



WILLIAMSON COUNTY
PURCHASING DEPARTMENT
901 S. Austin Ave.
GEORGETOWN, TEXAS 78626

<http://wilco-online.org/ebids/bids.aspx>

REQUEST FOR PROPOSAL

PECAN HARVESTING LEASE LAND LOCATED EAST OF JONAH, TEXAS BLACKLAND HERITAGE COUNTY PARK

PROPOSAL NUMBER: 14RFP00235

PROPOSALS MUST BE RECEIVED AT OR BEFORE: September 16, 2014 – 3:00 PM

PROPOSALS WILL BE PUBLICLY OPENED: September 16, 2014 – 3:00 PM

Williamson County seeks a qualified pecan harvester for the harvesting of an estimated 200 native and mature pecan trees that are situated on approximately 90 acres out of a tract of land known as the Blackland Heritage County Park.

PROPOSAL SUBMISSION

DEADLINE: Proposals must be received in the Williamson County Purchasing Department at or before September 16, 2014 3:00 pm. Proposals will be publicly opened at 3:00 pm or soon thereafter in the Williamson County Purchasing Department.

METHODS: Sealed proposals may be hand-delivered or mailed to the **Williamson County Purchasing Department, Attn: Pecan Harvesting Lease, 901 South Austin, Georgetown, Texas 78626.**

FAX/EMAIL: Facsimile and electronic mail transmittals will **not** be accepted.

PROPOSAL REQUIREMENTS

SUBMITTAL: One (1) original proposal and three (3) copies must be submitted and consist of the COMPLETED AND SIGNED Proposal Form and any other required documentation. **All copies should have the same attachments as the original.**

SEALED: All proposals should be returned in a sealed envelope with the **proposal name and number clearly marked on the outside.** If an overnight delivery service

is used, the proposal name and number must be clearly marked on the outside of the delivery service envelope.

REFERENCES: Williamson County requires proposer to supply with this proposal a list of at least **three (3) references proposer has leased a pecan grove** from in the past. Include name of reference, address, telephone number and name of representative.

LEGIBILITY: Proposals must be legible and of a quality that can be reproduced.

FORMS: All proposals should be submitted on the forms provided in this Request for Proposal. Changes to forms made by proposer shall disqualify their proposal.

LATE PROPOSAL: Proposals received after submission deadline will not be opened and will be considered void and unacceptable. Williamson County is not responsible for lateness of mail, courier service, etc.

RESPONSIBILITY: A prospective proposer must affirmatively demonstrate responsibility and must meet the following requirements:

- a) have adequate financial resources, or the ability to obtain such resources as required;
- b) be able to comply with the required lease payment;

- c) have a satisfactory record of performance in agriculture;
- d) be otherwise qualified and eligible to receive an award of said land lease.

Williamson County may request representation and other information sufficient to determine proposer's ability to meet these minimum standards listed above.

AWARD

SIXTY DAYS: Awards should be made approximately sixty (60) days after the proposal opening date. Results may be obtained by visiting the Williamson County Bid Portal:

<http://wilco-online.org/ebids/bids.aspx>

REJECTION OR ACCEPTANCE:

It is understood that the Commissioners' Court of Williamson County, Texas, reserves the right to accept or reject any and/or all proposals for any or all materials and/or services covered in this proposal request, and to waive informalities or defects in the proposal or to accept such proposal it shall deem to be in the best interest of Williamson County.

CONTRACT/LEASE AGREEMENT: This Proposal, when properly accepted by Williamson County, shall constitute a contract equally binding between the successful proposer and Williamson County.

The successful proposer shall be required to sign the lease agreement, which is attached hereto and entitled Pecan Harvesting Lease. The terms of this contract (this proposal when properly accepted by Williamson County) and the Pecan Harvesting Lease shall be collectively referred to herein as the "Lease Agreement." If, after the proposer executes the Pecan Harvesting Lease, there is a conflict between the terms and conditions of this contract and the Pecan Harvesting Lease, the terms and condition of the Pecan Harvesting Lease shall control.

CONTRACT ADMINISTRATION: Under the Lease Agreement, **Randy Bell**, Director of Parks and Recreation, Williamson County, shall be the contract administrator with designated responsibility to ensure compliance with the requirements of the Lease Agreement, such as but not limited to, acceptance, inspection and delivery. The contract administrator will serve as liaison between Williamson County Commissioners' Court and the successful proposer.

CONTRACT PERIOD: The Initial Term of the Lease shall commence after the Date of Award and continue for twelve (12) months thereafter. The Lease Agreement may be reviewed on an annual basis and may be renewed as described and set forth under "CONTRACT EXTENSIONS" below.

