. The awarded vendor will be responsible for insuring that all items meet specifications before delivery.
- c. Awarded vendor will make no substitutions for proposal items without prior written approval of the City of Fairhope Purchasing Department.
- d. If you are unable to furnish an item as specified and desire to offer a substitute, give full description of the item.
- e. No errors will be corrected after proposals are opened.
- f. No prices shall include State or Federal Excise Taxes.
- g. Municipalities are exempt from Alabama Sales Tax by state law.
- h. Any attachments hereto are made and become a part of this inquiry and must be signed by bidder.
- i. Our proposal form must be filled in completely.
- j. All pages of this proposal form must be returned.
- k. All documents requested must be attached to the back of page of such request and acknowledgement must be made where blank appears.
- l. A signed contractual or lease agreement, or Purchase Order must be in place prior to beginning work or services.

23. ORDERING

- a. The City of Fairhope will execute a lease with the awarded vendor.

**AFFIRMATION OF NON-COLLUSION**

All Bidders will sign and have notarized the following statement:

I hereby affirm I have not been in any agreement or collusion among bidders or prospective bidders in restraint of freedom of competition, by agreement to bid at a fixed price or to refrain from bidding or otherwise.

Company: \_\_\_\_\_ Date: \_\_\_\_\_

Company Representative: \_\_\_\_\_  
(Print)

Title: \_\_\_\_\_

Company Representative: \_\_\_\_\_  
(Signature in ink)

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
My Commission Expires:



**SCOPE OF WORK AND SPECIFICATIONS**  
**BID NO. : 003-12**  
**BID NAME: RFP TO LEASE MANLEY ROAD PROPERTY**

**SCOPE OF WORK**

1. PURPOSE

- a. The City of Fairhope is seeking to lease a specific, City owned property for farming purposes, until such time the City needs the property for other uses.

2. PROPERTY DEFINED

- a. LEGAL DESCRIPTION:

**TAX PARCEL 46-08-28-0-000-014.008**

The Northeast Quarter of the Southeast Quarter of Section 28, Township 6 South, Range 2 East, Baldwin County, Alabama.

LESS AND EXCEPT a 50 foot wide strip over and across the eastern end thereof for County Road #13 Right-of-Way and a 15 foot wide strip over and across the northern end thereof as recorded in Deed Book 23, Page 196, in the Office of the Judge of Probate, and being more particularly described as follows:

Commencing at the Southeast corner of Section 28, Township 6 South, Range 2 East, Baldwin County, Alabama; run North 00 degrees 02 minutes 30 seconds East, along the East Section line, a distance of 1,317.55 feet to a point; thence run North 89 degrees 52 minutes 32 seconds West, a distance of 50.00 feet to an iron pin lying on the West Right-of-Way line of County Road #13, for the POINT OF BEGINNING; thence continue North 89 degrees 52 minutes 32 seconds West, a distance of 1,278.13 feet to a point; thence run North 00 degrees 04 minutes 07 seconds East, a distance of 1,324.96 feet to an iron pin lying on the South Right-of-Way line of Manley Road; thence run South 89 degrees 59 minutes 06 seconds East, along said South Right-of-Way line, a distance of 1,277.51 feet to an iron pin lying on said West Right-of-Way line; thence run South 00 degrees 02 minutes 30 seconds West along said West Right-of-Way line, a distance of 1,327.40 feet to the POINT OF BEGINNING.

- b. GENERAL LOCATION:  
The property is located at the corner of Manley Road and County Road 13, Fairhope, Al.

**GENERAL TERMS AND CONDITIONS**

- 1. USAGE: Lessee agrees that:

- a. The property is to be used exclusively for farming purposes.

- b. The keeping or raising of livestock on the property is prohibited.
- c. Improvements in the form of manmade structures or facilities are not allowable.
- d. Reshaping of the property will only be allowed to the extent necessary for farming purposes. Redirection of drainage, or any other major reshaping will only be allowed by written approval of the Lessor.
- e. No recreational or social activities, including hunting, parties, or ball games will be conducted on the property.
- f. The application of herbicides, pesticides and fertilizers necessary to the farming enterprise will be with strict adherence to those recommendations of the manufacturer's of those products, all Federal, State and local regulations, and in a manner that extends no threat, or damage to the safety of any person, or the environment.

