



## Bismarck Airport

**DATE:** 6/30/2021

**FROM:** Gregory Haug, Airport Director

**ITEM:**

Consider a lease agreement with the State Historical Society of North Dakota for a storage building.

**REQUEST:**

Consider a lease agreement with the State Historical Society of North Dakota for a storage building.

Please place this item on the July 13, 2021 City Commission meeting agenda.

**BACKGROUND INFORMATION:**

The State Historical Society of North Dakota has rented a parcel for a storage building along Airway Avenue just west of the NPCC for a number of years. The building is in the top center of the picture provided (Enclosure 1). The lease (Enclosure 2) is for one year. The contract is written so the City must agree to any new improvements, structures, or alterations to the leased property. The ground lease has the same language in it as the one the Board approved last year. Required Federal Aviation Administration (FAA) clauses are included. A CPI adjustment upward of 5% was made this year. The lease represents \$935.57 of income to the Airport Enterprise Fund.

**RECOMMENDED CITY COMMISSION ACTION:**

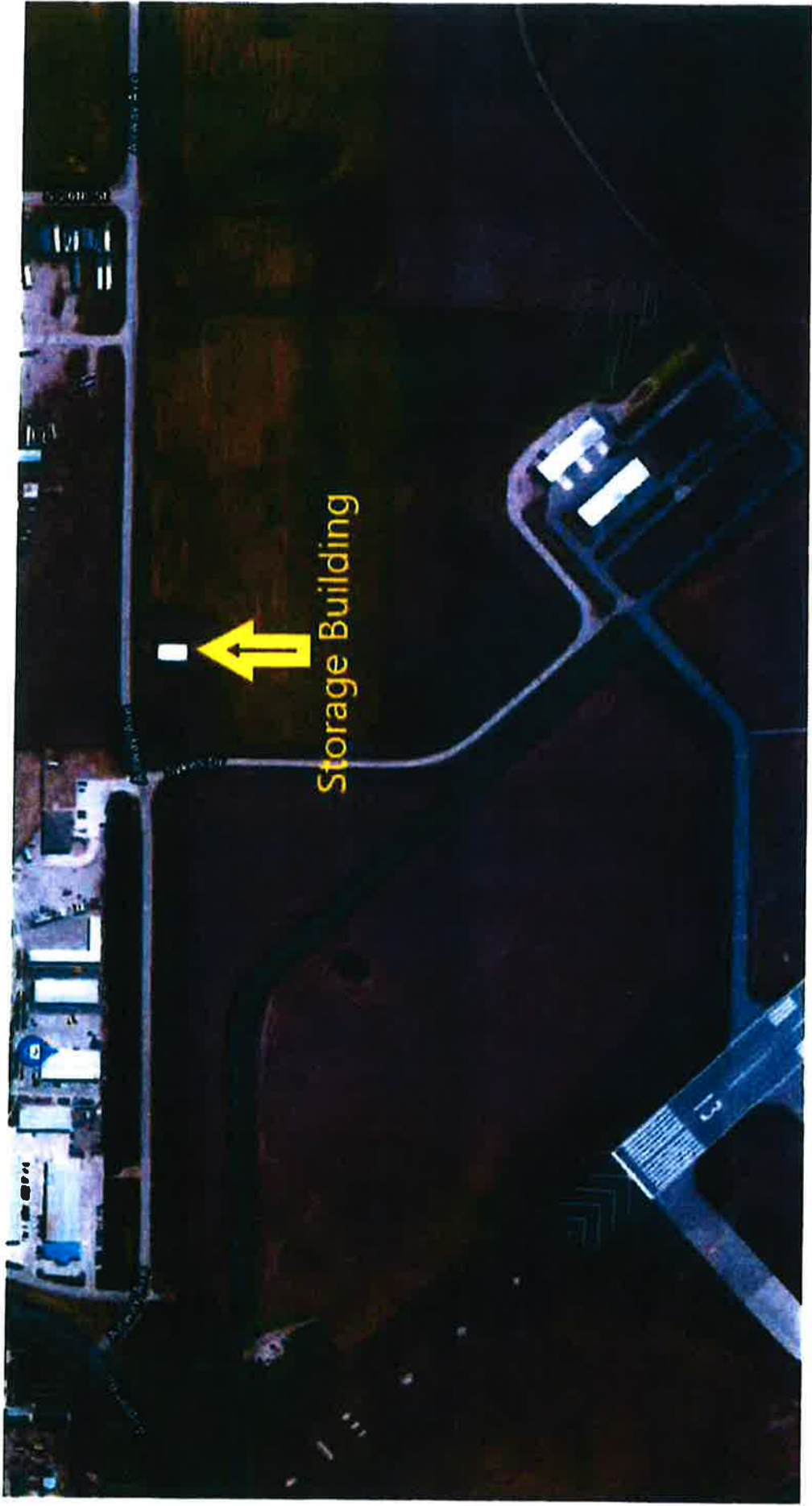
1. Approve the lease agreement at enclosure 2.

