

ORDINANCE NO. 1731 -A

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF FAIRHOPE, ALABAMA, AS FOLLOWS:

SECTION 1. It is hereby established and declared that the following described real property of the City of Fairhope, Alabama, is not needed for public or municipal purposes during the term of this lease, to-wit:

From the Point of Commencement and Beginning at the Southwest Corner of the intersection of Saint James Avenue and South Church Street; run N 89°51'07" W, along the south right-of-way line, ± 160.0 feet to a point; thence run South, leaving said right-of-way, ± 109.0 feet to a point; thence run west, ± 249.1 feet to a point On a fence line along the east margin of Summit Street (an unmapped right-of-way), thence run S 02°10'47" W, along said fence line, ± 114.1 feet to a point; thence run east, leaving said fence line, ± 160.1 feet to a point; thence run north, ± 30.0 feet to a point; thence run east, ± 93.3 feet to a point; thence run north, ± 49.0 feet to a point; thence run east, ± 160.0 feet to a point on the west right-of-way line of South Church Street; thence run N 00°09'15" E, along said west right-of-way line, ± 144.00 feet to the Point of Commencement and Beginning; containing 1.12 acres, MORE OR LESS, LYING IN grant SECTION 37, TOWNSHIP 6 SOUTH, RANGE 2 EAST, BALDWIN COUNTY, ALABAMA.

SECTION 2. The City of Fairhope, Alabama, having received an offer from Fairhope Education Enrichment Foundation, Inc. to lease that real property described in Section 1, above, it is hereby declared to be in the best interest of the public and the City of Fairhope, Alabama, to lease said real property to Fairhope Education Enrichment Foundation, Inc. under the following terms and conditions, to-wit:

The leased property to be used to promote and enrich educational opportunities for all Fairhope public school children, and used for integrating work in the sciences, engineering, art, mathematics, and technology (STEAM) and in accordance with uses normally incident thereto and for no other purpose, for the term of twenty-five (25) years commencing on October 1, 2021, and ending on September 30, 2046, for the yearly rent in the amount of \$1.00 per year. Attached hereto as Exhibit A is a graphic depiction of the property the parties intend to include in the leased premises.

SECTION 3. Pursuant to the authority granted by Section 11-47-21 of the Code of Alabama of 1975, the Mayor of the City of Fairhope, Alabama, is hereby directed to execute said lease agreement in the name of the City of Fairhope, Alabama.

SECTION 4. The sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by a court of competent jurisdiction, then such ruling shall not affect any other paragraphs and sections, since the same would have been enacted by the municipality council without the incorporation of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 5. This ordinance shall take effect immediately upon its due adoption and publication as required by law.

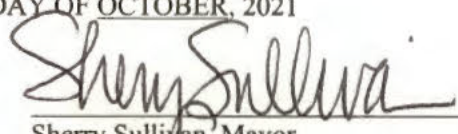
ADOPTED THIS 11TH DAY OF OCTOBER, 2021

  
Jack Burrell, Council President

ATTEST:

  
Lisa A. Hanks, MMC  
City Clerk

ADOPTED THIS 11TH DAY OF OCTOBER, 2021

  
Sherry Sullivan, Mayor

Ord. No. 1731 Published in  
FAIRHOPE COURIER  
on Wednesday, October 20, 2021  
 City Clerk

## MUNICIPAL LEASE AGREEMENT

This Lease Agreement is made and entered into this 12th day of October, 2021, at Fairhope, Alabama, by and between **THE CITY OF FAIRHOPE, ALABAMA**, a municipal corporation, hereinafter referred to as "Lessor," and **FAIRHOPE EDUCATIONAL ENRICHMENT FOUNDATION, INC.**, an Alabama Non-profit Corporation (FEEF), hereinafter referred to as "Lessee."

### **ARTICLE 1. DEMISE, DESCRIPTION, USE, TERM, AND RENT**

Lessor leases to Lessee, and Lessee leases from Lessor, that certain property, hereinafter called the "leased premises," situated in Fairhope, Baldwin County, Alabama, and described as follows:

From the Point of Commencement and Beginning at the Southwest Corner of the intersection of Saint James Avenue and South Church Street; run N 89°51'07" W, along the south right-of-way line, ± 160.0 feet to a point; thence run South, leaving said right-of-way, ± 109.0 feet to a point; thence run west, ± 249.1 feet to a point On a fence line along the east margin of Summit Street (an unmapped right-of-way), thence run S 02°10'47" W, along said fence line, ± 114.1 feet to a point; thence run east, leaving said fence line, ± 160.1 feet to a point; thence run north, ± 30.0 feet to a point; thence run east, ± 93.3 feet to a point; thence run north, ± 49.0 feet to a point; thence run east, ± 160.0 feet to a point on the west right-of-way line of South Church Street; thence run N 00°09'15" E, along said west right-of-way line, ± 144.00 feet to the Point of Commencement and Beginning; containing 1.12 acres, MORE OR LESS, LYING IN grant SECTION 37, TOWNSHIP 6 SOUTH, RANGE 2 EAST, BALDWIN COUNTY, ALABAMA.