CONTRACT EXTENSIONS: On or before the Termination Date of each twelve (12) month lease term, the Williamson County Commissioners' Court reserves the right to extend the Lease, by mutual agreement of both parties, as it deems, in its sole discretion, to be in the best interest of Williamson County. Any such extensions will be in twelve (12) month increments for up to three (3) additional years, with the terms, covenants and conditions of the Lease Agreement remaining the same for any extension; and with a price escalation at renewal of each additional year of no more than the current market rate for each such new extended year. Each new extension of the Lease Agreement is contingent upon the approval of Williamson County Commissioners' Court for each extended lease term in question. The County and the proposer agree that termination shall be the proposer's sole remedy if the Williamson County Commissioners' Court decides not to extend the Lease for additional term(s), as set forth above.

PROPOSAL CONTACTS

Any questions, clarifications or requests for general information should be directed to:

TECHNICAL CONTACT:

Randy Bell, Director
Parks & Recreation Department
219 Perry Mayfield
Leander, TX 78641
(512) 943-1920
randybell@wilco.org

PURCHASING CONTACT:

Connie Singleton
Senior Purchasing Agent
901 South Austin Avenue
Georgetown, TX 78626
(512) 943-1553
csingleton@wilco.org

MISCELLANEOUS

RENTAL/CROP SHARE: The proposer shall propose either **a lump sum cash rental amount or a crop share percentage or a combination of both a cash rental amount and crop share**. The proposed rental must be good for the period from the Date of Award and continuing for twelve (12) months thereafter, the end of the initial lease term. Proposals which do not state a proposed lump sum cash rental amount or a crop share percentage or a combination of both a cash rental amount and crop share, or which are subject to change

without notice, will not be considered. The Court may award the lease for the period implied or expressly stated in the highest and best proposal.

STATEMENTS: No oral statement of any person shall modify or otherwise change, or affect the terms, conditions, plans and/or specifications stated in the various Proposal Packages and/or Proposal Instructions/Requirements.

PAYMENT: Unless otherwise approved or agreed to by Williamson County, rental payments will be made in two (2) installments for each twelve (12) month lease term. The first installment will be due on or before the one hundred eightieth (180th) day of each twelve (12) month lease term. The second installment for each twelve (12) month lease term will be due on or before the last day of the twelve (12) month lease term.

Payments must be made payable to Williamson County and be hand delivered or mailed to Williamson County Parks & Recreation Department, ATTN: Randy Bell, 219 Perry Mayfield Leander, TX 78641.

RIGHT TO AUDIT: Successful Bidder agrees that Williamson County or its duly authorized representatives shall, until the expiration of three (3) years after termination or expiration of the services to be performed, have access to and the right to examine and photocopy any and all books, documents, papers and records of Successful Bidder, which are directly pertinent to the services to be performed or goods to be delivered for the purposes of making audits, examinations, excerpts and transcriptions. Successful Bidder agrees that Williamson County shall have access during normal working hours to all necessary facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. Williamson County shall give Successful Bidder reasonable advance notice of intended audits.

CONFLICT OF INTEREST: No public official shall have interest in a contract, in accordance with Vernon's Texas Codes Annotated, Local Government Code Title 5, Subtitle C, Chapter 171.

As of January 1, 2006 Vendor's are responsible for complying with Local Government Code Title 5, Subtitle C, Chapter 176. Additional information may be obtained from the County website at the following link: http://wcportals.wilco.org/Interest_Conflict/index.html

The Williamson County Conflict of Interest Statement is located on the page herein below of this RFP Package. This form must be completed, signed, and submitted with your Proposal.

ETHICS: The proposer shall not accept or offer gifts or anything of value nor enter into any business arrangement with any employee, official or agent of Williamson County.

DOCUMENTATION: Proposer shall provide with this response, all documentation required by this request for proposal. Failure to provide this information may result in rejection of the proposal.

VOLUNTARY TERMINATION: Either party may terminate the Lease Agreement, without cause or liability, upon giving sixty (60) calendar days written notice to the other party. Upon the termination of the Lease Agreement, the successful proposer, who is referred to as the Lessee in the Pecan Harvesting Lease, will surrender the Premises peaceably to the County/Lessor and pay County/Lessor all rental amounts or any pro-rata portion of rental amounts owing and any other amounts that may be due hereunder as of the date of termination. In the event that County/Lessor exercises its right to terminate this Lease for convenience and without cause, County/Lessor shall be obligated to reimburse Lessee, on a pro-rata basis, the proportion of rents, if any, that have been prepaid for any unused portion of a lease term or extension.

TERMINATION FOR DEFAULT: Williamson County reserves the right to enforce the performance of the Lease Agreement in any manner prescribed by law or deemed to be in the best interest of the County in the event of breach or default of the Lease Agreement. Lessee's will be given a reasonable opportunity before termination to correct the deficiencies.