**STAFF CONTACT INFORMATION:**

Greg Haug | Airport Director, 355-1800 or [ghaug@bismarcknd.gov](mailto:ghaug@bismarcknd.gov)

**ENCLOSURES:**

1. Building location diagram
2. Lease



ON JULY 13, 2021 A66-ND

## CONTRACT REVIEW FORM

### DEPARTMENT

Contract between the City of Bismarck and STATE HISTORICAL SOCIETY OF ND

Purpose of Contract: PARCEL LEASE FOR STORAGE BUILDING

Contract Amount: \$935.57

Contract Period: 1 YEAR JULY 1, 2021 TO JUNE 30, 2022

Funding Source: INCOME TO AIRPORT ENTERPRISE FUND

Project Number: (If needed, send copy to Fiscal)

Comments:

After Mayor's Signature, route to: AIRPORT

Date:

Department Head Signature:

Date:

### **CITY ATTORNEY**

Comments:

City Attorney Signature:

Date:

### **FINANCE**

Comments:

Director of Finance Signature:

Date:

### **ADMINISTRATION**

City Administrator Signature:

Date:

Please send copy of completed contracts to Administration.

## **LEASE**

### **PARTIES**

The parties to this lease (Lease) are the state of North Dakota, acting through its State Historical Society (STATE), and City of Bismarck, a North Dakota municipal corporation, having its principal place of business at 221 N. 5<sup>th</sup> St., Bismarck, ND 58506 (LANDLORD);

### **SCOPE OF LEASE**

LANDLORD, in consideration of the rent to be paid and the covenants to be performed by STATE, hereby leases to STATE the following described premises (Premises) situated in the city of Bismarck, county of Burleigh, and state of North Dakota:

A tract of land at the Bismarck Municipal Airport, being a tract in the Southeast Quarter of the Southwest Quarter (SE¼SW¼) of Section Ten (10), Township One Hundred Thirty-Eight North (T. 138 N.), Range Eighty (80), Burleigh County, North Dakota, described as follows, to wit: Lot Eighteen (18) which is 60 feet by 115 feet, tract contains 6,900 square feet and shown in Exhibit "A" attached hereto and made a part hereof.

The property is leased to be used for warehousing and for any other lawful business if approved in writing by the City.

### **TERM OF LEASE**

The term of this Lease (Term) is for a period of 12 months, commencing on the 1st day of July 2021 and terminating on the 30<sup>th</sup> day of June 2022.

### **HOLDING OVER**

If STATE remains in possession of the Premises after this Lease expires, and LANDLORD accepts rent from STATE, this Lease shall be deemed renewed on a month-to-month basis with all other terms and conditions of this Lease remaining in effect until otherwise agreed in writing.

### **RENTAL PAYMENTS**

STATE will pay rent for the Premises, consisting of 6,900 square feet, at \$935.57 per annum.

Rent will be payable annually on or before July 1.

Rent is payable at the address of LANDLORD, unless STATE is notified otherwise in writing by LANDLORD.

## **OBLIGATIONS**

The STATE is taking the premises as is and the STATE shall be responsible for all charges for utility or other services and for applicable taxes and the City as LANDLORD assumes no responsibility for upkeep or maintenance or charges or costs of any kind.

No additional improvements, structures, alterations, or additions shall be made in, to, or upon the leased premises without the prior written consent of the city. The STATE has the right to remove any buildings on termination of the lease provided that the premises are left in good condition.

## **TERMINATION OF LEASE**

STATE has no obligation under this Lease for the initial or succeeding terms if the North Dakota Legislature fails to appropriate to STATE sufficient funds to defray the full rental costs. STATE, without any liability, may terminate this Lease by providing thirty (30) days' written notice, if its legislative appropriations are reduced or if its authority to spend its appropriations is reduced or limited by law or by reductions in federal or other grant funds to a point STATE, in its sole discretion, deems insufficient to pay the full rental cost for the remainder of the Term of this Lease.

During the Term of this Lease or any renewal or extension, STATE may terminate this Lease by providing thirty (30) days' written notice to LANDLORD, if LANDLORD fails to comply with any of its obligations under this Lease, or if STATE determines it must relocate to comply with the Americans With Disabilities Act of 1990 or any rules adopted under the act, or with any other state or federal law or rules.

## **TERMINATION OF LEASE IN THE EVENT OF DESTRUCTION OF PREMISES**

If the leased Premises are destroyed or damaged by fire or the elements to the extent they become untenable, this Lease will terminate immediately, unless LANDLORD, within twenty (20) days of the happening of the event, gives written notice of intention to restore the building and fully restores the Premises within a reasonable time. During the term between destruction and restoration of the Premises rent will not be due, and if rent has already been paid LANDLORD shall refund to STATE all that portion of the prepaid rent attributable to the time during which STATE was unable to use the Premises for its intended use.

