CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number_____

Meeting Type: Regular

Meeting Date: 4/26/12

Action Requested By:
Engineering

Agenda Item Type
Resolution

Subject Matter:

Lease Agreement with Vandiver Farms

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a Renewal Land Lease Agreement with Vandiver Farms for the Lease of Farm Land located on the east side of Old Railroad Bed Road at Magnolia Springs Subdivision

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow
and accomplish and; any other information that might be helpful.

Land lease agreement in the amount of $375.00 for approx. 5 acres of unimproved land located on the east side of Old Railroad Bed Road at Magnolia Springs Subdivision. Land will be used for agricultural purposes. Income to be credited to – Acct. No. 02-0000-3077-0000.

Associated Cost:

Budgeted Item: Select...

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head: _____ Date: 4/10/12

revised 3/12/2012

ROUTING SLIP
CONTRACTS AND AGREEMENTS

Originating Department: **Engineering** Council Meeting Date: 4/26/12

Department Contact: **Lynn Majors** Phone # **256-427-5201**

Contract or Agreement: **Land Lease Renewal Agreement**

Document Name: **Vandiver Farms Lease Renewal**

City Obligation Amount: **0**

Total Project Budget: **$375.00**

Uncommitted Account Balance: **0**

Account Number: **02-0000-3077-0000**

Procurement Agreements

Not Applicable	**Not Applicable**

Grant-Funded Agreements

Not Applicable	**Grant Name:**

Department	Signature	Date
1) Originating		4/10/12
2) Legal		4-10-12
3) Finance		4/12
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO. 12-____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into a lease with Vandiver Farms, Lessee, whereby the City will rent and lease approximately five (5) acres of unimproved land located on the east side of Old Railroad Bed Road at Magnolia Springs Subdivision to be used for agricultural purposes, said lease being substantially similar in words and figures to that certain document attached hereto and identified as "Land Lease Agreement Between the City of Huntsville and Vandiver Farms" consisting of six (6) pages plus sixteen (16) additional pages consisting of Exhibit "A", "E-Verify Clause" and "Contractor's Affidavit and MOU" and the date of April 26, 2012, appearing on the margin of the first page, together with the signature of the President of the City Council, and an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 26th day of April, 2012.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 26th day of April, 2012.

Mayor of the City of Huntsville,
Alabama

LAND LEASE AGREEMENT BETWEEN THE CITY OF HUNTSVILLE AND VANDIVER FARMS

THIS AGREEMENT made, entered into and executed, in duplicate, by and between the City of Huntsville, a municipal corporation within the State of Alabama, hereinafter referred to as "City", and Vandiver Farms, hereinafter referred to as "Lessee".

City hereby rents and lets to Lessee and Lessee hereby takes and leases from City the lands hereinafter described upon the terms and conditions hereinafter set forth:

1. **The Property**: Approximately 5 acres of unimproved land described in Exhibit A attached hereto and incorporated herein as fully as if appearing herein, generally described and located as follows:

   5 Acres being generally located on the East side of Old Railroad Bed Road and more accurately identified in "Exhibit A".

2. **Terms**: The terms of this agreement shall commence on the 27th day of April, 2012, and expire on the 31st day of December, 2012, unless sooner terminated or extended in accordance with the terms and conditions herein set forth.

3. **Extended Term**: Subject to the provisions of paragraphs 4 and 5, of this Lease agreement, Lessee may extend this Lease for successive additional twelve (12) month terms upon giving written notice to City no less than thirty (30) days prior to the end of the then current terms.

4. **Right to Terminate**: City reserves the right to terminate this agreement at the end of any crop year.

5. **Rights Reserved:** It is understood and agreed that this property is owned by the City for development and that the lease of it for farming is secondary to the development purpose. The City reserves the right to show the property at any time to prospective purchasers or tenants, to permit prospective purchasers or tenants to come upon the land to conduct such tests as it deems fit to determine the suitability of the land for its purposes, and to terminate this lease as to any or all of the land so leased at any time upon written notice to the Lessee. The City shall compensate the Lessee for any direct losses which may be sustained by the Lessee as a result of any such showing, testing, or termination. Said direct losses shall include the actual cost of such items as fuel, seed, fertilizer, herbicides and pesticides incurred by Lessee in the normal course of farming operation on the leased land. However, compensation shall not extend to such expenses as labor costs, insurance costs or loss of anticipated profits. If all or any portion of the property is sold or leased by the City during the term of this lease the rent due under the lease will be reduced on a pro rata basis according to the number of acres withdrawn.

6. **Rent**: Lessee agrees to pay City the sum of $75.00 per acre for a total of $375.00. The number of acres planted shall be as recorded in the records of the Madison County Office of the Agricultural Stabilization and Conservation of the U.S. Department of Agriculture. The number of acres planted shall be computed as of July 15th. The foregoing notwithstanding, in no event shall rent be paid on less than 5 acres. All rent shall be payable in arrears on or before the 30th day of September, and is due without demand, set-off or deduction of any kind. Any rental payment received by City more than ten (10) days after the due date shall be assessed a late charge equal to one and one-half percent (1.5%) per month of the amount due.

7. **Use of Property**: The Property shall be used for agricultural purposes only and shall be subject to the following additional terms and conditions:

President of the City Council of the City of Huntsville, AL
Date: April 26, 2012

1. Lessee agrees to conduct farming activities on The Property in an efficient, economic, safe and careful manner, and in accordance with the best farming methods commonly practiced in the area. Lessee shall periodically have the soil tested by the Alabama Department of Agriculture and shall make such applications of fertilizers or lime as may be necessary and appropriate, as recommended by the Alabama Department of Agriculture. All such soil tests shall be conducted at Lessee's sole expense and copies of the soil test reports shall be furnished to the City upon request.

2. Lessee shall cut no timber, nor conduct any mining operations nor remove any soil or other natural substances from The Property.

3. Lessee shall allow no unlawful, improper or otherwise offensive use of The Property, nor commit or permit waste or damage to The Property nor commit or permit any nuisance to exist on The Property. Lessee shall strictly comply with all applicable rules, regulations, laws, administrative orders and ordinances of the City of Huntsville, County of Madison, State of Alabama, the United States and any other governmental agency having jurisdiction regarding use of The Property.