SILENCE OF SPECIFICATIONS: The apparent silence of these specifications as to any detail or to the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.

COMPLIANCE WITH LAWS: The successful proposer shall comply with all applicable federal, state and local laws and regulations pertaining to the practice of the profession and the execution of duties under this proposal including the TEXAS HAZARD COMMUNICATION ACT and THE WILLIAMSON COUNTY HAZARD COMMUNICATION PROGRAM POLICY.

Other Provisions:

1. The parties agree and understand that Williamson County, as a governmental entity, cannot enter into long-term contracts or lease agreements, without accepting competitive proposals.
2. Williamson County may become responsible for major soil conservation work and repairs or improvements as determined to be necessary for the upkeep of the Premises. The proposer/lessee shall submit said improvement requests to Williamson County in writing, and Williamson County reserves the right to reject any and all requests if Williamson County determines that the requested improvements are not necessary.
3. Williamson County will not provide insect scouting and or any spraying of herbicides, insecticides and fertilizers in relation to the pecan trees and grove. Proposer/lessee shall remove all dead limbs from the pecan grove and provide for all necessary wildlife control. The proposer/lessee shall not apply any herbicides, insecticides or fertilizers to any of the pecan trees unless such application is approved in advance by Williamson County.

PROPOSAL SPECIFICATIONS

Williamson County seeks a qualified pecan harvester for the harvesting of an estimated 200 native and mature pecan trees that are situated on approximately 90 acres out of a tract of land known as the Blackland Heritage County Park. This park is located off of State Highway 29, near the San Gabriel River, two (2) miles east of Jonah, Texas, which said land is more specifically described in Exhibit "A" of the attached Pecan Harvesting Lease. Williamson County leases approximately 227 acres of land adjacent to the 90 acres subject of this RFP. The adjacent 227 acres of land is separate and apart from this Pecan Harvesting Lease and it will be used by a third party lessee for Agricultural Crop production.

All proposals will be reviewed and ranked by Williamson County staff. An oral interview may be held if necessary. The staff will make its recommendation to the Williamson County Commissioners' Court which will award a pecan harvesting lease to the best proposer.

Selection Process

The selection of the best party will be accomplished through a two-step process by Williamson County:

1. Selection of the most qualified party will be based upon the best overall mix of **(8) eight Submission Requirements**. These Submission Requirements make up the Proposal and are listed on the following page. In addition, you must turn in the **Williamson County Conflict of Interest Statement** and the **Williamson County Proposal Form**, which are both attached herein below, with your Proposal.
2. Negotiations will proceed with the party that is selected as the most highly qualified to arrive at a mutually acceptable (fair and reasonable) cash rental and/or crop share. If an agreement cannot be reached as to the cash rental and/or crop share, negotiations will cease and new negotiations will begin with the party chosen as the next most qualified provider, and so on until an agreement as to the cash rental and/or crop share is reached. Proposer acknowledges and agrees that following an agreement as to the cash rental and/or crop share, proposer must execute the attached Pecan Harvesting Lease. Except for inserting the appropriate information onto the blank lines of the

attached Pecan Harvesting Lease, such lease must be executed, in its unmodified form, by the successful proposer prior to the Williamson County Commissioners Court's consideration of contract award.

3.

Proposal Evaluation

Interested and qualified parties should submit information that demonstrates their experience and Pecan Harvesting skills. Proposal documentation should be limited to ten (10) single-sided pages, 12pt font, and should include the following information:

1. Crop share percentage (%) of pecan harvest/gross sales price or lump sum cash rent or combination of both a crop share and lump sum cash rent amount to Williamson County. [20 Points](#)
2. Pecan harvesting experience. [20 Points](#)
3. Production history - Acres and crops you are currently producing. [15 Points](#)
4. Superior harvesting techniques you are using or will use. [10 Points](#)
5. Time frame of harvest and conditions of harvest. [10 Points](#)
6. Three (3) Pecan Harvesting References with names, addresses, and phone number. [15 Points](#)
7. Ability to sell pecans and any conditions thereof. [10 Points](#)



WILLIAMSON COUNTY CONFLICT OF INTEREST STATEMENT

I hereby acknowledge that I am aware of the Local Government Code of the State of Texas, Section 176.006 regarding conflicts of interest and will abide by all provisions as required by Texas law.

Printed name of person submitting form:

Name of Company:

Date:

Signature of person submitting form:

Notarized:

Sworn and subscribed before me

by: _____

on _____.

