



Huntsville, Alabama

305 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 6/13/2024

File ID: TMP-4233

Department: Engineering

Subject:

Type of Action: Approval/Action

Resolution authorizing the Mayor to enter into a Land Lease Agreement between the City of Huntsville, Alabama and DeVaney Brothers Farms for the lease of approximately 483.37 acres of unimproved land generally located off Greenbrier Road in Limestone County.

Resolution No.

Finance Information:

Account Number: 3080-71-00000-425109-00000000

City Cost Amount: At no cost to the City

Total Cost: At no cost to the City

Special Circumstances:

Grant Funded: N/A

Grant Title - CFDA or granting Agency: N/A

Resolution #: N/A

Location: (list below)

Address: N/A

District: District 1 District 2 District 3 District 4 District 5

Additional Comments:

Lease Agreement with DeVaney Farms to use City land, approximately 483.37 acres for agricultural purposes.

RESOLUTION NO. 24-

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and is hereby authorized, to enter into a Land Lease Agreement between the City of Huntsville, Alabama and DeVaney Brothers Farms, for the lease of approximately 483.37 acres of unimproved Farm Land generally located off of Greenbrier Road in Limestone County, 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, Alabama and DeVaney Brothers Farms,” consisting of a total of six (6) pages plus two (2) additional pages consisting of Exhibit “A”, and the date of June 13, 2024, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, and an executed copy of said document being permanently kept on file in the Office of the City Clerk of the City of Huntsville, Alabama.

ADOPTED this the 13th day of June, 2024.

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

APPROVED this the 13th day of June, 2024.

Mayor of the City of Huntsville, Alabama

LAND LEASE AGREEMENT BETWEEN THE CITY OF HUNTSVILLE AND DEVANEY BROTHERS 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 DeVaney Brothers 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 483.37 acres of unimproved land lying in Limestone County and generally located off of Greenbrier Road, and identified in Exhibit A attached hereto and incorporated herein as fully as if appearing herein.
2. **Terms:** The terms of this agreement shall commence on the 14th day of June, 2024, and expire on the 14th day of June, 2025, 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 \$125.00 per acre. The number of acres planted shall be as recorded in the records of the Limestone County Office of the U.S. Department of Agriculture, Farm Service Agency. The number of acres planted shall be computed as of July 15th. 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

**President of the City Council of the City
of Huntsville, AL**

Date: June 13, 2024

additional terms and conditions:

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 Limestone, 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. By signing this agreement, the contracting parties affirm, for the duration of the agreement, they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.
27. **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

Address:

Mr. Jimmy DeVaney
Mr. Keith DeVaney
DeVaney Brothers Farms
3096 County Line Road
Madison, AL 35766

Email: jimmy.devaney4020@gmail.com

Email: keith.devaney54@gmail.com

IN WITNESS WHEREOF, Roger Martin, as Lessee, and the City of Huntsville, a municipal corporation, acting by and through Tommy Battle, as Mayor, and Shaundrika Edwards, as Clerk 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 city clerk as heretofore authorized by the City Council of the City of Huntsville, Alabama, on this the 13th day of June, 2024.

LESSEE:

DEVANEY BROTHERS FARMS

By: Jimmy DeVaney
Name: Jimmy DeVaney
Its: Partner

LESSOR:

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

ATTEST:

BY: _____
Shaundrika Edwards
City Clerk

BY: _____
Tommy Battle
Mayor

Exhibit A
(Legal Description of the Property)

A tract of land lying and being in Sections 27 & 34, Township 4 South, Range 3 West of the Huntsville Meridian.

Said tract being a portion of the property conveyed to Greenbrier Enterprises, LLC in Real Property Book 2004, Pages 16851, 16859, 39586 and 63045 and Real Property Book 2010, Page 49384 and to KYH Properties, LLC In Real Property Book 2004, Page 16846 as recorded in the Office of the Judge of Probate of Limestone County, Alabama and being more particularly described as follows:

Commencing at a railroad spike found marking the northwest corner Section 34, Township 4 South, Range 3 West of the Huntsville Meridian, thence along the north boundary of said Section South 88 Degrees 20 Minutes 10 Seconds East a distance of 35 00 feet to a #5 rebar with a cap stamped "GARVER" found on the east right-of-way of Greenbrier Road, said point being the Point of Beginning of the herein described tract, having established grid coordinates of (N) 1513756 45, (E) 352328 97 of the Alabama State Plane Coordinate System Zone East of the North American Datum of 1983 (NAD83),