to be used to promote and enrich educational opportunities for all Fairhope public school children, and used for integrating work in the sciences, engineering, art, mathematics, and technology (STEAM) and in accordance with uses normally incident thereto and for no other purpose, for the term of twenty-five (25) years commencing on October 1, 2021, and ending on September 30, 2046, for the yearly rent as described in Article 2. Attached hereto as Exhibit A is a graphic depiction of the property the parties intend to include in the leased premises.

### **ARTICLE 2. RENT**

Lessee shall pay rent to Lessor in the amount of \$1.00 per year for a term of 25 years.

## **ARTICLE 3. INSURANCE**

### **Lessee's Obligation**

Lessee shall maintain independent commercial general liability coverage with no less than a \$1,000,000 per occurrence limit and a \$2,000,000 annual aggregate limit and the City shall be named as an additional insured, (b) if applicable, vehicle coverage for owned and non-owned vehicles in the amount of \$1,000,000, and (c) workers' Compensation insurance as required by law. Lessee shall maintain insurance and be responsible for any and all claims, actions, suits, demands, damages, and injuries arising from any loss of life, bodily or mental injury, or content damage arising from any occurrence in or upon the leased premises.

Lessee shall require any contractor or subcontractor on the premises to provide insurance as follows: (a) General Liability coverage with no less than a \$1,000,000 per occurrence limit and a \$2,000,000 annual aggregate limit and the City shall be named as an additional insured, (b) Vehicle coverage for owned and non-owned vehicles in the amount of \$1,000,000 and (c) Workers' Compensation insurance as required by law.

All such coverage shall be furnished by a company with an A.M. Best rating of "A" or better.

### **Lessor's Obligation**

Lessor is renting land, existing buildings, and other improvements to Lessee. Lessor shall be responsible for maintaining insurance on the buildings and improvements only with no additional expense to the tenant on the leased property. In the event of an insured loss, Lessor shall only be obligated to spend the insurance proceeds that it receives on rebuilding the buildings and other improvements.

### **Proof of Coverage**

The original policies may be retained by the insured, but the Lessor shall have the right to inspect any and all such policies, and the insured, on demand, agrees to furnish the other party proof of payment of the premium or premiums on any such policies.

### **Protection Against Cancellation**

Proof must also be given by Lessee to Lessor, pursuant to the paragraph above, that each of the policies provided for in this Article expressly provides that the policy shall not be cancelled or altered without thirty (30) days' prior written notice to the Lessor.

### **Failure to Secure**

If Lessee at any time during the term hereof should fail to secure or maintain the foregoing insurance, the Lessor shall be permitted to obtain such insurance in the defaulting party's name or as the agent of the defaulting party and shall be compensated by the defaulting party for the cost of the insurance premiums. The defaulting party shall pay the other interest on paid insurance premiums at the rate of ten percent (10%) per annum computed from the date written notice is received that the premiums have been paid.

### **ARTICLE 4. UTILITIES**

Lessee shall during the term hereof pay all charges for telephone, gas, electricity, sewage, and water used in or on the leased premises and for the removal of rubbish therefrom immediately on becoming due and shall hold Lessor harmless from any liability therefore. Lessee further agrees to pay all charges for repairs to water meters on the leased premises whether necessitated by ordinary wear and tear, temperature extremes, accident, or any other causes. Such payments shall be made immediately on becoming due.

### **ARTICLE 5. WASTE AND NUISANCE**

Lessee shall not commit, or suffer to be committed, any waste on the leased premises, nor shall it maintain, commit, or permit the maintenance or commission of any nuisance on the leased premises or use the leased premises for any unlawful purposes.

### **ARTICLE 6. REPAIRS**

Lessee agrees to keep the leased premises in good order and repair, reasonable wear and tear excepted. Lessee further agrees to keep the leased premises clean, and to repair or replace all HVAC, electrical, roof, all broken or damaged doors, windows, plumbing fixtures and pipes, floors, stairways, railings, or other portions of the leased premises. Lessee also agrees to maintain the curbs and pavements on and about the leased premises (excluding those in a City right of way), together with facilities appurtenant thereto, including entryways and awnings. Lessee shall keep the said pavements and appurtenances free of trash and expressly agrees to assume sole liability for accidents alleged to have been caused by their defective condition. The repair obligations in this Article Six shall not be construed to require Lessee to repair or improve the leased premises to a condition better than its condition on the date on which this lease commences.