**City of Fairhope  
Qualifications  
RFP to Lease Manley Road Property**

Qualifications Form

All answers must be typed. All requested information and financial data must be provided.

1. What is or was the name of your farming business?
2. Where is or was this business located?
3. How long has or was this business in operation?
4. If this business is no longer in operation, explain why.
5. Have you ever operated a farming business in Baldwin County?
6. Describe your current or former farming operation. Include types of product grown, average percent Return On Investment, number of staff employed and the tasks they performed, and your direct involvement with the operation.
7. Please provide a profit or loss statement along with your Tax Return for the last two years including 2009 or for the last two years that your farming business operated.
8. List the equipment you plan to use on the property.
9. Provide a brief one year plan for your intended use of the property.
10. Have you ever filed for Chapter 11 or Bankruptcy?

**CITY OF FAIRHOPE  
BID PROPOSAL**

**BID NO.: 003-12  
BID NAME: RFP TO LEASE MANLEY ROAD PROPERTY**

We propose to lease the herein described property for:

BID: \$ \_\_\_\_\_ per year

Each proposal must give the full business address of the bidder and must be signed by him with his usual signature. Proposals by partnerships must furnish the full names of all partners and must be signed with the partnership name by one of the members of the partnership, or by an authorized representative, followed by the signature and designation of the person signing. Proposals by corporations must be signed with the legal name of the corporation followed by the name of the State of Incorporation and by the signature and designation of the president, secretary, or other person authorized to bind it in the matter. The name of each person shall also be typed or printed below the signature. A proposal by a person who affixes to this signature the word "president," "secretary," "agent," or other designation without disclosing his principal, may be held to be the proposal of the individual signing. When requested by the City of Fairhope, Baldwin County, Alabama, satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished.

The undersigned agrees to furnish the goods/services as requested by you for the City of Fairhope, Baldwin County, Alabama in your proposal, and certifies that they will meet or exceed the specifications called for. The undersigned has read all information pertaining to this proposal and has resolved all questions. It is also understood and agreed that all prices quoted are F.O.B. described in the proposal documents and specifications.

If Individual

\_\_\_\_\_  
(Name of Individual or Partnership)

\_\_\_\_\_  
(Name of Partner Print)

\_\_\_\_\_  
(Name of Representative Authorized to sign Bids and Contracts for the firm Print)

\_\_\_\_\_  
(Name of Partner Print)

\_\_\_\_\_  
(Name of Representative Authorized to sign Bids and Contracts for the firm Signature)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

Phone Number (    ) \_\_\_\_\_

Fax Number (    ) \_\_\_\_\_

Primary e-mail address \_\_\_\_\_

Alabama Contractor's License No. \_\_\_\_\_

If Corporation or LLC

Company \_\_\_\_\_

State of Incorporation \_\_\_\_\_

Company Representative \_\_\_\_\_  
(Name of Representative Authorized to sign Bids and Contracts for the firm Print)

Company Representative \_\_\_\_\_  
(Name of Representative Authorized to sign Bids and Contracts for the firm Signature)

Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone Number ( ) \_\_\_\_\_

Fax Number ( ) \_\_\_\_\_

Primary e-mail address \_\_\_\_\_

Alabama Contractor's License No. \_\_\_\_\_

Federal ID Number \_\_\_\_\_

Contractor's State of Alabama Foreign Vendor  
Registration Number (Required of out-of-state-vendors) \_\_\_\_\_

**BID PROPOSAL NOTARISATION:**

STATE OF \_\_\_\_\_ }  
\_\_\_\_\_ } ss:  
COUNTY OF \_\_\_\_\_ }

I, the undersigned authority in and for said State and County, hereby certify that \_\_\_\_\_, as \_\_\_\_\_ respectively, of \_\_\_\_\_, whose name is signed to the foregoing document and who is known to me, acknowledged before me on this day, that, being informed of the contents of the document they executed the same voluntarily on the day the same bears date.