Thence leaving said Section line and along said right-of-way North 1 Degree 26 Minutes 17 Seconds East a distance of 797 44 feet to a #5 rebar with a cap stamped "GARVER" found marking the northwest corner of a tract of land conveyed to Greenbrier Enterprises, LLC as recorded in the Office of the Judge of Probate of Limestone County, Alabama in Real Property Book 2004, Page 16859; thence leaving said right-of-way and along the north boundary of said Greenbrier Enterprises tract South 88 Degrees 24 Minutes 10 Seconds East a distance of 700 05 feet to a #5 rebar with a cap stamped "GARVER" found, thence South 0 Degrees 56 Minutes 40 Seconds West a distance of 125 00 feet to a #5 rebar with a cap stamped "GARVER" found, thence South 88 Degrees 24 Minutes 10 Seconds East a distance of 4754 05 feet to a #5 rebar with a cap stamped "GARVER LLC CA-445-LS" (typical) set on the east boundary of Section 27, Township 4 South, Range 3 West of the Huntsville Meridian, thence leaving said north boundary and along the east boundary of said Section 27 South 1 Degree 16 Minutes 02 Seconds West a distance of 678 81 feet to a concrete monument found (TVA Monument #12) marking the northeast corner of said Section 34, thence leaving the east boundary of said Section 27 and along the east boundary of said Section 34 South 1 Degree 12 Minutes 27 Seconds West a distance of 2777.54 feet to a #5 rebar with an illegible cap found on the north right-of-way of Interstate 565, thence leaving the east boundary of said Section 34 and along said right-of-way South 66 Degrees 49 Minutes 22 Seconds West a distance of 1456.35 feet to a #5 rebar with a cap stamped "DUNIVANT CA0044LS" found marking the southwest corner of a tract of land conveyed to Greenbrier Enterprises, LLC as recorded in the Office of the Judge of Probate of Limestone County, Alabama in Real Property Book 2004, Page 39586, thence leaving said right-of-way and along the west boundary of said Greenbrier Enterprises tract North 14 Degrees 08 Minutes 49 Seconds West a distance of 678 00 feet to an iron bar found marking the east corner of a tract of land conveyed to Greenbrier Enterprises, LLC as recorded in the Office of the Judge of Probate of Limestone County, Alabama in Real Property Book 2010, Page 49384, thence leaving said west boundary and along the south boundary of said Greenbrier Enterprises tract South 66 Degrees 51 Minutes 18 Seconds West a distance of 1447.20 feet to an iron bar found on the east boundary of a tract of land conveyed to Greenbrier Enterprises, LLC as recorded in the Office of the Judge of Probate of Limestone County, Alabama in Real Property Book 2004, Page 16851, thence leaving said south boundary and along the east boundary of said Greenbrier Enterprises tract South 1 Degree 07 Minutes 57 Seconds East a distance of 199.35 feet to a #4 rebar found on the south boundary of said Greenbrier Enterprises tract; thence leaving said east boundary and along the south boundary of said Greenbrier Enterprises tract North 89 Degrees 15 Minutes 07 Seconds West a distance of 684.51 feet to a #4 rebar found, thence North 89 Degrees 16 Minutes 06 Seconds West a distance of 249 77 feet to a #4 rebar with a cap stamped "MCELROY" found; thence leaving said south boundary North 89 Degrees 18 Minutes 19 Seconds West a distance of 287 71 feet to a #4 rebar with a cap stamped "MCELROY" found on the south boundary of a tract of land conveyed to KYH Properties, LLC as recorded in the Office of the Judge of Probate of Limestone County, Alabama in Real Property Book 2004, Page 16846, thence along said south boundary North 89 Degrees 16 Minutes 33 Seconds West a distance of 673.23 feet to a #5 rebar with an illegible cap found, thence North 0 Degrees 02 Minutes 55 Seconds East a distance of 172.91 feet to a

#5 rebar set; thence North 44 Degrees 59 Minutes 54 Seconds West a distance of 120.74 feet to a #5 rebar found, thence leaving said south boundary North 0 Degrees 04 Minutes 20 Seconds West a distance of 580.70 feet to a #5 rebar set; thence South 89 Degrees 55 Minutes 40 Seconds West a distance of 617.13 feet to a #5 rebar set on the east right-of-way of Greenbrier Parkway; thence along said right-of-way North 0 Degrees 04 Minutes 20 Seconds West a distance of 860.67 feet to a 4 inch square concrete monument with an aluminum disc found, thence leaving said right-of-way and along the boundary of said KYH tract South 88 Degrees 55 Minutes 45 Seconds East a distance of 288.86 feet to a 1 inch open top pipe found; thence North 1 Degree 12 Minutes 20 Seconds East a distance of 150.29 feet to a #5 rebar found; thence North 1 Degree 22 Minutes 28 Seconds East a distance of 151.64 feet to an iron pin found; thence North 0 Degrees 50 Minutes 20 Seconds East a distance of 300.00 feet to a #5 rebar set; thence North 89 Degrees 16 Minutes 47 Seconds West a distance of 290.40 feet to an iron pin found on the east right-of-way of Greenbrier Road; thence along said right-of-way North 1 Degree 07 Minutes 26 Seconds East a distance of 49.91 feet to a #5 rebar found; thence North 1 Degree 05 Minutes 00 Seconds East a distance of 1246.52 feet to the POINT OF BEGINNING

The above-described tract contains 483.37 acres (21055473.70 sq. ft.), more or less.