(date)

WILLIAMSON COUNTY PROPOSAL FORM

PECAN HARVESTING LEASE LAND LOCATED EAST OF JONAH, TEXAS BLACKLAND HERITAGE COUNTY PARK 14RFP00235

The proposer shall propose either a **lump sum cash rental amount** or a **crop share percentage** or a **combination of both a cash rental amount and crop share**. The proposed rental must be good for the period from the Date of Award and continuing for twelve (12) months thereafter, the end of the initial lease term. Proposals which do not state a proposed lump sum cash rental amount or a crop share percentage or a combination of both a cash rental amount and crop share, or which are subject to change without notice, will not be considered.

NAME OF PROPOSER: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

Email Address: _____

Telephone: (_____) _____ Fax: (_____) _____

TRACT +/- 90 Acres	<u>Crop share percentage (%) of pecan harvest/gross sales price or lump sum cash rent or combination of both a crop share and lump sum cash rent amount to Williamson County</u>
Lump Sum/Annual	\$ _____
Pecan Harvesting Crop Share%	% _____

The undersigned, by his/her signature, represents that he/she is authorized to bind the proposer to fully comply with the terms and conditions of the attached Request for Proposal, Specifications, and Special Provisions for the amount(s) shown on the accompanying proposal sheet(s). By signing below, you have read the entire document and agreed to the terms therein.

Signature of Person **Authorized to Sign** Proposal Date : _____

Printed Name and Title of Signer: _____

DO NOT SIGN OR SUBMIT WITHOUT READING ENTIRE DOCUMENT

THIS FORM MUST BE COMPLETED, SIGNED, AND RETURNED WITH PROPOSAL

PECAN HARVESTING LEASE

THE STATE OF TEXAS §

COUNTY OF WILLIAMSON §

THIS PECAN HARVESTING LEASE (the "Lease") is made and entered into by
and between Williamson County, Texas, being a political subdivision of the State of
Texas, hereinafter referred to as "Lessor", and

hereinafter referred to as "Lessee."

In consideration of the rent and the covenants herein contained on the part of Lessee to be kept and performed, the Lessor does hereby lease, demise and let unto the Lessee, and the Lessee hires and rents ONLY THE PECAN TREES situated on approximately Ninety (90) acres of land, more or less, located in Williamson County, Texas, as described in Exhibit "A" (the "Premises"), subject to the following terms and conditions:

ARTICLE 1: TERM OF LEASE

Commencement Date: _____, 20____

Termination Date: _____, 20____

Extensions: On or before the Termination Date, the Williamson County Commissioners Court reserves the right to extend this Lease, by mutual agreement of both parties, as it deems in the best interest of Williamson County. Any such extensions will be in twelve (12) month increments for up to three (3) additional years, with the terms, covenants and conditions of this Lease remaining the same for any extension;

and with a price escalation at renewal of no more than the current market rate for each new extended year.

ARTICLE 2: RENT

Lessee agrees to pay to Lessor, as rent for the Premises,

_____.

Unless otherwise approved or agreed to by Williamson County, rental payments shall be made in two (2) installments for each twelve (12) month lease term. The first installment will be due on or before the one hundred eightieth (180th) day of each twelve (12) month lease term. The second installment for each twelve (12) month lease term will be due on or before the last day of the twelve (12) month lease term. All rental payments must be made payable to Williamson County and be hand delivered or mailed to Williamson County Parks & Recreation Department, ATTN: Randy Bell, 219 Perry Mayfield Leander, TX 78641

ARTICLE 3: TAXES

Lessee agrees to pay any taxes levied against the pecan crop and personal property and fixtures of Lessee in and about the Premises, provided, however, that if any such taxes of Lessee are levied against Lessor or Lessor's property and Lessor pays those taxes, Lessee, on demand, shall reimburse Lessor for all taxes actually paid on Lessee's behalf.

ARTICLE 4: MAINTENANCE OF PECAN TREES

Lessor will not provide insect scouting or any spraying of herbicides, insecticides and fertilizers in, on and around the pecan trees and grove. Lessee shall remove all dead limbs from the Premises and provide for all necessary wildlife controls. Lessee shall not apply any herbicides, insecticides or fertilizers to any of the pecan trees unless such application is approved in advance by Williamson County.

ARTICLE 5: USE OF PREMISES

Lessee shall use the Premises solely for the purpose of harvesting pecans from the pecan trees situated on the Premises, together with all other purposes and activities usually and customarily associated with a pecan harvesting operation in Williamson County, Texas. Lessee hereby acknowledges and understands that Lessor may lease the surface of the Premises for the purpose of cattle grazing and that Lessee shall only have pecan harvesting rights to the Premises and shall not have any rights to otherwise farm or graze animals on the Premises or interfere with such other lessee's rights in relation to the Premises.