### **ARTICLE 7. ALTERATIONS, IMPROVEMENTS, AND FIXTURES**

Lessee shall have the right at Lessee's own cost and expense from time to time during the term or any extended term of this lease to construct on the leased premises such buildings and other improvements, including but not limited to fencing and paving, and make such alterations, additions, and changes therein only with express written permission of the Governing body of the City of Fairhope. All improvements, additions, and fixtures shall become property of the Lessor.

## **ARTICLE 8. QUIET POSSESSION**

Lessor shall, on the commencement date of the term of this lease, place Lessee in quiet possession of the leased premises and shall secure the Lessee in the quiet possession thereof against all persons lawfully claiming possession during the entire lease term and each extension of the lease.

## **ARTICLE 9. DELIVERY OF POSSESSION**

If Lessor shall be unable to deliver possession of the leased premises on the commencement date of the term hereof, Lessor shall not be liable to Lessee for any damage caused thereby, nor shall this lease thereby become void or voidable, nor shall the term hereof in any way be extended, but in such event, Lessee shall not be liable for any rent herein reserved until such time as Lessor can and does deliver possession.

### **Effect of Holding Over**

In the event Lessee does not renew this lease as herein provided, and holds over beyond the expiration of the term hereof, such holding over shall be deemed a month-to-month tenancy only, at the rental of \$1 per month, payable on the first day of each and every month thereafter until the tenancy is terminated in a manner provided by law.

## **ARTICLE 10. DEFAULTS AND REMEDIES**

### **Default of Lessee**

If Lessee shall allow the rent to be in arrears more than thirty (30) days after written notice of such delinquency, or shall remain in default under any other condition of this lease for a period of fifteen (15) days after written notice from Lessor, or should any other person than Lessee secure possession of the premises, or any part thereof, by reason of any receivership, bankruptcy proceedings, or other operation of law in any manner whatsoever, Lessor may at Lessor's option, without notice to Lessee, terminate this lease. Should Lessor be unable to relet after reasonable efforts to do so, or should such monthly rental be less than the rental Lessee was obligated to pay under this lease, or any renewal thereof, plus the expense of reletting, then Lessee shall pay the amount of such deficiency to Lessor.

### **Default of Lessor**

If Lessor shall remain in default under any condition of this lease for a period of fifteen (15) days after written notice from Lessee, Lessee may at Lessee's option, without notice to Lessor, terminate this lease. Lessee shall be entitled to terminate this lease without cause by giving written notice of its desire to terminate the lease to Lessor, provided that said written notice is given one year prior to the date of termination.

**ARTICLE 11. INSPECTION BY LESSOR**

Lessee shall permit Lessor and Lessor's agents to enter into and upon the leased premises at all reasonable times for the purpose of inspecting the same or for the purpose of maintaining or making repairs or alterations to the building.

**ARTICLE 12. ASSIGNMENT AND SUBLEASE**

**Assignment and Subletting by Lessee**

Lessee shall not assign this lease nor sublet all or any portion of the leased premises without the prior written consent of the Lessor.

**Assignment by Lessor**

Lessor is expressly given the right to assign any or all of Lessor's interest under the terms of this lease.

**ARTICLE 13. MISCELLANEOUS**

**Rights and Remedies Cumulative**

The rights and remedies provided by this lease are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

**Waiver of Default**

No waiver by the parties hereto of any default or breach of any term, condition, or covenant of this lease shall be deemed to be a waiver of any other breach of the same or any other terms, condition, or covenant contained herein.

**Abandonment**

If during the term of this Lease, the leased premises or any part thereof is vacant or not actively used for its intended purposes in excess of 90 days, the lease terminates and the use and possession reverts back to the Lessor. Temporary or static use of the buildings does not constitute active use of a building or premises. The Governing Body of the City of Fairhope shall have the sole exclusive right to determine if the leased premises or any part thereof has been abandoned in accordance with the terms of the lease.

**Attorney's Fees**

In the event Lessor or Lessee breaches any of the terms of this agreement whereby the party not in default employs attorneys to protect or enforce its rights hereunder and prevails, then the defaulting party agrees to pay the other party reasonable attorney's fees so incurred by such other party.

