

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: 15.dd.

Meeting Type: Regular

Meeting Date: Jan. 22, 2015

Action Requested By: Administration

Agenda Type: Resolution

Subject Matter:

Option Agreement to purchase wheat crop.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute an Option Agreement between the City of Huntsville, Alabama and J & M Hargrave Farms.

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.

Associated Cost: \$69,522.20

Budgeted Item: Yes

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: _____

Date: _____

RESOLUTION NO. 15-_____

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 an Option Agreement on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Option Agreement between the City of Huntsville, Alabama and J & M Hargrave Farms," consisting of eight (8) pages including Exhibits A and B, and the date of January 22, 2015, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, 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 22nd day of January, 2015.

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

APPROVED this the 22nd day of January, 2015.

Mayor of the City of
Huntsville, Alabama

OPTION AGREEMENT

This Option Agreement (this "Agreement") is made and entered into effective the 22nd day of January, 2015, by and between **J & M HARGRAVE FARMS**, an Alabama general partnership (hereinafter referred to as "Tenant") and **THE CITY OF HUNTSVILLE, ALABAMA**, an Alabama municipal corporation (hereinafter collectively referred to as the "City").

WITNESSETH:

WHEREAS, Tenant leases, for agricultural purposes, a portion of the real property in Limestone County, Alabama described in Exhibit A, attached hereto and incorporated herein (the "Property"), which Tenant leases from McCrary Limited Partnership I, a Delaware limited partnership ("McCrary") (the "Lease"); and

WHEREAS, while McCrary did not extend a lease of the full Property due to its anticipated sale to the City, Tenant was allowed to farm a portion of the Property which currently has 132 acres of wheat (the "Crop"); and

WHEREAS, the City currently anticipates exercising its option to acquire the Property on or about February 2, 2015, for purposes of an industrial development project; and

WHEREAS, in the event that the City exercises its option to acquire the Property, said industrial project will require the termination of the current Lease;

NOW, THEREFORE, for and in consideration of the premises, which are incorporated herein by reference, and TEN AND 00/100 DOLLARS (\$10.00) (the "Option Money") cash in hand paid to Tenant, the receipt and sufficiency of which is hereby acknowledged, and for other good and valuable consideration, the parties hereby agree as follows:

1. Option. For the consideration cited above, Tenant hereby grants to the City, its successors and assigns, an exclusive right and option to purchase the Crop, as is, and any and all rights Tenant has, by virtue of the Lease or otherwise, in the Property (collectively, "Tenant's Interest"). The City shall have no obligation to purchase Tenant's Interest unless the City purchases the Property from McCrary. This option is irrevocable and will expire at 5:00 p.m. CDT on **April 11, 2015**. The purchase price and payment terms are set forth below. The City's election to exercise this option shall be communicated by written notice of its intent sent to Tenant. This option shall be binding on the Tenant's successors and assigns.

2. Sales Price. The Purchase Price for the Tenant's Interest shall be \$69,522.20, to be paid at closing, which is to be held at the office of the City's Counsel, Samuel H. Givhan, with the law firm of Wilmer & Lee, P.A.

3. The Closing. Within twenty (20) days of the City exercising its option, the Tenant shall convey the Tenant's Interest pursuant to the Bill of Sale and Termination of Lease in substantially the form attached hereto as Exhibit "B." Each party shall pay their own fees and expenses, including, but not limited to, their own attorney's fees.

President of the City Council of the
City of Huntsville, Alabama
Date: _____

4. **Warranties and Representations.** Tenant warrants and represents as of the date of this Agreement and as of the Closing as follows: (i) Tenant has all power and authority required for it to enter into this Agreement and perform all of its obligations hereunder; (ii) Tenant's execution of, and performance of its obligations under, this Agreement does not conflict with or result in a breach of any governmental order, judgment, writ or decree or of any contract, agreement or other instrument; (iii) there are no pending or threatened lawsuits or similar proceedings that could have an adverse effect on the Tenant's ability to perform its obligations hereunder; (iv) Tenant has good and marketable absolute title to the Tenant's Interest; and (v) there are no tenants or occupants of the Property, except for Tenant and McCrary.

5. **Cooperation.** All parties agree to take any necessary actions and to execute any documents necessary to consummate the transactions contemplated hereunder, whether prior to, on, or subsequent to the closing date, and to cooperate in any other way possible to ensure that the Tenant's Interest is effectively conveyed to the City and/or terminated to allow conveyance of the Property from the City to a third party free and clear of the Lease and with Tenant having no right to continue to farm and/or harvest the Crop.

6. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, executors, representatives, partners, agents, officers, directors, shareholders, managers, members, and assigns.

7. **Definitions.** Each and every reference to a party, and any and all pronouns describing a party, shall include male or female, singular and plural, corporation or corporations, individual or individuals, as may fit the particular party or parties. All captions are descriptive only.

8. **Execution by Counterpart Originals.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument. The parties agree that this document may be executed and the signatures transmitted to the other parties by facsimile, email or similar electronic transmission. Upon transmission and receipt by another party, such signature shall be effective as an original. Notwithstanding the preceding sentence, the parties agree that they will transmit original signature pages to the other parties and Counsel promptly after execution

9. **Survival.** All warranties, representations, obligations, duties, undertakings, and Agreements made herein by any party, shall be true and correct as of the date of closing and, to the extent not satisfied at closing, survive the closing and the delivery of any instruments and shall not be merged therewith.

10. **Waiver.** The failure of any party to insist upon strict compliance with any of the provisions of this Agreement by another party shall not constitute a waiver of such party's right to demand exact compliance with said provisions.

11. **Entire Agreement.** This Agreement and the Exhibits attached hereto constitute the entire Agreement between the parties with regard to the subject matter hereof. No other understanding, inducement, representation, or agreement shall be of any force or effect except as

otherwise specifically provided for or referred to herein. This Agreement may not be altered or amended except in writing signed by all parties.

12. **Rules of Construction.** For the purposes of this Assignment, except as otherwise expressly provided or unless the context otherwise required: (a) Words of masculine, feminine or neuter gender shall mean and include the correlative words of other genders, and words importing the singular number shall mean and include the plural number, and vice versa; (b) All paragraph and other subdivision and Exhibit caption herein are used for reference only and in no way limit or describe the scope of intent of, or in any way affect, this Assignment; (c) The terms "include", "including", and similar terms shall be construed as if followed by the phrase "without being limited to"; (d) The terms "herein", "hereof" and "hereunder" and other words of similar import refer to this Assignment as a whole and not to any particular Paragraph, other subdivision or Exhibit; (e) All recitals set forth in, and all Exhibits to, this Assignment are hereby incorporated in this Assignment by reference; (f) No inference in favor of or against any party shall be drawn from the fact that such party or its counsel has drafted any portion; and (g) the Assignment shall be construed by the laws of the State of Alabama, without regard to its provisions for conflicts of law

13. **Notices.** Any notice, request, demand or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given if delivered if sent by registered or certified mail, upon the sooner of the date on which the receipt is acknowledged or the expiration of three days after deposit in United States post office facilities properly addressed with postage prepaid. All notices to a party will be sent to the addresses set forth below or to such other address or person as such party may designate by notice to each other party hereunder:

To Tenant: Mr. David Hargrave

_____, Alabama, 35____

To the City: The City of Huntsville
308 Fountain Circle
8th Floor
Huntsville, Alabama 35801
Attn: City Attorney

[Signatures on Following Pages]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the 22nd day of January, 2015.

The City of Huntsville, Alabama

By: _____
Tommy Battle, Mayor

Attest: _____
Charles Hagood, Clerk Treasurer

Date: _____

J & M HARGRAVE FARMS

By: _____
David Hargrave, Authorized Agent

By: Hargrave and Son Farms, Inc.
It: General Partner

By: _____
David Hargrave, Secretary

Exhibit A

**STATE OF ALABAMA
LIMESTONE COUNTY**

A portion of the north half and all of the southwest quarter of Section 33, Township 4 South, Range 3 West of the Huntsville Meridian.

All of the northwest quarter of Section 4, Township 5 South, Range 3 West of the Huntsville Meridian lying north of the northerly right-of-way of I-565.

A portion of the south half of the southeast quarter of Section 32, Township 4 South, Range 3 West of the Huntsville Meridian.

A portion of the northeast quarter of Section 5, Township 5 South, Range 3 West of the Huntsville Meridian.