ARTICLE 6: UTILITIES

Lessee shall pay or cause to be paid all charges for any water, electricity and any other utilities, if any, used by Lessee on the Premises throughout the term of this Lease or any extension thereof, including any costs of installation and connection fees.

ARTICLE 7: LESSEE'S COVENANTS

Lessee further covenants and agrees as follows:

A. To pay and provide the rent for this Lease, as it is set out herein; to use the Premises in a careful and proper manner for the use specifically described herein; to commit or permit no waste or damages to the Premises; to conduct or permit no business or act that is a nuisance or may be in violation of any federal, state, or local law or ordinance; only use the Premises in such a prudent manner so as to preserve and protect the land and soil; to cooperate with any other lessees that may be leasing the Premises for purposes other than pecan harvesting; to surrender the Premises and the pecan trees situated thereon on expiration or termination of this Lease in at least as good of a condition as the Premises was in on the date prior to Lessee's occupation of the Premises; harvest the pecans from the pecan trees in a timely, thorough, and harvester-like manner, employing the best methods of harvesting customarily practiced on pecan trees and groves in the area and keep, repair and maintain all existing fencing, if any, during the term of this Lease and any extension thereof.

B. Lessee agrees to not use the Premises for any purpose other than for harvesting pecans or to alter the Premises, including clearing new roads, moving or erecting any fences, or locating on the Premises any type of permanent or temporary improvement without Lessor's prior written consent. Lessee further agrees to not hunt or fish the Premises or allow anyone else to do so.

C. Lessee assumes the risk of loss on all property and all improvements, including any crops, which are situated on the Premises. Lessee agrees to maintain at all times during this Lease, the insurance described herein below.

D. Upon termination of this Lease, Lessee agrees that all improvements situated on the Premises, whether such improvements were situated on the Premises prior to this Lease or placed on the Premises during this Lease, shall become the property of Lessor, or, at the option of the Lessor, Lessee, at Lessee's sole expense, shall remove all improvements and debris and restore the surface of the Premises to its original condition provided that Lessee placed such improvements on the Premises during the term of this Lease.

E. To permit Lessor to enter, inspect, and make such repairs to the Premises as Lessor may reasonably desire or show the Premises to prospective purchasers and tenants, at all reasonable times.

F. Lessee agrees that it is solely responsible for making all alterations, additions, or improvements necessary to the Premises to cause the Premises and its intended use to be in compliance with any laws, rules, ordinances, development codes or regulations of any applicable governmental authority, entity, or body, including, without limitation, the Federal Government, the local municipality, the County of Williamson, and the State of Texas and the rules and regulations of the United States Department of Agriculture and the Texas Agriculture Commissioner. The allocation of responsibility to Lessee for compliance with said laws, rules, ordinances, development codes or regulations is a material inducement for the parties to enter into this Lease. The costs incurred in causing the Premises and its intended use to be in compliance with said laws, rules, ordinances, development codes or regulations shall be solely borne by Lessee.

G. Keep all gates on the Premises closed and locked, ingress to and egress from the Premises being at those places designated by Lessor and provide Lessor with all keys and/or combinations to each gate locking mechanism used by Lessee on the Premises.

H. In the event this Lease or any extension thereof is terminated early by Lessor, whether such termination be for cause or convenience, Lessee shall pay Lessor any and all rents and amounts, on a pro-rata basis, which were incurred and due prior to or as of the date this Lease is terminated. If Lessee has paid any portion of the annual rental amount in advance, Lessor shall return to Lessee, on a pro-rata basis, the proportion of rents that have been prepaid for any unused portion of a lease term or extension.

ARTICLE 8: LESSOR'S COVENANTS

Lessor covenants and agrees to warrant and defend Lessee in the enjoyment and peaceful use and operation of the Premises during the term of this Lease or any extension thereof, subject to the termination rights set forth herein.

ARTICLE 9: INDEMNIFICATION & INSURANCE

A. **INDEMNIFICATION OF LESSOR: LESSOR SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM ANY USE OF THE PREMISES OR ANY NEARBY PREMISES USED BY LESSEE OR ANY PART THEREOF; OR CAUSED BY ANY DEFECT IN ANY BUILDING, STRUCTURE OR OTHER IMPROVEMENT THEREON; OR IN ANY EQUIPMENT OR OTHER FACILITY THEREIN; OR CAUSED BY OR ARISING FROM ANY ACT OR OMISSION OF LESSEE, OR OF ANY OF LESSEE'S AGENTS, EMPLOYEES, LICENSEES, OR INVITEES,**