Given under my hand and Notaries Seal on this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

MY COMMISSION EXPIRES:

## LEASE AGREEMENT

This lease agreement is made [date of agreement], between CITY OF FAIRHOPE, a municipal corporation, ("Lessor"), and [name of Lessee], of [address of Lessee], ("Lessee").

In consideration of the mutual covenants contained in this lease agreement, the parties agree as follows:

### SECTION ONE, LEASE OF PREMISES

On the terms and conditions specified in this lease agreement, Lessor leases to lessee and lessee hires from Lessor, to be used for agricultural and related purposes, the following-described property, located in Baldwin County], Alabama, particularly described as follows:

#### TAX PARCEL 46-08-28-0-000-014.008

The Northeast Quarter of the Southeast Quarter of Section 28, Township 6 South, Range 2 East, Baldwin County, Alabama.

LESS AND EXCEPT a 50 foot wide strip over and across the eastern end thereof for County Road #13 Right-of-Way and a 15 foot wide strip over and across the northern end thereof as recorded in Deed Book 23, Page 196, in the Office of the Judge of Probate, and being more particularly described as follows:

Commencing at the Southeast corner of Section 28, Township 6 South, Range 2 East, Baldwin County, Alabama; run North 00 degrees 02 minutes 30 seconds East, along the East Section line, a distance of 1,317.55 feet to a point; thence run North 89 degrees 52 minutes 32 seconds West, a distance of 50.00 feet to an iron pin lying on the West Right-of-Way line of County Road #13, for the POINT OF BEGINNING; thence continue North 89 degrees 52 minutes 32 seconds West, a distance of 1,278.13 feet to a point; thence run North 00 degrees 04 minutes 07 seconds East, a distance of 1,324.96 feet to an iron pin lying on the South Right-of-Way line of Manley Road; thence run South 89 degrees 59 minutes 06 seconds East, along said South Right-of-Way line, a distance of 1,277.51 feet to an iron pin lying on said West Right-of-Way line; thence run South 00 degrees 02 minutes 30 seconds West along said West Right-of-Way line, a distance of 1,327.40 feet to the POINT OF BEGINNING, consisting of 39 acres, more or less, together with all buildings and other improvements on the same, and appurtenances,.

SECTION TWO, TERM

a. Lease duration: One (1) year from signing date of contract, from \_\_\_\_\_ to \_\_\_\_\_, with the option to renew lease for up to Two (2) additional years if terms and conditions, including pricing remain the same, and both parties are in written agreement to renewing the lease. The lease renewal must be approved by City Council, and signed by the Mayor, prior to lease expiration.

SECTION THREE, RENT

The total rent for the term shall be \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) , which Lessee agrees to pay to Lessor at P.O. Drawer 429, Fairhope, Al 36533, or at such other place or places as Lessor may from time to time designate. The rent shall be paid in installments as follows: **lump sum**.

SECTION FOUR, PERMISSIBLE USES

A. The premises are leased to lessee for the purpose of producing crops The land use and cropping plan shall be as follows (the "Land-Use Table"):

LAND USE TABLE

Use of Land	Acres
Farming Baldwin County applicable crops	Approximately thirty nine (39)

B. The acres of crops shown above are those planned for the first year of this lease agreement, and may be adjusted within the year, or, if lease extended, from year to year by mutual agreement of Lessor and lessee. All operations in furtherance of the use or uses and purpose or purposes for which the premises are leased shall be carried on and conducted in an efficient manner and in accordance with the best practices generally employed and practiced in the area.

C. Lessee shall not use, or permit to be used, the demised premises, or any part of the demised premises, for any purpose or use other than those for which the premises have been leased, and in the manner provided in this lease agreement, unless otherwise from time to time mutually agreed by Lessor and Lessee.

SECTION FIVE, WASTE

Lessee shall not commit waste on, or damage to, the demised premises, and will use due care to prevent others from so doing. Lessee shall also not commit a nuisance on the demised premises, or permit others to do so; nor shall Lessee use the demised premises for any unlawful purpose, or allow any other person to do so.

## SECTION SIX, DUTIES OF LESSEE TO REPAIR

Lessee shall keep the demised premises, including buildings, fences, and other improvements, and the approaches to and appurtenances of the property in as good repair and condition as when received, and in as good repair and condition as they may be put during the term of this lease agreement, ordinary wear and tear accepted.