4. Lessee shall not make, construct or install any additions, improvements or alterations to or on The Property without the advance written consent of the City. Lessee shall not construct or install any fuel tanks on The Property, whether permanent or temporary, whether above or below ground, under any circumstances. Any approved additions, improvements or alterations shall become the property of the City upon termination of this Agreement, unless the City gives written approval for Lessee to retain such improvements, in which case Lessee shall promptly remove such improvements at the end of the lease term and shall repair any damages caused by such removal.

8. **Maintenance**: It shall be the responsibility of Lessee to:

1. Maintain The Property and conduct all operations in strict compliance with all governmental regulations and federal, state, county and municipal statutes, laws, ordinances and rules in effect during the term of this agreement.

2. Keep The Property in an orderly condition and free from debris, weeds and brush which would be detrimental to efficient farming operations.

3. Insure that no mechanic's, materialmen's or other liens are placed against The Property for labor or materials furnished or supplied at Lessee's request.

4. Use every reasonable means to prevent soil erosion on The Property.

In the event the City determines that The Property is not being properly maintained, in accordance with the provisions of this Agreement, it shall notify Lessee of the deficiency. Lessee shall perform the required maintenance, at Lessee's sole expense. In the event the maintenance is not satisfactorily performed within thirty (30) days of receiving the notice or, in the event such maintenance is not capable of being performed within said period and Lessee has not begun such maintenance and is not pursuing completion with due diligence, then the City may, in addition to all other rights or remedies provided herein, enter The Property and perform the maintenance. Lessee agrees to reimburse the City for the reasonable cost of all such maintenance immediately

upon demand.

9. **Condition of the Property**: Lessee acknowledges that Lessee has thoroughly inspected the condition of The Property, and found the Property to be in satisfactory condition for the intended purpose. This Agreement is made without any representations or warranties by the City as to the condition of The Property and without obligation of the City to make any changes or alterations to The Property. Lessee expressly assumes sole liability for any and all accidents, loss, cost or damage alleged to have been caused by the condition of The Property.

10. **Environmental Matters**: Lessee agrees to strictly comply with all applicable governmental regulations and federal, state, county and municipal statutes, laws, rules, orders and ordinances, as now exist or may hereafter be adopted concerning protection of the environment. It is an express condition of this Agreement that Lessee shall comply with all rules and regulations of the Environmental Protection Agency, the Alabama Department of Environmental Management, the Department of Agriculture, and any other authority of competent jurisdiction regarding operations on The Property and reporting and clean-up of any spills, emissions, discharges, leaks or releases causing contamination of the environment. Lessee hereby indemnify and holds the City harmless from and against any and all liability, including fines, suits, claims, loss, costs, damage, liens, expenses, judgments and causes of action of every kind resulting from pollution, emissions, leaks, discharges, release, escapes or spills resulting from the activities, operations or omissions of Lessee, the employees, independent contractors or agents of Lessee in connection with the operations on The Property; including, but not limited to, costs of any required clean up, abatement or environmental remediation. This obligation on the part of Lessee shall survive the expiration or earlier termination of this agreement.

    Lessee shall not, nor will Lessee permit any third parties, to discharge, dispose, dump or release, any hazardous substance or waste on or under The Property. The use of pesticides and herbicides, which have been approved by the appropriate regulatory agency, shall not be considered as hazardous substances, when used in accordance with approved application procedures.

11. **Security Deposit**: No security deposit shall be required upon commencement of the lease term. In the event of default by Lessee of any provision of this Agreement, the City reserves the right to institute a reasonable security deposit requirement as a condition of continuing the lease.

12. **Taxes, Assessments and Utilities**: The City shall be responsible for payment of any property taxes or general assessments which may be levied on or assessed against The Property. Lessee shall be responsible for the payment of all taxes levied against Lessee's personal property and taxes attributable to Lessee's use of or income from The Property. Lessee shall be responsible for payment of utility charges, if any.

13. **Sublease**: Lessee shall not sublease or encumber the Property nor any portion thereof under any circumstance. Use of The Property, by anyone other than Lessee constitutes a sublease. Any attempted sublease or assignment of Lessee's interest in this Agreement constitutes an event of default on the part of Lessee and gives the City the right to terminate this Agreement immediately upon notice to Lessee.

14. **Default**:

    1. In the event of Lessee's breach of any provision of this Agreement, the City shall give Lessee written notice of default. In the event the default is not corrected within ten (10) days from the date of such notice, then the City shall have the right to terminate this Agreement or terminate Lessee's right to conduct operations on The Property. Upon termination of this Agreement or upon termination of Lessee's right to conduct operations at The Property, Lessee agrees to promptly remove any and all equipment and vacate The Property without further demand.

2. Lessee agrees to pay the City's reasonable attorneys' fees and all costs of legal proceedings if it becomes necessary for the City to employ an attorney or legal process to collect any amounts due hereunder, to remove any equipment from The Property, to restore The Property to the condition it was in upon commencement of the Agreement or to enforce any provisions of this agreement upon default by Lessee.

3. An assignment for the benefit of creditors, the appointment of a receiver, any proceedings in bankruptcy, whether voluntary or involuntary, or any act of Lessee's insolvency shall be deemed a breach of this Agreement.

4. Upon default by Lessee, the City may elect to exercise any of the remedies provided by this Agreement, individually or cumulatively, or may elect to assert such other remedies as are available in equity or at law.

15. **Insurance**:

1. Lessee shall, within thirty (30) days from the date of this Agreement and at Lessee's sole expense, procure and maintain during the term of this Agreement comprehensive public liability insurance in a minimum amount of ONE MILLION AND NO/100 DOLLARS ($1,000,000.00) per injured person, to a maximum of ONE MILLION AND NO/100 DOLLARS ($1,000,000.00) for a single incident.

2. The City and its councilmen, officers, employees and agents shall be named as additional insureds on the policy. The insurance carrier shall be required to send a certificate of insurance to the City, and give the City thirty (30) days' advance written notification of any cancellation or modification to the policy.

3. It is understood and agreed by Lessee that the City is not responsible for the loss of or damage to any of Lessee's equipment or personal property, nor does the City's insurance cover such loss or damage. Lessee is encouraged to procure and maintain sufficient insurance to protect Lessee's equipment against any loss or damage.

16. **Indemnification:** Lessee, the heirs, personal representatives and assigns of Lessee, shall indemnify and hold the City and its councilmen, officers, employees and agents harmless from and against any and all liability, including fines, suits, judgments, claims, loss, costs, damage, lines, expenses and causes of action of every kind resulting from Lessee's use of or presence on The Property, or arising out of or in connection with Lessee's or any third party's operations, activities or omissions pursuant to this Agreement. Lessee and the heirs, personal representatives and assigns of lessee, shall indemnify and hold the City and its councilmen, officers employees and agents, harmless from and against any and all liability for injury, disability or death to persons, for damage to or loss of property, resulting from Lessee's, or any third party's operations, activities, or omissions pursuant to this Agreement. This indemnification shall include the cost of defense of any suit or claim including all court costs and reasonable attorneys' fees.