OR BY OR FROM ANY ACCIDENT ON THE LAND OR ANY SURROUNDING PREMISES OR ANY FIRE OR OTHER CASUALTY THEREON, OR OCCASIONED BY THE FAILURE OF LESSEE TO MAINTAIN THE PREMISES IN SAFE CONDITION, OR ARISING FROM ANY OTHER CAUSE WHATSOEVER; AND LESSEE HEREBY WAIVES ON ITS BEHALF ALL CLAIMS AND DEMANDS AGAINST LESSOR FOR ANY SUCH LOSS, DAMAGE, OR INJURY OF LESSEE OR OF LESSEE'S AGENTS, EMPLOYEES, LICENSEES, OR INVITEES, AND HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD LESSOR ENTIRELY FREE AND HARMLESS FROM ALL LIABILITY FOR ANY SUCH LOSS, DAMAGE, OR INJURY OF OTHER PERSONS, AND FROM ALL COSTS AND EXPENSES ARISING THEREFROM. THE TERMS OF THIS INDEMNITY PROVISION SHALL SURVIVE ANY TERMINATION OF THIS LEASE.

B. Insurance: In order to insure the fulfillment of the above referenced indemnity provision, Lessee hereby agrees to maintain, at all times during the Term of this Lease and any extension thereof, at Lessee's sole cost, a comprehensive public liability insurance policy protecting Lessor against all claims or demands that may arise or be claimed on account of Lessee's use of the Premises, in an amount of at least \$1,000,000.00, per occurrence of accident and/or injury, for injuries to persons and damages to real and/or personal property. Said insurance shall be written by a company or companies acceptable to Lessor, authorized to engage in the business of general liability insurance in the state of Texas, and name Lessor as an additional insured. Furthermore, said insurance shall be primary as to any other existing, valid, and collectible insurance. Lessee shall deliver to Lessor annual certificates demonstrating that said insurance is paid up and copies of the insurance policies issued by the insurance companies.

Lessee further agrees to maintain at all times during the Term of this Lease and any extension thereof, at Lessee's cost, broad-coverage fire and casualty insurance on its property and to provide Lessor with a copy of the policy and a certificate issued by the insurance company demonstrating that insurance is paid up.

Lessee shall, within ten (10) calendar days from the execution of this Lease, obtain a certified statement by each insurance carrier containing a clause providing that the insurance carrier will give Lessor 30 days' written notice before any cancellation shall be effective. The insurance policies shall be provided by Lessee and shall be for a period of at least one year.

ARTICLE 10: DEFAULTS BY LESSEE

In addition to the remedies specifically set forth herein and those available at law or in equity, if Lessee fails to perform or breaches any term, condition or covenant set forth in this Lease, and this failure or breach continues for ten (10) calendar days after a written notice specifying the required performance has been given to Lessee, Lessee shall be in default and Lessor may:

- A. enforce specific performance causing Lessee to strictly comply with and perform such term, condition or covenant; or
- B. may, but not be obligated to do so, enter the Premises and perform Lessee's obligations for the account of and at the expense of Lessee. Bills for all amounts paid by Lessor and all losses, costs, and expenses incurred by Lessor in connection with such performance by Lessor pursuant to this clause, including without limitation, all amounts paid and costs and expenses incurred by Lessor

for any property, material, labor or services provided, furnished, or rendered or caused to be provided, furnished or rendered by Lessor to Lessee may be sent by Lessor to Lessee monthly or immediately, at Lessor's option, and shall be due and payable by Lessee to Lessor as additional rent within five (5) calendar days after same is sent to Lessee by Lessor; or

C. terminate this Lease, without liability, by written notice to Lessee, in which event, the Lease hereby created shall terminate on the tenth (10th) day after such notice is given (the "Termination Date") and Lessee shall within such ten (10) day period vacate the Premises and surrender them to Lessor in the state required under this Lease, with Lessor having the right to reenter and repossess the Premises discharged of this Lease and to remove all property therefrom.

Upon the occurrence of any default, Lessor may enter and take possession of the Premises by self-help, by picking or changing locks if necessary, and may lock out Lessee from the Premises, until the default is cured, without being liable for damages.

ARTICLE 11: DEFAULTS BY LESSOR

Defaults by Lessor are failing, within thirty (30) calendar days after receiving written notice from Lessee, to comply with any term, condition or covenant set forth in this Lease. In the event that Lessor fails to cure its default within the said thirty (30) calendar days, Lessee may, as Lessee's sole remedy, terminate this Lease.

ARTICLE 12: VOLUNTARY TERMINATION

Lessor or Lessee may terminate this Lease, without cause or liability, upon giving sixty (60) calendar days written notice to the other party. Upon the termination of this Lease, Lessee will surrender the Premises peaceably to the Lessor and pay Lessor all rental amounts or any pro-rata portion of rental amounts owing and any other amounts that may be due hereunder as of the date of termination. In the event that Lessor exercises its right to terminate this Lease for convenience and without cause, Lessor shall be obligated to reimburse Lessee, on a pro-rata basis, the proportion of rents, if any, that have been prepaid for any unused portion of a lease term or extension.