**Excuse**

Neither Lessor nor Lessee shall be required to perform any term, condition, or covenant in this lease so long as such performance is delayed or prevented by any acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within the control of the Lessor or Lessee and which by the exercise of due diligence Lessor or Lessee is unable, wholly or in part, to prevent or overcome.

**Recording**

Lessee shall be obligated to record this lease in the Office of the Judge of Probate for Baldwin County, Alabama.

**IN WITNESS WHEREOF**, the undersigned Lessor and Lessee hereto execute this agreement as of the day and year first above written.

**LESSOR:**

THE CITY OF FAIRHOPE,  
a municipal corporation

By: Sherry Sullivan  
As Its Mayor

**LESSEE:**

FAIRHOPE EDUCATIONAL  
ENRICHMENT FOUNDATION, INC.,  
an Alabama non-profit corporation

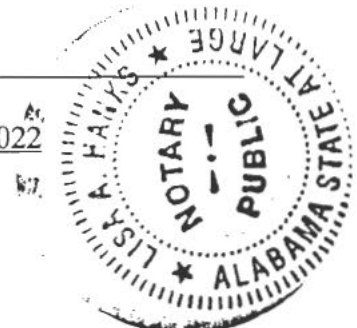
By: \_\_\_\_\_  
As Its \_\_\_\_\_

STATE OF ALABAMA  
COUNTY OF BALDWIN

I, Lisa A. Hanks, a Notary Public in and for said County, in said State, hereby certify that The Honorable Sherry Sullivan whose name as Mayor of **THE CITY OF FAIRHOPE**, a municipal corporation, is signed to the foregoing Municipal Lease Agreement, and who is known to me, acknowledged before me on this day, that being informed of the contents of said Municipal Lease Agreement, she, as such Mayor, and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

Given under my hand this the 12th day of October, 2021.

  
\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: 08/21/2022



STATE OF ALABAMA  
COUNTY OF BALDWIN

I, \_\_\_\_\_, a Notary Public in and for said County in said State, hereby certify that \_\_\_\_\_ whose name as \_\_\_\_\_ of the Board of **FAIRHOPE EDUCATIONAL ENRICHMENT FOUNDATION, INC.** is signed to the foregoing Municipal Lease Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the Municipal Lease Agreement, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

Prepared by  
  
**MARCUS McDOWELL**  
City Attorney  
60 N. Section St.  
Post Office Box 1367  
Fairhope, Alabama 36533  
(251) 928-1915



FEEF Lease Area - City of Fairhope K-1 Center Property

Legal Description

FROM THE POINT OF COMMENCEMENT AND BEGINNING AT THE SOUTHWEST CORNER OF THE INTERSECTION OF SAINT JAMES AVENUE AND SOUTH CHURCH STREET; RUN N 89°51'07" W, ALONG THE SOUTH RIGHT-OF-WAY LINE, ± 160.0 FEET TO A POINT; THENCE RUN SOUTH, LEAVING SAID RIGHT-OF-WAY, ± 109.0 FEET TO A POINT; THENCE RUN WEST, ± 249.1 FEET TO A POINT ON A FENCE LINE ALONG THE EAST MARGIN OF SUMMIT STREET (AN UNMAPPED RIGHT-OF-WAY), THENCE RUN S 02°10'47" W, ALONG SAID FENCE LINE, ± 114.1 FEET TO A POINT; THENCE RUN EAST, LEAVING SAID FENCE LINE, ± 160.1 FEET TO A POINT; THENCE RUN NORTH, ± 30.0 FEET TO A POINT; THENCE RUN EAST, ± 93.3 FEET TO A POINT; THENCE RUN NORTH, ± 49.0 FEET TO A POINT; THENCE RUN EAST, ± 160.0 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF SOUTH CHURCH STREET; THENCE RUN N 00°09'15" E, ALONG SAID WEST RIGHT-OF-WAY LINE, ± 144.00 FEET TO THE POINT OF COMMENCEMENT AND BEGINNING, CONTAINING 1.12 ACRES, MORE OR LESS, LYING IN GRANT SECTION 37, TOWNSHIP 6 SOUTH, RANGE 2 EAST, BALDWIN COUNTY, ALABAMA.

POC/POB SOUTHWEST CORNER OF THE INTERSECTION OF SAINT JAMES AVENUE AND SOUTH CHURCH STREET

N 89°51'07" W - ±160.0'

SOUTH - ±109.0'

WEST - ±249.1'

Summit  
S 02°10'47" W - ±114.1'

EAST - ±160.0'

EAST - ±93.3'

NORTH - ±49.0'

EAST - ±160.1'

NORTH - ±30.0'

Church  
N 00°09'15" E - ±144.0'

