



Bismarck Airport

DATE: April 19, 2022
FROM: Gregory Haug, Airport Director
ITEM: Consider Bids for Bismarck Airport Crop Land

REQUEST:

Please consider bids and award crop land contract.

Please place this item on the April 26, 2022, City Commission meeting agenda.

BACKGROUND INFORMATION:

Bismarck Airport has one tract of crop land that it bids out every three-years to assure the price stays close to fair market value. The crop land tract for 2022, 2023 and 2024 was publically advertised and bids were received and opened by Airport staff on April 18, 2022. Two bids were received. Mark Berger submitted the high bid for the crop land tract with a bid of \$88.00 per acre..

RECOMMENDED CITY COMMISSION ACTION:

Accept the bid tab for the crop land project and award crop land tract to the high bidder, Mark Berger.

STAFF CONTACT INFORMATION:

Greg Haug | Airport Director | 701-355-1808 | ghaug@bismarcknd.gov

Enclosure

1. 2022-2024 Crop Land Bid Tabulation
2. Mark Berger Crop Land Contract

Bid for Cropland

Bismarck Airport

Monday, April 18, 2022

Name/Address	Year 1 -2022 165 Acres	Year 2 - 2023 165 Acres	Years 3 - 2024 165 Acres
Mark Berger	\$88.00 per acre	\$88.00 per acre	\$88.00 per acre
Joe Wetsch	\$67.55 per acre	\$67.55 per acre	\$67.55 per acre

LEASE AGREEMENT CITY/AIRPORT FARMLAND

THIS AGREEMENT, made and by and between the CITY OF BISMARCK, North Dakota, a municipal corporation, hereinafter called the “Lessor” and Mark Berger 5890 13th Ave Ft. Rice, ND 58554 hereinafter called the “Lessee”, with reference to certain lands owned by the City of Bismarck, North Dakota, and controlled by the Bismarck Municipal Airport, hereinafter referred to as the “Airport”.

WITNESSETH:

THE PARTIES HERETO, in consideration of the rents, covenants, and agreements herein contained, decree as follow:

I.

PREMISES. The Lessor does hereby let to the Lessee and the Lessee does hereby rent and take from the Lessor land found in the S2 of Section 23, Township 138 North, Range 80 West, for the purpose of farming; “Cropland Area” of land as described on Sheet 1 attached hereto.

II.

TERM. The term of the Lease shall be from May 1, 2022 to December 31, 2024.

III.

RENTAL. The Lessee shall pay to the Lessor a rental of \$88.00 per acre per year which is 165 acres-cultivated totaling \$14,250.00. Payment shall be made no later than April 1st of each year for the term of this lease and any renewal thereof.

IV.

UTILITIES. The lessee agrees to furnish all utilities necessary to perform Lessee’s operation.

V.

REPAIRS. The Lessee agrees to maintain fences, wells, roadways, or any of the Lessor’s equipment, which may be applicable to the Lessee’s farming operation. The Lessee agrees to maintain, during the term and to surrender at the end of the term, the leased premises in the condition they were in at the commencement of this Lease, less ordinary wear, tear, and damage by fire or casualty.

VI.

FARMING PRACTICES. The farmlands described within this Lease shall be worked in a manner, which is generally accepted as good farming practices within the industry.

VII.

SPECIAL CONDITIONS:

- 1. No cultivated land shall be summer fallowed without the written consent of the Lessor's Airport Director or designee.**
- 2. Application of fertilizers is subject to approval of the Lessor's Airport Director or Designee.**
- 3. Acceptable crops that can be planted on the leased land are canola, flax safflower, peas, lentils and beans (Navy, Pinto, Soy)**
- 4. Following harvest leased land shall be disced and worked to eliminate any remaining crop material.**

VIII.

INSURANCE. The Lessee agrees to indemnify and hold harmless the Lessor from any loss, liability, or expenses for injury to or death of any person or damage to or destruction of any property caused by Lessee's negligence, use of occupancy of the Cropland Area, except the loss, liability, or expense caused by the negligence of the Lessor, its agents or employees. The Lessor will give the Lessee prompt notice of any claim made or suit instituted which in any way affects or might affect Lessee and Lessee will have the right to compromise and defend to the extent of its own interest. The Lessee, its officers, agents, and employees shall not be liable for any loss or damage to the premises, facilities, and equipment on which the leased premises are located to the extent that such loss is compensated by insurance, provided that this provision shall not be effective if it shall invalidate any insurance policy.