## SECTION SEVEN, ALTERATIONS OR ADDITIONS

A. Lessee shall not (on penalty of immediate forfeiture of the leasehold conveyed by this lease agreement) without the written consent of Lessor, make, or permit to be made, any additions to or alterations of the demised premises, or any part of the demised premises. All additions to and alterations of the demised premises (except trade fixtures so intended by Lessor and Lessee at the time of their annexation to the demised premises, and then only if they can be removed without injury to the reality) shall immediately become a part of the realty, and the property of the Lessor.

B. Should Lessor, from time to time, agree in writing to any addition to or alteration of the demised premises, Lessor and Lessee may at such time or times agree on the terms and conditions on which the additions or alterations shall be made, and the agreement shall determine the rights of the parties in and to the specific additions or alteration made under each such agreement.

## SECTION EIGHT, WATER RIGHTS

A. Lessee shall pay all acquisitions, operation, and maintenance, repair, diversion, and dispersion costs and charges and water tolls connected with the use of water used on the property for whatever purpose or purposes. No surface or subsurface water will be provided by Lessor.

B. No drilling will be allowed.

C. All means of water conveyance onto the property will be pre-approved by Lessor.

## SECTION NINE, LESSOR'S RIGHT OF ENTRY

A. Lessor reserves the right during the term of this lease agreement to enter on the demised premises, and all parts of the demised premises, at any reasonable time or times for the purpose of inspection, consultation with Lessee, making repairs or improvements, developing mineral resources and carrying away minerals, posting notices, and for all other lawful purposes.

B. Lessor shall have, after notice of termination of this lease agreement or an extension of this agreement, the right to enter on the demised premises for the purpose of plowing, seeding and fertilizing, and for the performance of customary



seasonal work; provided, however, such entry by Lessor shall not interfere with lessee in carrying out regular farm operations that Lessee shall, at the time, have the right to carry out and perform under the terms of this lease agreement.

#### SECTION TEN LIABILITY OF LESSOR TO THIRD PERSONS

Lessee agrees to hold Lessor harmless and keep Lessor free, during the term of this lease agreement and all extensions of this lease agreement, from any and all liability and claim for damages arising out of injury to persons and property while in or on the demised premises, or the approaches to the demised premises, or resulting from water or flood damage caused by improper, inadequate, or defective canals and ditches, or works of whatever kind, or the negligent operation, maintenance, use, or handling by whomever, such wear damage occurring on or off the demised premises.

#### SECTION ELEVEN, ASSIGNMENT OR SUBLETTING

A. Lessee shall not assign this lease agreement, or any interest in this lease agreement, not sublet the demised premises, or any part of the demised premises, without Lessor's prior, express, and written consent. Lessee shall also not permit, without the prior written consent of Lessor, the demised premises, or any part of the demised premises, to be occupied or possessed by any other person or persons other than lessee's agents and employees.

B. It is provided that no right or interest of Lessee in and to this lease agreement shall be assignable by operation of law without the approval and consent of the Lessor first obtained in writing. Lessor shall have the right to terminate this lease agreement on any unauthorized assignment or sublease, and declare this lease agreement void and of not further force or effect.

#### SECTION TWELVE, WAIVER BY LESSOR OF BREACH BY LESSEE

A. The waiver by Lessor of a breach of any covenant or condition in this lease agreement shall not constitute a waiver of such covenant or condition, not a waive of a future breach of the same or any other covenant or condition of this lease agreement. The acceptance of rent by Lessor, with or without knowledge of a previous breach, shall not be deemed a waiver of a previous breach or breaches, by lessee of any covenant or condition contained in this lease agreement, other than the one for which payment is so accepted.

#### SECTION THIRTEEN, LESSOR'S REMEDIES ON DEFAULT BY LESSEE

A. Lessee agrees that if [he/she] should be in default of the performance of any of the terms, covenants, or conditions of this lease agreement, or have otherwise breached this lease agreement, Lessor may in addition to every remedy now or later available at law or in equity have the rights and remedies set forth in this lease agreement, which shall be deemed cumulative and not exclusive of those available at law or in equity.