17. **Security and Damage**: The City Assumes no responsibility or liability for damage to The Property or crops from any cause whatsoever. The City assumes no responsibility for the security of The Property or any improvements or equipment thereon, nor for the safety of Lessee's employees, independent contractors or agents. Lessee assumes full responsibility and risk of loss for all improvements and equipment on The Property and for the safety

of all persons and equipment utilized in the operations of Lessee.

18. **Relationship of the Parties**: Nothing contained herein shall be deemed or construed as creating a partnership, joint venture or agency relationship between the parties. Neither party shall have the right or authority to bind the other.

19. **Right to Enter**: The City reserves the right to enter the Property at all reasonable times, to inspect the Property, to perform tasks, surveys, etc., or at any time in the event of emergency. The City will endeavor to limit entry to reasonable hours. Lessee shall have no claim against the City for interference with Lessee's interest during such periods of inspection.

20. **Joint and Several Liability**: Each individual lessee executing this Agreement hereby assumes individual as well as joint liability for the full and faithful performance of all provisions of this Agreement.

21. **Waiver**: The City's waiver of default by Lessee of any provision of this Agreement shall not operate as a waiver of subsequent defaults by Lessee.

22. **Integration**: This Agreement is the entire agreement between the parties, and cannot be altered or amended except in writing and signed by both parties.

23. **Binding Effect**: The rights and obligations of this Agreement shall extend to and be binding upon the parties and their heirs, personal representatives, successors and assigns. However, this section shall not be construed as giving Lessee the right to assign this Agreement.

24. **Assignment**: Lessee shall not assign or transfer this Agreement, sublet any portion of The Property or permit any part of The Property to be used by anyone other than Lessee.

25. **Construction**: This Agreement shall be construed under, and in accordance with, the laws of the State of Alabama. In the event any provisions of this Agreement are held to be invalid, illegal or unenforceable in any respect, by a court of competent jurisdiction, the remaining portion of this Agreement shall continue in full force and effect.

26. **Notice**: All payments and written notices required by this Agreement, unless otherwise provided, shall be mailed to the City at the following address:

City of Huntsville
Real Estate Department
P.O. Box 308
Huntsville, Alabama 35804
Attention: Kelly W. Davis

All notices required by this Agreement unless otherwise provided , shall be mailed to Lessee at the following Address:

Vandiver Farms
Attn: Jack Vandiver
135 Winter Lane
Madison, Alabama 35757

IN WITNESS WHEREOF, Jack Vandiver, as Lessee, and the City of Huntsville, a municipal corporation, acting by and through Tommy Battle, as Mayor, and Charles Hagood, as Clerk-Treasurer of the City of Huntsville, Alabama, have hereunto set their hands and affixed the seal of the City of Huntsville and attested the same as and for the official act of said municipal corporation in accordance with their duly constituted authority as such Mayor and Clerk Treasurer as heretofore authorized by the City Council of the City of Huntsville, Alabama, on this the 26 day of April, 2012.

LESSEE:

Jack Vandiver

Jack Vandiver
Vandiver Farms

LESSOR:

CITY OF HUNTSVILLE, a municipal corporation
In the State of Alabama

ATTEST:

BY:_____
Charles E. Hagood
City Clerk-Treasurer

BY:_____
Tommy Battle
Mayor

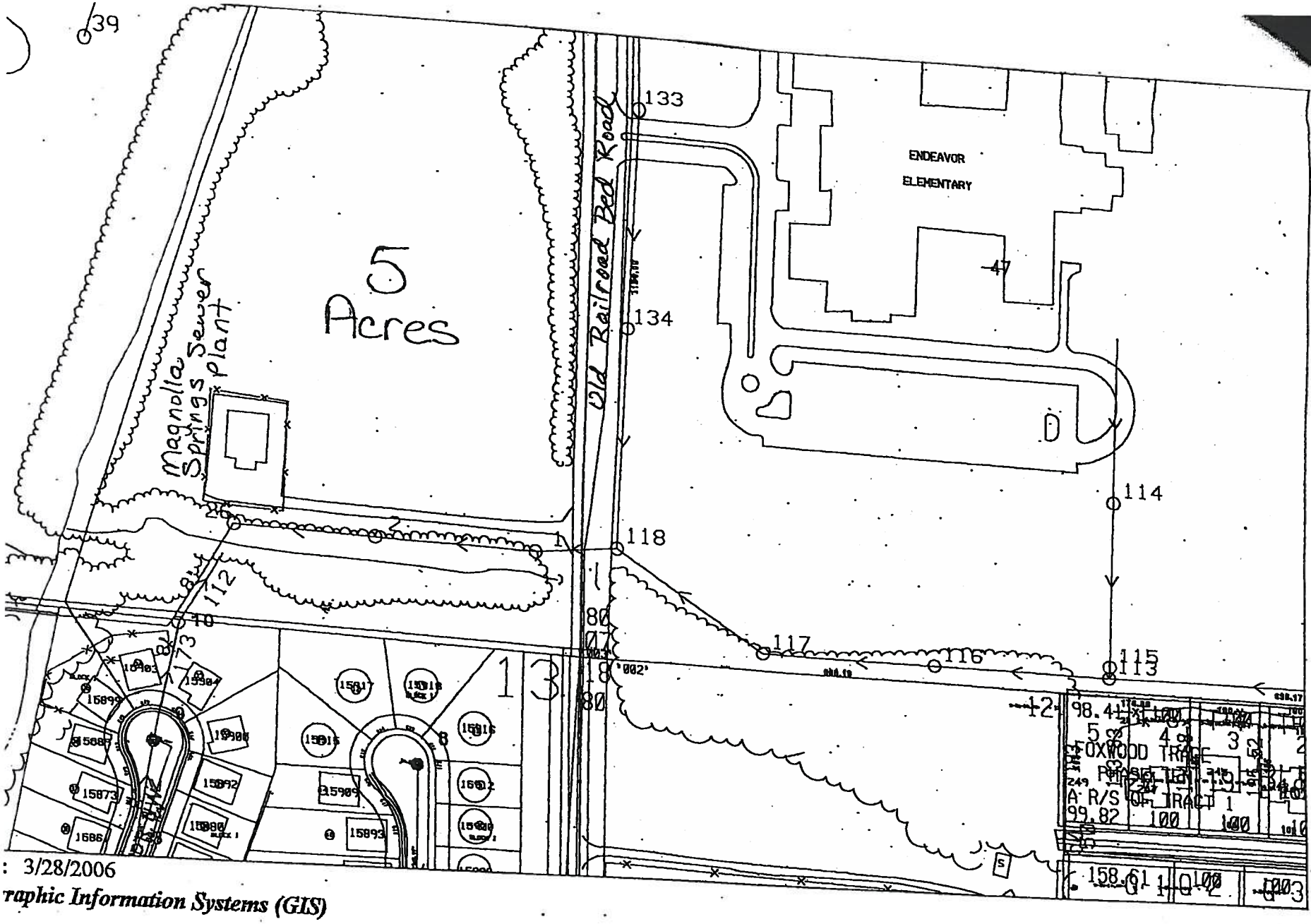

Exhibit "A"

: 3/28/2006

raphic Information Systems (GIS)

Contractor's E-Verify Clause and Affidavit

Effective January 1, 2012, this notice shall be included in all contracts awarded for labor, supplies, or services for the City of Huntsville, Alabama.

E-VERIFY – NOTICE

The Beason-Hammon Alabama Taxpayer and Citizen Protection Act, Act No. 2011-535, *Code of Alabama (1975) § 31-13-1 through 31-13-30"* (also known as and hereinafter referred to as " the Alabama Immigration Act") is applicable to contracts with the City of Huntsville. As a condition for the award of a contract and as a term and condition of the contract with the City of Huntsville, in accordance with § 31-13-9 (a) of the Alabama Immigration Act, any business entity or employer that employs one or more employees shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien and shall attest to such by sworn affidavit signed before a notary. Such business entity or employer shall provide a copy of such affidavit to the City of Huntsville as part of its bid or proposal for the contract along with documentation establishing that the business entity or employer is enrolled in the E-Verify program. The required affidavit form is included at the end of this notice. The original affidavit for your business entity must be returned to the City of Huntsville, the affidavit for the subcontractors should be kept on file in your office, and be made available to the city if requested.

During the performance of the contract, such business entity or employer shall participate in the E-Verify program and shall verify every employee that is required to be verified according to the applicable federal rules and regulations. The business entity or employer shall assure that these requirements are required of every subcontractor in accordance with §31-13-9(c) and shall maintain records that are available upon request by the City, state authorities or law enforcement to verify compliance with the requirements of the Alabama Immigration Act. Failure to comply with these requirements may result in breach of contract, termination of the contract or subcontract, and possibly suspension or revocation of business licenses and permits in accordance with §31-13-9 (e) (1) & (2) or in the case of a subcontractor, in accordance with §31-13- 9 (f) (1) & (2).

FORM FOR SECTIONS 9 (a) and (b) BEASON-HAMMON ALABAMA TAXPAYER AND CITIZEN PROTECTION ACT; CODE OF ALABAMA, SECTIONS 31-13-9 (a) and (b)

AFFIDAVIT FOR BUSINESS ENTITY/EMPLOYER /CONTRACTOR
(To be completed as a condition for the award of any contract, grant, or incentive by the State of Alabama, any political subdivision thereof, or any state-funded entity to a business entity or employer that employs one or more employees)

State of Alabama

County of Madison

Before me, a notary public, personally appeared Phillip Vandiver (print name) who, being duly sworn, says as follows:

As a condition for the award of any contract, grant, or incentive by the State of Alabama, any political subdivision thereof, or any state-funded entity to a business entity or employer that employs one or more employees, I hereby attest that in my capacity as partner (state position) for VANDIVER FARMS (state business entity/employer/contractor name) that said business entity/employer/contractor shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien.

I further attest that said business entity/employer/contractor is enrolled in the E-Verify program. (ATTACH DOCUMENTATION ESTABLISHING THAT BUSINESS ENTITY/EMPLOYER/CONTRACTOR IS ENROLLED IN THE E-VERIFY PROGRAM)

Signature of Affiant

Sworn to and subscribed before me this 23rd day of March, 2012.

I certify that the affiant is known (or made known) to me to be the identical party he or she claims to be.

Kelly W. Davis Signature and Seal of Notary Public

comm. expires: 3/26/2014

E-Verify

Company ID Number: 525918

THE E-VERIFY PROGRAM FOR EMPLOYMENT VERIFICATION MEMORANDUM OF UNDERSTANDING

ARTICLE I

PURPOSE AND AUTHORITY

This Memorandum of Understanding (MOU) sets forth the points of agreement between the Department of Homeland Security (DHS) and **Vandiver Farms** (Employer) regarding the Employer's participation in the Employment Eligibility Verification Program (E-Verify). This MOU explains certain features of the E-Verify program and enumerates specific responsibilities of DHS, the Social Security Administration (SSA), and the Employer. E-Verify is a program that electronically confirms an employee's eligibility to work in the United States after completion of the Employment Eligibility Verification Form (Form I-9). For covered government contractors, E-Verify is used to verify the employment eligibility of all newly hired employees and all existing employees assigned to Federal contracts or to verify the entire workforce if the contractor so chooses.

Authority for the E-Verify program is found in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009, as amended (8 U.S.C. § 1324a note). Authority for use of the E-Verify program by Federal contractors and subcontractors covered by the terms of Subpart 22.18, "Employment Eligibility Verification", of the Federal Acquisition Regulation (FAR) (hereinafter referred to in this MOU as a "Federal contractor with the FAR E-Verify clause") to verify the employment eligibility of certain employees working on Federal contracts is also found in Subpart 22.18 and in Executive Order 12989, as amended.

ARTICLE II

FUNCTIONS TO BE PERFORMED

A. RESPONSIBILITIES OF SSA

1. SSA agrees to provide the Employer with available information that allows the Employer to confirm the accuracy of Social Security Numbers provided by all employees verified under this MOU and the employment authorization of U.S. citizens.

2. SSA agrees to provide to the Employer appropriate assistance with operational problems that may arise during the Employer's participation in the E-Verify program. SSA agrees to provide the Employer with names, titles, addresses, and telephone numbers of SSA representatives to be contacted during the E-Verify process.