Said tract being a portion of the property conveyed to McCrary Limited Partnership I, a Delaware Limited Partnership in Fiche 96145, pages 45 and 46 as recorded in the Office of the Probate Judge for Limestone County, Alabama, and being more particularly described as follows:

Commencing at a railroad spike found at the northeast corner of Section 33, Township 4 South, Range 3 West of the Huntsville Meridian; thence South 1 Degrees 04 Minutes 33 Seconds West a distance of 2113.06 feet to a #5 rebar with a cap Stamped "Garver LLC CA 445"(typical) set; thence North 89 Degrees 07 Minutes 20 Seconds West a distance of 150.95 feet to a #5 rebar set at the intersection of proposed southwesterly right-of-way of Greenbrier Parkway and the north boundary of Lot 2 of McCrary Commercial Subdivision Phase One as recorded in the Office of the Judge of Probate for Limestone County, Alabama in Plat Book H, Page 214, said point being the Point of Beginning of the herein described tract;

Thence along the north boundary of said Lot 2 North 89 Degrees 07 Minutes 20 Seconds West a distance of 1356.16 feet to a #5 rebar found at the northwest corner of said Lot 2; thence leaving said north boundary and along the west boundary of said Lot 2 South 0 Degrees 57 Minutes 30 Seconds West a distance of 599.98 feet to a #5 rebar found at the southwest corner of said Lot 2, said point being on the north boundary of a tract of land conveyed to Target Corporation as recorded in the Office of the Judge of Probate for Limestone County, Alabama in Real Property Book (RLPY) 2000, Page 4069; thence leaving said west boundary and along the north boundary of said Target tract North 89 Degrees 06 Minutes 50 Seconds West a distance of 1173.74 feet to a #5 rebar set at the northwest corner of said Target tract; thence leaving said north boundary and along the west boundary of said Target tract South 1 Degrees 28 Minutes 33 Seconds West a distance of 2676.66 feet to a #5 rebar set; thence leaving said west boundary South 1 Degrees 11 Minutes 03 Seconds West a distance of 1249.75 feet to a #5 rebar with a cap Stamped "R. Smith LLC #19378" found on the northerly right-of-way of I-565; thence along said right-of-way South 65 Degrees 57 Minutes 31 Seconds West a distance of 2271.47 feet to a #5 rebar set at the southeast corner of a tract of land conveyed to The City of Huntsville in Fiche 98372, Page 58 as recorded in the Office of the Judge of Probate for Limestone County, Alabama; thence leaving said right-of-way and along the boundary of said City of Huntsville tract North 24 Degrees 02 Minutes 28 Seconds West a distance of 50.00 feet to a #5 rebar set; thence South 65 Degrees 57

Minutes 32 Seconds West a distance of 70.00 feet to a #5 rebar set; thence South 24 Degrees 02 Minutes 28 Seconds East a distance of 50.00 feet to a #5 rebar set on said right-of-way; thence leaving said boundary of City of Huntsville tract and along said right-of-way South 65 Degrees 57 Minutes 31 Seconds West a distance of 638.26 feet to a 4 inch square concrete monument with a cap Stamped "DUNIVANT ENG CO CA-0044-LS" found at the intersection of the west boundary of a tract of land conveyed to McCrary Limited Partnership I, a Delaware Limited Partnership in Fiche 96145, Pages 45 and 46 as recorded in the Office of the Probate Judge of Limestone County, Alabama and said right-of-way; thence leaving said right-of-way and along the west boundary of said McCrary tract North 1 Degrees 07 Minutes 21 Seconds East a distance of 1158.92 feet to a point; thence North 88 Degrees 03 Minutes 36 Seconds West a distance of 1074.08 feet to a point; thence North 1 Degrees 07 Minutes 21 Seconds East a distance of 1371.34 feet to a point on the North Boundary of said Section 5, Township 5 South, Range 3 West; thence leaving said North Section line, North 1 Degrees 48 Minutes 35 Seconds East a distance of 247.57 feet to a point; thence South 87 Degrees 16 Minutes 18 Seconds East a distance of 1074.12 feet to a 4" Square Concrete Monument found on the West Boundary of Section 33, Township 4 South, Range 3 West. thence along the west boundary of said Section 33 North 1 Degrees 49 Minutes 21 Seconds East a distance of 3229.26 feet to a #5 rebar set at the center of a Transmission Line Easement as recorded in the Office of the Judge of Probate for Limestone County, Alabama in Deed Book 146, Page 361 and Fiche 96331, Page 14; thence leaving said west boundary and along said centerline of easement North 59 Degrees 49 Minutes 07 Seconds East a distance of 2971.07 feet to a #5 rebar set; thence North 57 Degrees 54 Minutes 26 Seconds East a distance of 49.28 feet to a #5 rebar set at the intersection of said easement line and the proposed southerly right-of-way of Greenbrier Parkway, said point being on a curve to the left, having a radius of 2070.00 feet, a chord of South 66 Degrees 35 Minutes 04 Seconds East for a distance of 290.54 feet; thence along said proposed right-of-way and the arc of said curve 290.78 feet to a #5 rebar set at the point of tangency of said curve; thence South 70 Degrees 36 Minutes 32 Seconds East a distance of 1165.88 feet to a #5 rebar set at the point of curvature of a curve to the right, having a radius of 1930.00 feet, a chord of South 43 Degrees 00 Minutes 58 Seconds East for a distance of 1787.88; thence along the arc of said curve 1858.91 feet to the POINT OF BEGINNING.