B. Lessor shall have the right to reenter the demised premises without effecting the termination of this lease agreement, by giving lessee lawful notice of such intention. Lessor, either before or after reentry, may notify lessee, if Lessee can be located, that Lessor elects to terminate this lease agreement, or that Lessor elects to relet the demised premises on Lessee's account under the terms and conditions provided below. If lessee cannot with reasonable diligence be located within ten (10) days after abandonment of the demised premises, Lessor may make the election without notice to lessee, or by such substituted notice as the law shall provide or allow.

C. Lessor shall have the right to own and possess at Lessor's election all crops both harvested and unharvested; the right to remove all property and persons from the demised premises; and the right to store in a public warehouse at lessee's expense all property so removed. At lessor's election, lessor may terminate this lease agreement, or, without terminating, relet the demised premises or any part of the demised premises, on such terms and conditions, and at such rental as to Lessor may seem advisable, and from time to time. The term of the reletting may be for a term beyond the term of this lease agreement.

D. Lessor shall have the right to, at lessee's expense, alter the demised premises, or any part of the demise premises, and put the demised premises in good condition and repair.

E. On such reletting, Lessor may elect: (1) to hold lessee immediately liable for : (a) the expenses of reletting, altering and repairing the demised premises; (b) the amount by which the rent reserved in this lease agreement for the period of reletting (not exceeding the term of this lease agreement,. However) exceeds the amount agreed to by the new lessee, or lessees, to be paid as rent for the relet premises; and (c) all indebtedness due under this lease agreement; or (2) to apply the periodic rents received by Lessor: (a) first, to any indebtedness (other than rent) due from lessee to Lessor; (b) second, to the payment of expenses incurred by lessor in repairing and altering the demised premises, and in reletting the demised premises; and (c) third, to the payment of rent due under the lease agreement as it shall become due and payable.

F. If the rent payments due from the reletting of the demised premises are not paid at the time they become due and payable by the tenant holding under the reletting, or are, for any reason, insufficient to pay the rent due under this lease agreement, lessee shall immediately pay to lessor the total deficiency ascertained to be due under the provisions of subparagraph E(1) above; or, pay to lessor the deficiency for the period in which it occurs, under the provisions of subparagraph E(2) above.

#### SECTION FOURTEEN. BINDING EFFECT

The terms, covenants, and conditions contained in this lease agreement shall (subject to the provisions with the respect to assignment and subletting) apply to bind the heirs, successors, executors, administrators, and assigns of the parties. All such parties, including Lessor and Lessee, shall be jointly and several liable under the lease agreement's terms, covenant, and conditions.

#### SECTION FIFTEEN, TIME OF ESSENCE

It is specifically declared that time is of the essence for this lease agreement.

#### SECTION SIXTEEN, GOVERNING LAW

This Agreement is deemed to be under and shall be governed by and construed according to the laws of the State of Alabama. Any litigation arising out of the Agreement shall be heard in the Courts of Baldwin County, Alabama.

#### SECTION SEVENTEEN, ATTORNEY'S FEES

If any action is filed in relation to the lease agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all the sums that either party may be called on to pay, a reasonable sum for the attorney's fees of the successful party.

#### SECTION EIGHTEEN, ENTIRE AGREEMENT

This lease agreement shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this lease agreement.

#### SECTION NINETEEN, MODIFICATION OF AGREEMENT

Any modification of this lease agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if evidenced in a writing signed by each party or an authorized representative of each party.

#### SECTION TWENTY, COUNTERPARTS

This lease agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

#### SECTION TWENTY ONE, INSPECTION

Landlord shall have the right to enter upon the Leased Premises at reasonable hours to inspect the same, provided Landlord shall not thereby unreasonably interfere with Tenant's business on the Leased Premises. Landlord shall have the right to show said Premises to prospective tenants and to display "For Sale" and/or "For Rent" signs on said Premises.

#### SECTION TWENTY TWO, COMPLIANCE WITH LAW

a. Tenant shall comply with all laws, orders, ordinances and other public requirements now or hereafter pertaining to Tenant's use of the Leased Premises. Landlord shall comply with all laws, orders, ordinances and other public requirements now or hereafter affecting the Leased Premises.