3. SSA agrees to safeguard the information provided by the Employer through the E-Verify program procedures, and to limit access to such information, as is appropriate by law, to individuals responsible for the verification of Social Security Numbers and for evaluation of the E-Verify program or such other persons or entities who may be authorized by SSA as governed

Company ID Number: 525918

by the Privacy Act (5 U.S.C. § 552a), the Social Security Act (42 U.S.C. 1306(a)), and SSA regulations (20 CFR Part 401).

4. SSA agrees to provide a means of automated verification that is designed (in conjunction with DHS's automated system if necessary) to provide confirmation or tentative nonconfirmation of U.S. citizens' employment eligibility within 3 Federal Government work days of the initial inquiry.

5. SSA agrees to provide a means of secondary verification (including updating SSA records as may be necessary) for employees who contest SSA tentative nonconfirmations that is designed to provide final confirmation or nonconfirmation of U.S. citizens' employment eligibility and accuracy of SSA records for both citizens and non-citizens within 10 Federal Government work days of the date of referral to SSA, unless SSA determines that more than 10 days may be necessary. In such cases, SSA will provide additional verification instructions.

B. RESPONSIBILITIES OF DHS

1. After SSA verifies the accuracy of SSA records for employees through E-Verify, DHS agrees to provide the Employer access to selected data from DHS's database to enable the Employer to conduct, to the extent authorized by this MOU:

- Automated verification checks on employees by electronic means, and
- Photo verification checks (when available) on employees.

2. DHS agrees to provide to the Employer appropriate assistance with operational problems that may arise during the Employer's participation in the E-Verify program. DHS agrees to provide the Employer names, titles, addresses, and telephone numbers of DHS representatives to be contacted during the E-Verify process.

3. DHS agrees to make available to the Employer at the E-Verify Web site and on the E-Verify Web browser, instructional materials on E-Verify policies, procedures and requirements for both SSA and DHS, including restrictions on the use of E-Verify. DHS agrees to provide training materials on E-Verify.

4. DHS agrees to provide to the Employer a notice, which indicates the Employer's participation in the E-Verify program. DHS also agrees to provide to the Employer anti-discrimination notices issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), Civil Rights Division, U.S. Department of Justice.

5. DHS agrees to issue the Employer a user identification number and password that permits the Employer to verify information provided by employees with DHS's database.

6. DHS agrees to safeguard the information provided to DHS by the Employer, and to limit access to such information to individuals responsible for the verification of employees' employment eligibility and for evaluation of the E-Verify program, or to such other persons or entities as may be authorized by applicable law. Information will be used only to verify the accuracy of Social Security Numbers and employment eligibility, to enforce the Immigration and

Company ID Number: 525918

Nationality Act (INA) and Federal criminal laws, and to administer Federal contracting requirements.

7. DHS agrees to provide a means of automated verification that is designed (in conjunction with SSA verification procedures) to provide confirmation or tentative nonconfirmation of employees' employment eligibility within 3 Federal Government work days of the initial inquiry.

8. DHS agrees to provide a means of secondary verification (including updating DHS records as may be necessary) for employees who contest DHS tentative nonconfirmations and photo non-match tentative nonconfirmations that is designed to provide final confirmation or nonconfirmation of the employees' employment eligibility within 10 Federal Government work days of the date of referral to DHS, unless DHS determines that more than 10 days may be necessary. In such cases, DHS will provide additional verification instructions.

C. RESPONSIBILITIES OF THE EMPLOYER

1. The Employer agrees to display the notices supplied by DHS in a prominent place that is clearly visible to prospective employees and all employees who are to be verified through the system.

2. The Employer agrees to provide to the SSA and DHS the names, titles, addresses, and telephone numbers of the Employer representatives to be contacted regarding E-Verify.

3. The Employer agrees to become familiar with and comply with the most recent version of the E-Verify User Manual.

4. The Employer agrees that any Employer Representative who will perform employment verification queries will complete the E-Verify Tutorial before that individual initiates any queries.

A. The Employer agrees that all Employer representatives will take the refresher tutorials initiated by the E-Verify program as a condition of continued use of E-Verify.

B. Failure to complete a refresher tutorial will prevent the Employer from continued use of the program.

5. The Employer agrees to comply with current Form I-9 procedures, with two exceptions:

• If an employee presents a "List B" identity document, the Employer agrees to only accept "List B" documents that contain a photo. (List B documents identified in 8 C.F.R. § 274a.2(b)(1)(B)) can be presented during the Form I-9 process to establish identity.) If an employee objects to the photo requirement for religious reasons, the Employer should contact E-Verify at 888-464-4218.

• If an employee presents a DHS Form I-551 (Permanent Resident Card) or Form I-766 (Employment Authorization Document) to complete the Form I-9, the Employer agrees to make a photocopy of the document and to retain the photocopy with the employee's Form I-9. The photocopy must be of sufficient quality to allow for verification of the photo

Company ID Number: 525918

and written information. The employer will use the photocopy to verify the photo and to assist DHS with its review of photo non-matches that are contested by employees. Note that employees retain the right to present any List A, or List B and List C, documentation to complete the Form I-9. DHS may in the future designate other documents that activate the photo screening tool.

6. The Employer understands that participation in E-Verify does not exempt the Employer from the responsibility to complete, retain, and make available for inspection Forms I-9 that relate to its employees, or from other requirements of applicable regulations or laws, including the obligation to comply with the antidiscrimination requirements of section 274B of the INA with respect to Form I-9 procedures, except for the following modified requirements applicable by reason of the Employer's participation in E-Verify: (1) identity documents must have photos, as described in paragraph 5 above; (2) a rebuttable presumption is established that the Employer has not violated section 274A(a)(1)(A) of the Immigration and Nationality Act (INA) with respect to the hiring of any individual if it obtains confirmation of the identity and employment eligibility of the individual in good faith compliance with the terms and conditions of E-Verify; (3) the Employer must notify DHS if it continues to employ any employee after receiving a final nonconfirmation, and is subject to a civil money penalty between $550 and $1,100 for each failure to notify DHS of continued employment following a final nonconfirmation; (4) the Employer is subject to a rebuttable presumption that it has knowingly employed an unauthorized alien in violation of section 274A(a)(1)(A) if the Employer continues to employ an employee after receiving a final nonconfirmation; and (5) no person or entity participating in E-Verify is civilly or criminally liable under any law for any action taken in good faith based on information provided through the confirmation system. DHS reserves the right to conduct Form I-9 and E-Verify system compliance inspections during the course of E-Verify, as well as to conduct any other enforcement activity authorized by law.