ARTICLE 13: INSOLVENCY, BANKRUPTCY, ETC., OF LESSEE

If Lessee is declared insolvent or adjudicated a bankrupt; if Lessee makes an assignment for the benefit of creditors; or if a receiver is appointed for Lessee, Lessor, without prejudice to its rights hereunder and at its option, may terminate this Lease and retake possession of the Premises immediately and without notice to Lessee or any assignee, transferee, trustee, or any other person or persons, using force if necessary.

ARTICLE 14: LESSOR TO HAVE LIEN

Lessor will have a lien against all goods, equipment and other personal property of Lessee brought, stored, or kept on the Premises during the term of this Lease and any extension thereof, in the aggregate amount of all rent, consideration, damages, and other sums that may at any time be owed by Lessee to Lessor under this Lease. In the event of any default by Lessee, Lessor may foreclose the lien in the same manner that a mortgage would be foreclosed.

ARTICLE 15: RIGHT TO SELL

It is understood and agreed that Lessor shall have the right to sell or assign its right, title and interest in the Premises, in whole or in part, at any time during the term of this Lease or any extension thereof. If during the term of this Lease or any extension thereof, the Premises are sold by Lessor to a third party, this Lease shall terminate. Not later than sixty (60) calendar days from the date in which Lessor gives Lessee notice that the Premises has been sold, Lessee shall vacate the Premises.

ARTICLE 16: ELECTION BY LESSOR NOT EXCLUSIVE

The exercise by Lessor of any right or remedy to collect rent or enforce its rights under this Lease will not be a waiver or preclude the exercise of any other right or remedy afforded Lessor by this Lease or by statute or law. The failure of Lessor in one or more instances to insist on strict performance or observations of one or more of the covenants or conditions of this Lease or to exercise any remedy, privilege, or option conferred by this Lease on or reserved to Lessor shall not operate or be construed as a relinquishment or future waiver of the covenant or condition or the right to enforce it or to exercise that remedy, privilege, or option; that right shall continue in full force and effect. The receipt by Lessor of rent or any other payment or part of payment required to be made by Lessee shall not act to waive any other additional consideration, rent or payment then due. Even with the knowledge of the breach of any covenant or condition of this Lease, receipt will not operate as or be deemed to be a waiver of this breach, and no waiver by Lessor of any of the provisions of this Lease, or any of Lessor's rights, remedies, privileges, or options under this Lease, will be deemed to have been made unless made by Lessor in writing.

ARTICLE 17: LIMITATIONS OF WARRANTIES

LESSEE ACKNOWLEDGES AND AGREES THAT, OTHER THAN AS MAY BE SPECIFICALLY SET FORTH HEREIN, LESSOR HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE NATURE, QUALITY OR CONDITION OF THE PREMISES, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL, GEOLOGY, OR CONDITIONS OF THE PECAN TREES; (B) THE INCOME TO BE DERIVED FROM THE PREMISES, (C) THE SUITABILITY OF THE PREMISES FOR ANY AND ALL ACTIVITIES AND USES WHICH LESSEE MAY CONDUCT THEREON, (D) THE COMPLIANCE OF OR BY THE PREMISES OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; (E) THE FITNESS FOR A PARTICULAR PURPOSE OF THE PREMISES, OR (F) ANY OTHER MATTER WITH RESPECT TO THE PREMISES AND THE PECAN TREES THEREON, AND SPECIFICALLY THAT LESSOR HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS REGARDING SOLID WASTE, AS DEFINED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., PART 261, OR THE DISPOSAL OR EXISTENCE, IN OR ON THE PREMISES, OF ANY HAZARDOUS SUBSTANCE, AS DEFINED BY THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, AND APPLICABLE STATE LAWS, AND REGULATIONS PROMULGATED THEREUNDER. LESSEE FURTHER ACKNOWLEDGES AND AGREES THAT HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PREMISES, LESSEE IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PREMISES AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY LESSOR. LESSEE FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PREMISES WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT LESSOR HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION. LESSEE FURTHER ACKNOWLEDGES AND AGREES THAT THE USE AND OPERATION OF THE PREMISES AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS, WHERE IS" CONDITION AND BASIS "WITH ALL FAULTS". LESSEE ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF THIS PARAGRAPH WERE A MATERIAL FACTOR IN THE DETERMINATION OF THE AMOUNT OF THE RENT OF THE PREMISES. THE TERMS OF THIS PARAGRAPH WILL SURVIVE ANY TERMINATION OF THIS LEASE.