## **MERGER AND MODIFICATION**

This Lease constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this Lease. This Lease may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties.

**SEVERABILITY**

If any term of this Lease is declared to be illegal or unenforceable by a court having competent jurisdiction, the validity of the remaining terms is unaffected and, if possible, the rights and obligations of the parties are to be construed and enforced as if this Lease did not contain that term.

**ASSIGNMENT – SALE OF PREMISES**

This Lease must not be assigned or subleased by STATE without LANDLORD’s written consent, but the LANDLORD shall not withhold such permission in an unreasonable or capricious fashion. This Lease does not terminate if the Premises are sold, but continues throughout the entire Term.

**NOTICE**

All notices or other communications required under this Lease must be given by registered or certified mail and are complete on the date postmarked when addressed to the parties at the following addresses:

| <b>STATE</b>                         | <b>LANDLORD</b>                      |
|--------------------------------------|--------------------------------------|
| Name: William Peterson               | Name: Jannelle Combs                 |
| Title: Director, SHSND               | Title: City Attorney, Bismarck       |
| Address: 612 E. Boulevard Ave.       | Address: P.O. Box 5503               |
| City, State, Zip: Bismarck, ND 58505 | City, State, Zip: Bismarck, ND 58506 |

Notice provided under this provision does not meet the notice requirements for monetary claims against the State found at N.D.C.C. § 32-12.2-04.

**APPLICABLE LAW AND VENUE**

This Lease is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Lease must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

**ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL**

By entering into this Lease, STATE does not agree to binding arbitration, mediation, or any other form of mandatory Alternative Dispute Resolution. The parties may enforce the rights and remedies in judicial proceedings. STATE does not waive any right to a jury trial.

## **SPOILIATION – PRESERVATION OF EVIDENCE**

LANDLORD shall promptly notify STATE of all potential claims that arise from or result from this Lease. LANDLORD shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to STATE the opportunity to review and inspect such evidence, including the scene of an accident.

## **INDEMNIFICATION**

LANDLORD and STATE each agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorney's fees which may in any manner result from or arise out of this Lease.

## **INSURANCE**

Both parties shall maintain appropriate insurance or self-insurance as appropriate.

## **CONFIDENTIALITY**

LANDLORD shall not use or disclose any information it receives from STATE under this Lease that STATE has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Lease or as authorized in advance by STATE. STATE shall not disclose any information it receives from LANDLORD that LANDLORD has previously identified as confidential and that STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota public records law, N.D.C.C. ch. 44-04. The duty of STATE and LANDLORD to maintain confidentiality of information under this section continues beyond the Term of this Lease.

LANDLORD acknowledges that STATE possesses substantial amounts of information at the leased Premises that is confidential pursuant to state law. LANDLORD, if it views, comes into possession of, or otherwise becomes knowledgeable of confidential information located at the leased Premises, shall maintain the confidentiality of that information and shall refrain from re-disclosing that information to any third party. LANDLORD shall require, by contract, any agent it retains to fulfill its obligations otherwise set out in this Lease to similarly maintain the confidentiality of any information it views, comes into possession or of which otherwise becomes knowledgeable. Those indemnity provisions otherwise set out in the Lease agreement specifically apply to this confidentiality requirement.

## **COMPLIANCE WITH PUBLIC RECORDS LAWS**

LANDLORD understands that, in accordance with this Lease's Confidentiality clause, STATE must disclose to the public upon request any records it receives from LANDLORD. LANDLORD further understands that any records obtained or generated by LANDLORD under this Lease, may, under

certain circumstances, be open to the public upon request under the North Dakota public records law. LANDLORD agrees to contact STATE immediately upon receiving a request for information under the public records law and to comply with STATE's instructions on how to respond to the request.

**STATE AUDIT**

All records, regardless of physical form, and the accounting practices and procedures of LANDLORD relevant to this Lease are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors, if required. LANDLORD shall maintain all of these records for at least three (3) years following completion of this Lease and be able to provide them upon reasonable notice. STATE, State Auditor, or Auditor's designee shall provide reasonable notice to LANDLORD prior to conducting examination.

**FAA REQUIREMENTS**

The FAA required clauses are part of the agreement and are listed in enclosure 1.

**EFFECTIVENESS OF LEASE**

This Lease is not binding on STATE until it is reviewed and executed by the Office of Attorney General and approved and executed by the Director of Facility Management Division, OMB, as required in N.D.C.C. § 54-21-24.1.

CITY OF BISMARCK

BY: \_\_\_\_\_  
President, Board of City Commissioners

Attest: \_\_\_\_\_  
City \_\_\_\_\_

THE STATE HISTORICAL SOCIETY OF  
NORTH DAKOTA

Director: \_\_\_\_\_

Form approved by the Attorney General

\_\_\_\_\_

Date: \_\_\_\_\_

Form approved by Facility Management

\_\_\_\_\_

Date: \_\_\_\_\_