#### SECTION TWENTY THREE, DEFAULT

a. If default shall at any time be made by Tenant in the payment of rent when due to Landlord as herein provided, and if said default shall continue for fifteen (15) days after written notice thereof shall have been given to Tenant by Landlord, or if default shall be made in any of the other covenants or conditions to be kept, observed and performed by Tenant, and such default shall continue for thirty (30) days after notice thereof in writing to Tenant by Landlord without correction thereof then having been commenced and thereafter diligently prosecuted, Landlord may declare the term of this Lease ended and terminated by giving Tenant written notice of such intention, and if possession of the Leased Premises is not surrendered, Landlord may reenter said premises. Landlord shall have, in addition to the remedy above provided, any other right or remedy available to Landlord on account of any Tenant default, either in law or equity.

#### TWENTY FOUR, ACCELERATION

a. Upon default, the rent payable under this Lease shall become immediately due and payable and without regard whether possession of the Premises shall have been surrendered to or taken by the Landlord.

#### TWENTY FIVE, DAMAGE AND DESTRUCTION

a. If the Leased Premises are damaged to the extent that the same are rendered wholly untenable, and such damage is not directly attributable to Tenant's negligence, then at Landlord's option, this lease shall automatically thereupon terminate, and rent shall be payable only to the time of said destruction. Landlord shall notify Tenant within sixty (60) days

from the time of such damage as to whether Landlord shall terminate this Lease or whenever it shall repair and restore the Leased Premises. If Landlord elects to repair and restore the Leased Premises, Landlord shall make such repairs as soon following the time such damage occurs as is practicable. If the Landlord elects not to repair said building, then this Lease shall be terminated as of the date of the occurrence.

#### TWENTY SIX, NOTICES

a. Any notice required or allowed under this Lease shall be in writing and shall be delivered in person or sent by prepaid certified mail to the Tenant at the Leased Premises and to the Landlord at the address set forth hereinabove, or to such other address as the parties hereto may designate in writing.

#### TWENTY SEVEN, SURRENDER

a. Upon the expiration or termination of the Lease, Tenant shall surrender possession of the Lease Premises in the same condition as the same were in on the Commencement Date, natural wear and tear excepted.

#### TWENTY EIGHT, ATTORNEY'S FEES

a. In the event that Landlord employs an attorney to render advice or services incident to Tenant's breach or threatened breach of this Lease, the Tenant agrees to pay all reasonable attorney's fees incurred by Landlord.

#### TWENTY NINE, INDEMNIFICATION

a. Tenant shall indemnify Landlord and hold Landlord harmless from and against any and all claims, actions, damages, liability and expenses, including costs of defense and attorney's fees, in connection with loss of life, personal injury or property damage arising from the Tenant's occupancy or use of the Leased Premises, including without limitation claims for professional malpractice, or caused wholly or in part by any act or omission of Tenant, its agents, Lessees, employees or invitees.

#### THIRTY, SUBLEASE AND ASSIGNMENT

a. Tenant shall not sublease all or any part of the Leased Premises, or assign this Lease in whole or in part without Landlord's consent, such consent not to be unreasonably withheld or delayed. Any violation hereof is agreed and understood to constitute a substantial and material breach of condition of this

Lease, with all of the rights thereunto pertaining as in the case of default for any other cause hereunder.

#### THIRTY ONE, WAIVER OF SUBROGATION

a. Landlord and Tenant each hereby waives such causes of action that either may have or acquire against the other that are occasioned by the negligence of either party or their respective employees or agents and that result in damage to the other party's property that is located in or about the Leased Premises and that are caused by fire and/or hazards normally insured by an extended coverage endorsement to a standard fire insurance policy. Each party further agrees to use its respective best efforts to cause any insurance policy covering damage to such property from fire and/or the hazards covered under said endorsement to contain a waiver of subrogation or endorsement under which the insurance company waives its right of subrogation against any party to this Lease in case of destruction of or damage to said property.