7. The Employer agrees to initiate E-Verify verification procedures for new employees within 3 Employer business days after each employee has been hired (but after the Form I-9 has been completed), and to complete as many (but only as many) steps of the E-Verify process as are necessary according to the E-Verify User Manual, or in the case of Federal contractors with the FAR E-Verify clause, the E-Verify User Manual for Federal Contractors. The Employer is prohibited from initiating verification procedures before the employee has been hired and the Form I-9 completed. If the automated system to be queried is temporarily unavailable, the 3-day time period is extended until it is again operational in order to accommodate the Employer's attempting, in good faith, to make inquiries during the period of unavailability. Employers may initiate verification by notating the Form I-9 in circumstances where the employee has applied for a Social Security Number (SSN) from the SSA and is waiting to receive the SSN, provided that the Employer performs an E-Verify employment verification query using the employee's SSN as soon as the SSN becomes available.

8. The Employer agrees not to use E-Verify procedures for pre-employment screening of job applicants, in support of any unlawful employment practice, or for any other use not authorized by this MOU. Employers must use E-Verify for all new employees, unless an Employer is a Federal contractor that qualifies for the exceptions described in Article II.D.1.c. Except as provided in Article II.D, the Employer will not verify selectively and will not verify employees hired before the effective date of this MOU. The Employer understands that if the Employer

Company ID Number: 525918

uses the E-Verify system for any purpose other than as authorized by this MOU, the Employer may be subject to appropriate legal action and termination of its access to SSA and DHS information pursuant to this MOU.

9. The Employer agrees to follow appropriate procedures (see Article III. below) regarding tentative nonconfirmations, including notifying employees in private of the finding and providing them written notice of the findings, providing written referral instructions to employees, allowing employees to contest the finding, and not taking adverse action against employees if they choose to contest the finding. Further, when employees contest a tentative nonconfirmation based upon a photo non-match, the Employer is required to take affirmative steps (see Article III.B. below) to contact DHS with information necessary to resolve the challenge.

10. The Employer agrees not to take any adverse action against an employee based upon the employee's perceived employment eligibility status while SSA or DHS is processing the verification request unless the Employer obtains knowledge (as defined in 8 C.F.R. § 274a.1(l)) that the employee is not work authorized. The Employer understands that an initial inability of the SSA or DHS automated verification system to verify work authorization, a tentative nonconfirmation, a case in continuance (indicating the need for additional time for the government to resolve a case), or the finding of a photo non-match, does not establish, and should not be interpreted as evidence, that the employee is not work authorized. In any of the cases listed above, the employee must be provided a full and fair opportunity to contest the finding, and if he or she does so, the employee may not be terminated or suffer any adverse employment consequences based upon the employee's perceived employment eligibility status (including denying, reducing, or extending work hours, delaying or preventing training, requiring an employee to work in poorer conditions, refusing to assign the employee to a Federal contract or other assignment, or otherwise subjecting an employee to any assumption that he or she is unauthorized to work) until and unless secondary verification by SSA or DHS has been completed and a final nonconfirmation has been issued. If the employee does not choose to contest a tentative nonconfirmation or a photo non-match or if a secondary verification is completed and a final nonconfirmation is issued, then the Employer can find the employee is not work authorized and terminate the employee's employment. Employers or employees with questions about a final nonconfirmation may call E-Verify at 1-888-464-4218 or OSC at 1-800-255-8155 or 1-800-237-2515 (TDD).

11. The Employer agrees to comply with Title VII of the Civil Rights Act of 1964 and section 274B of the INA, as applicable, by not discriminating unlawfully against any individual in hiring, firing, or recruitment or referral practices because of his or her national origin or, in the case of a protected individual as defined in section 274B(a)(3) of the INA, because of his or her citizenship status. The Employer understands that such illegal practices can include selective verification or use of E-Verify except as provided in part D below, or discharging or refusing to hire employees because they appear or sound "foreign" or have received tentative nonconfirmations. The Employer further understands that any violation of the unfair immigration-related employment practices provisions in section 274B of the INA could subject the Employer to civil penalties, back pay awards, and other sanctions, and violations of Title VII could subject the Employer to back pay awards, compensatory and punitive damages. Violations of either section 274B of the INA or Title VII may also lead to the termination of its participation in E-

Company ID Number: 525918

Verify. If the Employer has any questions relating to the anti-discrimination provision, it should contact OSC at 1-800-255-8155 or 1-800-237-2515 (TDD).

12. The Employer agrees to record the case verification number on the employee's Form I-9 or to print the screen containing the case verification number and attach it to the employee's Form I-9.

13. The Employer agrees that it will use the information it receives from SSA or DHS pursuant to E-Verify and this MOU only to confirm the employment eligibility of employees as authorized by this MOU. The Employer agrees that it will safeguard this information, and means of access to it (such as PINS and passwords) to ensure that it is not used for any other purpose and as necessary to protect its confidentiality, including ensuring that it is not disseminated to any person other than employees of the Employer who are authorized to perform the Employer's responsibilities under this MOU, except for such dissemination as may be authorized in advance by SSA or DHS for legitimate purposes.

14. The Employer acknowledges that the information which it receives from SSA is governed by the Privacy Act (5 U.S.C. § 552a(i)(1) and (3)) and the Social Security Act (42 U.S.C. 1306(a)), and that any person who obtains this information under false pretenses or uses it for any purpose other than as provided for in this MOU may be subject to criminal penalties.

15. The Employer agrees to cooperate with DHS and SSA in their compliance monitoring and evaluation of E-Verify, including by permitting DHS and SSA, upon reasonable notice, to review Forms I-9 and other employment records and to interview it and its employees regarding the Employer's use of E-Verify, and to respond in a timely and accurate manner to DHS requests for information relating to their participation in E-Verify.