ARTICLE 18: CONDEMNATION

If during the term of this Lease or any extension thereof, all of the Premises are taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right or eminent domain, or are sold to the condemning authority under threat of condemnation, this Lease will terminate, effective as of the date the condemning authority takes the premises. If only a part of the premises shall be so

taken or sold, but the remainder of the premises is not capable of being used for the purposes set forth herein, Lessor may terminate this Lease, without liability, at any time within forty-five (45) calendar days following such taking or sale. Any and all payments made for or arising from any such taking or for damages to the premises resulting therefrom shall belong and be payable entirely to Lessor.

ARTICLE 19: MISCELLANEOUS PROVISIONS

A. **Gender, Number and Headings.** Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The headings and section numbers are for convenience only and shall not be considered in interpreting or construing this Lease. The captions and paragraphs or letters appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of the sections or articles of this Lease or affect this Lease in any way.

B. **Place of Performance.** This Lease shall be interpreted according to the laws of the State of Texas and shall be performed in Williamson County, Texas, and exclusive jurisdiction and venue shall lie in Williamson County, Texas.

C. **Terms Inclusive.** As used herein, the terms "Lessor" and "Lessee" include the plural whenever the context requires or admits.

D. **Severability.** If any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Lease will be

construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligation of the parties shall be construed and enforced in accordance therewith. The parties acknowledge that if any provision of this Lease is determined to be invalid or unenforceable, it is the desire and intention of each that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, give effect to the intent of this Lease and be deemed to be validated and enforceable.

E. **Governmental Immunity.** Nothing in this Lease shall be deemed to waive, modify or amend any legal defense available at law or in equity to Lessor nor to create any legal rights or claim on behalf of any third party. Lessor does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

F. **No Assignment or Lease by Lessee.** Lessee may not sell or assign any interest granted herein or lease the Premises or any portion of the same or any portion of any improvement erected on said premises at any time without the prior written authorization and approval of Lessor.

G. **No Indemnification by Lessor.** Lessee acknowledges and agrees that Lessor, as a Texas Lessor and a political subdivision of the State of Texas, under the Constitution and the laws of the State of Texas, cannot enter into an agreement whereby it agrees to indemnify or hold harmless any other party, including but not limited to Lessee; therefore, all references of any kind, if any, to Lessor indemnifying,

holding or saving harmless any other party, including but not limited to Lessee, for any reason whatsoever are hereby deemed void and deleted.

H. **NOTICES.** Any notice to be given hereunder shall be in writing and may be affected by personal delivery or in writing by certified mail, return receipt requested, addressed to the proper party, at the following address:

LESSOR: Williamson County Judge (or successor)
301 S.E. Inner Loop, Ste. 109
Georgetown, Texas 78626

With copy to: Williamson County Parks and Recreation Department
Attention: Parks Director
219 Perry Mayfield
Leander, TX 78641

LESSEE: [REDACTED]
[REDACTED]
[REDACTED], Texas [REDACTED]

I. **Compliance with All Statutes and Regulations.** Lessee, at its expense, shall ensure compliance with any and all State, Federal, City and Lessor (and any other such regulatory body as may exercise jurisdiction over Lessee and/or the Premises) laws, ordinances, regulations, or rules regarding the erection or installment of any improvements and all permitted activities upon the Premises.

J. **Subordination.** This Lease and all rights of Lessee under it are and shall be subject to and subordinate to the rights of any mortgage or bond holder now or hereafter having a security interest in the Premises or any other encumbrances Lessor desires to place on the property.

K. **Entire Agreement.** This Lease and its addenda, if any, sets forth all the promises, agreements, conditions, and understandings between Lessor and Lessee relative to the Premises and supersedes any prior understandings or written or oral agreements between the parties with respect to the to the Premises. There are no other promises, agreements, conditions, or understandings, either oral or written, between them. No subsequent alteration, amendment, change, or addition to this Lease will be binding on Lessor or Lessee unless in writing and signed by them and made a part of this Lease by direct reference.

EXECUTED this _____ day of _____, 20_____, by authority of the governing board of each party.

Lessor:

Williamson County, Texas

By: _____
Dan A. Gattis,
Williamson County Judge

Lessee:

By: _____

Printed Name: _____

Name of Business: _____

Title of Signer: _____

Exhibit "A"

Being ONLY THE PECAN TREES situated on ninety (90) acres of land, more or less, out of a greater 353.692 acre tract situated in the Silas Palmer Survey, Abstract No. 499, Williamson County, Texas, with said greater tract being more particularly described by metes and bounds in a Special Warranty Deed recorded under Document No. 2008007749, Official Records, Williamson County, Texas. The said ninety (90) acres on which the pecan trees are situated, which is referenced in this Pecan Harvesting Lease as being the "Premises", is further depicted in the sketch attached to the immediately following page.