#### THIRTY TWO, LANDLORD'S RIGHTS CUMULATIVE

a. Landlord's failure to insist upon Tenant's strict performance of any of its obligations under this lease shall not be construed as a waiver of Tenant's future strict performance. Landlord's receipt of any payment with knowledge of Tenant's breach of any covenant hereunder shall not be deemed a waiver of such breach.

#### THIRTY THREE, HOLDING OVER

a. If the Tenant continues to occupy the Premises following the expiration of the Term, or option period, of this Lease or following an event of default, then such holding over shall create a month-to-month extension of the Term of this Lease. PROVIDED, HOWEVER, that the Landlord may terminate this Lease during any holdover period upon ten (10) days' prior written notice to Tenant.

#### THIRTY FOUR, EMINENT DOMAIN

a. In the event that a governmental authority causes the Leased Premises (or so much thereof so as to render the same untenable) to be taken under power of eminent domain or to otherwise be transferred in lieu thereof, then this Lease shall automatically terminate as of the date that possession is taken by the governmental authority, Any compensation awarded or paid for any taking or acquiring under the power or threat of eminent domain, whether for the whole or a part of the Leased Premises, shall be paid to the Landlord.

#### THIRTY FIVE, SAFETY

a. Tenant shall make any and all additions, improvements, alterations and repairs to or on the Leased Premises that are required or recommended by any lawful authorities, insurance underwriters or insurance inspectors and that are necessitated by Tenant's use or occupancy of the Leased **Premises**. In the event that Tenant fails or refuses to make any such improvements, alterations or repairs, the Landlord may perform the same and Tenant agrees to pay Landlord upon demand for the costs incurred by Landlord in doing so.

#### THIRTY SIX, ACCORD AND SATISFACTION

a. Tenant's payment or Landlord's receipt of acceptance of a lesser amount than is actually due hereunder shall not be deemed an accord and satisfaction. Landlord may accept any such payment without prejudice to Landlord's right to recover the balance of such payment or to pursue any other remedy provided in this Lease.

#### THIRTY SEVEN, ENTIRE AGREEMENT

a. This Lease and any exhibits attached hereto set forth all the agreements between Landlord and Tenant concerning the Leased Premises. No subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless the same is reduced to writing and signed by them.

#### THIRTY EIGHT, PARTIAL INVALIDITY

a. If any term, covenant or condition of the Lease or the application thereof to any person or circumstances shall be to any extent held invalid or unenforceable, the remainder of the Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Lease shall be valid and enforceable to the fullest extent permitted by law.

#### THIRTY NINE, RECORDING

a. Tenant shall not record this Lease without first obtaining the prior written consent of Landlord and the recordation of this Lease by Tenant without first obtaining such consent shall be deemed a material breach of this Lease.

#### FORTY, COUNTERPARTS

a. This Lease is executed in counterparts, each of which shall be deemed a duplicate original hereof.

#### FORTY ONE, TERMINATION OF AGREEMENT

a. Termination for Default: Performance of Work under this Agreement may be terminated by the Lessor, in whole or in part, in writing, whenever the Lessor





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I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that

\_\_\_\_\_ whose name as \_\_\_\_\_

\_\_\_\_\_ of \_\_\_\_\_,

\_\_\_\_\_ a corporation, is signed

to the foregoing

instrument, and who is known to me, acknowledged before me on this day, that being informed of the contents of the within instrument, he, as such officer and with full authority executed the same voluntarily and as the act of said corporation.

Given under my hand and Official Seal this the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC,

\_\_\_\_\_, \_\_\_\_\_  
county) (state)

My Commission expires: \_\_\_\_/\_\_\_\_/\_\_\_\_

LESSOR NOTARIZATION

{STATE OF ALABAMA}

{COUNTY OF BALDWIN}

I, \_\_\_\_\_, a Notary Public in and for said State and County, hereby certify that TIMOTHY M. KANT and LISA A. HANKS, whose names as Mayor and City Clerk, respectively of the CITY OF FAIHOPE of BALDWIN COUNTY, a body corporate and politic, are signed to the foregoing instrument and who are known to me, acknowledge before me on this day, that being informed of the contents of the instrument, they as such officers and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and notarial seal on this the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC, BALDWIN COUNTY, ALABAMA

My Commission expires: \_\_\_\_/\_\_\_\_/\_\_\_\_