D. RESPONSIBILITIES OF FEDERAL CONTRACTORS WITH THE FAR E-VERIFY CLAUSE

1. The Employer understands that if it is a subject to the employment verification terms in Subpart 22.18 of the FAR, it must verify the employment eligibility of any existing employee assigned to the contract and all new hires, as discussed in the Supplemental Guide for Federal Contractors. Once an employee has been verified through E-Verify by the Employer, the Employer may not reverify the employee through E-Verify.

a. Federal contractors with the FAR E-Verify clause agree to become familiar with and comply with the most recent versions of the E-Verify User Manual for Federal Contractors and the E-Verify Supplemental Guide for Federal Contractors.

b. Federal contractors with the FAR E-Verify clause agree to complete a tutorial for Federal contractors with the FAR E-Verify clause.

c. Federal contractors with the FAR E-Verify clause not enrolled at the time of contract award: An Employer that is not enrolled in E-Verify at the time of a contract award must enroll as a Federal contractor with the FAR E-Verify clause in E-Verify within 30 calendar days of contract award and, within 90 days of enrollment, begin to use E-Verify to initiate verification of employment eligibility of new hires of the Employer who are working in the United States,

Company ID Number: 525918

whether or not assigned to the contract. Once the Employer begins verifying new hires, such verification of new hires must be initiated within 3 business days after the date of hire. Once enrolled in E-Verify as a Federal contractor with the FAR E-Verify clause, the Employer must initiate verification of employees assigned to the contract within 90 calendar days from the time of enrollment in the system and after the date and selecting which employees will be verified in E-Verify or within 30 days of an employee's assignment to the contract, whichever date is later.

d. Employers that are already enrolled in E-Verify at the time of a contract award but are not enrolled in the system as a Federal contractor with the FAR E-Verify clause: Employers enrolled in E-Verify for 90 days or more at the time of a contract award must use E-Verify to initiate verification of employment eligibility for new hires of the Employer who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire. Employers enrolled in E-Verify as other than a Federal contractor with the FAR E-Verify clause, must update E-Verify to indicate that they are a Federal contractor with the FAR E-Verify clause within 30 days after assignment to the contract. If the Employer is enrolled in E-Verify for 90 calendar days or less at the time of contract award, the Employer must, within 90 days of enrollment, begin to use E-Verify to initiate verification of new hires of the contractor who are working in the United States, whether or not assigned to the contract. Such verification of new hires must be initiated within 3 business days after the date of hire. An Employer enrolled as a Federal contractor with the FAR E-Verify clause in E-Verify must initiate verification of each employee assigned to the contract within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever is later.

e. Institutions of higher education, State, local and tribal governments and sureties: Federal contractors with the FAR E-Verify clause that are institutions of higher education (as defined at 20 U.S.C. 1001(a)), State or local governments, governments of Federally recognized Indian tribes, or sureties performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond may choose to only verify new and existing employees assigned to the Federal contract. Such Federal contractors with the FAR E-Verify clause may, however, elect to verify all new hires, and/or all existing employees hired after November 6, 1986. The provisions of Article II.D, paragraphs 1.a and 1.b of this MOU providing timeframes for initiating employment verification of employees assigned to a contract apply to such institutions of higher education, State, local and tribal governments, and sureties.

f. Verification of all employees: Upon enrollment, Employers who are Federal contractors with the FAR E-Verify clause may elect to verify employment eligibility of all existing employees working in the United States who were hired after November 6, 1986, instead of verifying only new employees and those existing employees assigned to a covered Federal contract. After enrollment, Employers must elect to do so only in the manner designated by DHS and initiate E-Verify verification of all existing employees within 180 days after the election.

g. Form I-9 procedures for existing employees of Federal contractors with the FAR E-Verify clause: Federal contractors with the FAR E-Verify clause may choose to complete new Forms I-9 for all existing employees other than those that are completely exempt from this process. Federal contractors with the FAR E-Verify clause may also update previously completed Forms I-9 to initiate E-Verify verification of existing employees who are not completely exempt as long as that Form I-9 is complete (including the SSN), complies with

Company ID Number: 525918

Article II.C.5, the employee's work authorization has not expired, and the Employer has reviewed the information reflected in the Form I-9 either in person or in communications with the employee to ensure that the employee's stated basis in section 1 of the Form I-9 for work authorization has not changed (including, but not limited to, a lawful permanent resident alien having become a naturalized U.S. citizen). If the Employer is unable to determine that the Form I-9 complies with Article II.C.5, if the employee's basis for work authorization as attested in section 1 has expired or changed, or if the Form I-9 contains no SSN or is otherwise incomplete, the Employer shall complete a new I-9 consistent with Article II.C.5, or update the previous I-9 to provide the necessary information. If section 1 of the Form I-9 is otherwise valid and up-to-date and the form otherwise complies with Article II.C.5, but reflects documentation (such as a U.S. passport or Form I-551) that expired subsequent to completion of the Form I-9, the Employer shall not require the production of additional documentation, or use the photo screening tool described in Article II.C.5, subject to any additional or superseding instructions that may be provided on this subject in the Supplemental Guide for Federal Contractors. Nothing in this section shall be construed to require a second verification using E-Verify of any assigned employee who has previously been verified as a newly hired employee under this MOU, or to authorize verification of any existing employee by any Employer that is not a Federal contractor with the FAR E-Verify clause.

2. The Employer understands that if it is a Federal contractor with the FAR E-Verify clause, its compliance with this MOU is a performance requirement under the terms of the Federal contract or subcontract, and the Employer consents to the release of information relating to compliance with its verification responsibilities under this MOU to contracting officers or other officials authorized to review the Employer's compliance with Federal contracting requirements.

ARTICLE III

REFERRAL OF INDIVIDUALS TO SSA AND DHS

A. REFERRAL TO SSA

1. If the Employer receives a tentative nonconfirmation issued by SSA, the Employer must print the notice as directed by the E-Verify system and provide it to the employee so that the employee may determine whether he or she will contest the tentative nonconfirmation. The Employer must review the tentative nonconfirmation with the employee in private.

2. The Employer will refer employees to SSA field offices only as directed by the automated system based on a tentative nonconfirmation, and only after the Employer records the case verification number, reviews the input to detect any transaction errors, and determines that the employee contests the tentative nonconfirmation. The Employer will transmit the Social Security Number to SSA for verification again if this review indicates a need to do so. The Employer will determine whether the employee contests the tentative nonconfirmation as soon as possible after the Employer receives it.

3. If the employee contests an SSA tentative nonconfirmation, the Employer will provide the employee with a system-generated referral letter and instruct the employee to visit an SSA office within 8 Federal Government work days. SSA will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it

Company ID Number: 525918

determines that more than 10 days is necessary. The Employer agrees to check the E-Verify system regularly for case updates.

4. The Employer agrees not to ask the employee to obtain a printout from the Social Security Number database (the Numident) or other written verification of the Social Security Number from the SSA.

B. REFERRAL TO DHS

1. If the Employer receives a tentative nonconfirmation issued by DHS, the Employer must print the tentative nonconfirmation notice as directed by the E-Verify system and provide it to the employee so that the employee may determine whether he or she will contest the tentative nonconfirmation. The Employer must review the tentative nonconfirmation with the employee in private.