The above described tract contains 505.37 acres more or less and is subject to easements of record.

EXHIBIT B

STATE OF ALABAMA)
)
COUNTY OF LIMESTONE)

AGREEMENT TO TERMINATE LEASE

For and in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, between **J & M HARGRAVE FARMS**, an Alabama general partnership (hereinafter referred to as "Tenant") and **THE CITY OF HUNTSVILLE, ALABAMA**, an Alabama municipal corporation (hereinafter collectively referred to as the "City"), being the respective Tenant and Landlord relative to the property located at Old Highway 20, Huntsville, Alabama 35801, more particularly described in attached Exhibit A (the "Premises"), which is incorporated herein by reference, hereby mutually agree to terminate, effective immediately, the Tenant's leasehold interest in the Premises and all of Tenant and Landlord's obligations thereunder, effective as of _____, 2015, (the "Termination Date") upon the following terms and conditions:

- (1) The City shall pay the Tenant the sum of \$69,522.20 in connection herewith.
- (2) Tenant hereby grants, bargains, sells and conveys to the City any and all rights to the current wheat crop planted on the Premises as well as any other crops located thereon and quit claims, remises, and releases any and all interest in the Premises.
- (3) Tenant agrees to pay McCrary Limited Partnership I, the prior landlord, rent pursuant to their previous lease agreement.
- (4) Tenant shall surrender the Premises on or before the Termination Date.
- (5) All crops, alterations, additions, improvements and fixtures shall become the property of Landlord upon Tenant's surrender of the Premises.

IN WITNESS WHEREOF, the undersigned set their hands and seals as of the dates set forth below.

The City of Huntsville, Alabama

By: _____
Tommy Battle, Mayor

Attest: _____
Charles Hagood, Clerk Treasurer

Date: _____

Tenant's Signature and Acknowledgment on following page.

J & M HARGRAVE FARMS

By: _____
David Hargrave, Authorized Agent

By: Hargrave and Son Farms, Inc.
It: General Partner

By: _____
David Hargrave, Secretary

Date: _____

STATE OF ALABAMA)
) SS:
COUNTY OF _____)

BEFORE ME, a Notary Public in and for said County and State, personally appeared David Hargrave, as the Secretary of Hargrave and Son Farms, Inc., the General Partner of J & M Hargrave Farms and as Authorized Agent of J & M Hargrave Farms, personally known to me, who acknowledged that he did voluntarily execute the foregoing instrument on behalf of Hargrave and Son Farms, Inc., the General Partner of J & M Hargrave Farms and as Authorized Agent of J & M Hargrave Farms and that the same was his free act and deed in his capacities indicated above, and the free act and deed of the corporation in its capacity as general partner.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at this ___ day of _____, 2015.

Notary Public
Name: _____
My Commission Expires: _____

(SEAL)

**ROUTING SLIP
CONTRACTS AND AGREEMENTS**

Originating Department: Administration

Council Meeting Date: 1/22/2015

Department Contact: John Hamilton

Phone # 427-5000

Contract or Agreement: Option Agreement to Purchase Wheat Crop

Document Name:

City Obligation Amount: \$69,522.20

Total Project Budget:

Uncommitted Account Balance:

Account Number:

Procurement Agreements

<u>Not Applicable</u>	<u>Not Applicable</u>
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Grant-Funded Agreements

<u>Not Applicable</u>	Grant Name:
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Department	Signature	Date
1) Originating		
2) Legal		
3) Finance		
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		