2. If the Employer finds a photo non-match for an employee who provides a document for which the automated system has transmitted a photo, the employer must print the photo non-match tentative nonconfirmation notice as directed by the automated system and provide it to the employee so that the employee may determine whether he or she will contest the finding. The Employer must review the tentative nonconfirmation with the employee in private.
3. The Employer agrees to refer individuals to DHS only when the employee chooses to contest a tentative nonconfirmation received from DHS automated verification process or when the Employer issues a tentative nonconfirmation based upon a photo non-match. The Employer will determine whether the employee contests the tentative nonconfirmation as soon as possible after the Employer receives it.

4. If the employee contests a tentative nonconfirmation issued by DHS, the Employer will provide the employee with a referral letter and instruct the employee to contact DHS through its toll-free hotline (as found on the referral letter) within 8 Federal Government work days.

5. If the employee contests a tentative nonconfirmation based upon a photo non-match, the Employer will provide the employee with a referral letter to DHS. DHS will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary. The Employer agrees to check the E-Verify system regularly for case updates.

6. The Employer agrees that if an employee contests a tentative nonconfirmation based upon a photo non-match, the Employer will send a copy of the employee's Form I-551 or Form I-766 to DHS for review by:

- Scanning and uploading the document, or
- Sending a photocopy of the document by an express mail account (paid for at employer expense).

7. If the Employer determines that there is a photo non-match when comparing the photocopied List B document described in Article II.C.5 with the image generated in E-Verify, the Employer must forward the employee's documentation to DHS using one of the means described in the preceding paragraph, and allow DHS to resolve the case.

Company ID Number: 525918

ARTICLE IV

SERVICE PROVISIONS

SSA and DHS will not charge the Employer for verification services performed under this MOU. The Employer is responsible for providing equipment needed to make inquiries. To access E-Verify, an Employer will need a personal computer with Internet access.

ARTICLE V

PARTIES

A. This MOU is effective upon the signature of all parties, and shall continue in effect for as long as the SSA and DHS conduct the E-Verify program unless modified in writing by the mutual consent of all parties, or terminated by any party upon 30 days prior written notice to the others. Any and all system enhancements to the E-Verify program by DHS or SSA, including but not limited to the E-Verify checking against additional data sources and instituting new verification procedures, will be covered under this MOU and will not cause the need for a supplemental MOU that outlines these changes. DHS agrees to train employers on all changes made to E-Verify through the use of mandatory refresher tutorials and updates to the E-Verify User Manual, the E-Verify User Manual for Federal Contractors or the E-Verify Supplemental Guide for Federal Contractors. Even without changes to E-Verify, DHS reserves the right to require employers to take mandatory refresher tutorials. An Employer that is a Federal contractor with the FAR E-Verify clause may terminate this MOU when the Federal contract that requires its participation in E-Verify is terminated or completed. In such a circumstance, the Federal contractor with the FAR E-Verify clause must provide written notice to DHS. If an Employer that is a Federal contractor with the FAR E-Verify clause fails to provide such notice, that Employer will remain a participant in the E-Verify program, will remain bound by the terms of this MOU that apply to participants that are not Federal contractors with the FAR E-Verify clause, and will be required to use the E-Verify procedures to verify the employment eligibility of all newly hired employees.

B. Notwithstanding Article V, part A of this MOU, DHS may terminate this MOU if deemed necessary because of the requirements of law or policy, or upon a determination by SSA or DHS that there has been a breach of system integrity or security by the Employer, or a failure on the part of the Employer to comply with established procedures or legal requirements. The Employer understands that if it is a Federal contractor with the FAR E-Verify clause, termination of this MOU by any party for any reason may negatively affect its performance of its contractual responsibilities.

C. Some or all SSA and DHS responsibilities under this MOU may be performed by contractor(s), and SSA and DHS may adjust verification responsibilities between each other as they may determine necessary. By separate agreement with DHS, SSA has agreed to perform its responsibilities as described in this MOU.

Company ID Number: 525918

D. Nothing in this MOU is intended, or should be construed, to create any right or benefit, substantive or procedural, enforceable at law by any third party against the United States, its agencies, officers, or employees, or against the Employer, its agents, officers, or employees.

E. Each party shall be solely responsible for defending any claim or action against it arising out of or related to E-Verify or this MOU, whether civil or criminal, and for any liability wherefrom, including (but not limited to) any dispute between the Employer and any other person or entity regarding the applicability of Section 403(d) of IIRIRA to any action taken or allegedly taken by the Employer.

F. The Employer understands that the fact of its participation in E-Verify is not confidential information and may be disclosed as authorized or required by law and DHS or SSA policy, including but not limited to, Congressional oversight, E-Verify publicity and media inquiries, determinations of compliance with Federal contractual requirements, and responses to inquiries under the Freedom of Information Act (FOIA).

G. The foregoing constitutes the full agreement on this subject between DHS and the Employer.

H. The individuals whose signatures appear below represent that they are authorized to enter into this MOU on behalf of the Employer and DHS respectively.

E-Verify

Company ID Number: 525918

To be accepted as a participant in E-Verify, you should only sign the Employer's Section of the signature page. If you have any questions, contact E-Verify at 888-464-4218.

Employer Vandiver Farms	
Phil Vandiver	
Name (Please Type or Print)	Title
Electronically Signed	**03/26/2012**
Signature	Date
Department of Homeland Security – Verification Division	
USCIS Verification Division	
Name (Please Type or Print)	Title
Electronically Signed	**03/26/2012**
Signature	Date

Information Required for the E-Verify Program

Information relating to your Company:

Company Name:	**Vandiver Farms**
Company Facility Address:	**135 Winter Lane**
	Madison, AL 35757
Company Alternate Address:	
County or Parish:	**MADISON**
Employer Identification Number:	**631188983**

Company ID Number: 525918

North American Industry Classification Systems Code:	111
Administrator:	
Number of Employees:	1 to 4
Number of Sites Verified for:	1

Are you verifying for more than 1 site? If yes, please provide the number of sites verified for in each State:

- ALABAMA 1 site(s)

Information relating to the Program Administrator(s) for your Company on policy questions or operational problems:

Name:	**Phil K Vandiver**		
Telephone Number:	**(256) 837 - 5543**	Fax Number:	**(256) 837 - 5543**
E-mail Address:	**vfarms@bellsouth.net**		