IX.

LAWS AND REGULATORY ENFORCEMENT. Lessee acknowledges its obligations for security on the leased premises as prescribed by FAA and TSA regulations and shall employ such measures as are necessary to prevent or deter the unauthorized access of persons or vehicles to or on its leased premises and any portion of the aircraft operations areas connected therewith. Lessee further shall abide by the ordinances adopted by the Lessor in carrying out the Lessor's obligations under FAA and TSA regulations and other measures the Lessor deems necessary from time to time for the security and safety of the airport and of persons and vehicles entering the Aircraft Operations Area, which is defined as the area inside the

airport perimeter fence. Lessee shall reimburse the Lessor in full for any fines or penalties levied against the Lessor for any violation of Federal State and local laws, rules, or regulations as a result of any act or failure to act on the part Lessee, its agents, suppliers, or employees.

X.

CANCELLATION. The Lessee does hereby agree that the Lessor may terminate the Lease or any part of the Lease in the event the land is needed for airport purposes, provided the Lessor allows adequate time to harvest and remove crops and or hay within the growing year which payment for the Lease has been made, or appropriate reimbursement is made to the Lessee.

XI.

NON-EXCLUSIVE RIGHTS. Lessee shall have the right and privilege of engaging in the operations and business herein specified on the premises leased under the terms herein provided; however, this agreement does not grant the Lessee or those claiming under it the exclusive right to the use of the premises and facilities of said airport other than those premises leased exclusively to the Lessee hereunder.

XII.

CIVIL RIGHTS ASSURANCES. The Lessee, for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied benefits of, or otherwise be subjected to discrimination, (3) that the Lessee, shall use the premises in compliance with all other requirements imposed by or pursuant to title 49, code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

That in the event of breach of any of the above nondiscrimination covenants, the City of Bismarck shall have the right to terminate the Lease and to re-enter and repossess said land and the facilities thereon, hold the same as if said Lease had never been made or issued.

XIII.

PROPERTY TAXES. The Lessee agrees to pay all property taxes applicable to the Leased premises through possessory interest of such land, during the term of the Lease.

XIV.

ASSIGNMENT. Lessee shall not at any time assign this Lease or any part thereof without the written consent of the Lessor.

XV.

1. FEDERAL PROVISIONS (ATTACHMENT A). Federal law requires that certain agreement provisions must be incorporated into all airport agreements. These federally required agreement provisions are hereby incorporated herein and made a part of this agreement and the contractor agrees to the following:
 - a. Civil Rights – General
 - b. Civil Rights Title VI Assurances
 - i. Notice - Solicitation
 - ii. Clause - Contracts
 - iii. Clause – Transfer of U.S. Property
 - iv. Clause – Transfer of Real Property
 - v. Clause - Construct/Use/Access to Real Property
 - vi. List – Pertinent Authorities
 - c. Federal Fair Labor Standards Act
 - d. Occupational Safety and Health Act

IN WITNESS WHEREOF, the parties have executed this Lease agreement by their duly authorized officers the day and year above written.

CITY OF BISMARCK

Date: _____

RECOMMENDED APPROVAL
TERMS AND CONDITIONS BY:

APPROVED AS TO FORM AND
LEGALITY BY:

Gregory B. Haug
Airport Director

Janelle Combs
City Attorney

ATTEST:

CITY OF BISMARCK, NORTH DAKOTA

Keith Hunke
City Administrator

Steven Bakken, President
Board of City Commissioners

Date: _____

ATTEST:

LESSEE:

Attest Signature

Lessee Signature

Printed Name

Printed Name



- MINIMUM CROP OR HAY DISTANCE
- ***** CONSTRUCTION AREA, NOT AVAILABLE FOR HAYING
- AIRPORT PROPERTY LINE

- HAYLAND AREA #1 = 690 ACRE - 105 ACRE
- HAYLAND AREA #2 = 324 ACRES - 61 ACRE
- CROPLAND AREA = 165 ACRE



FOR PLANNING PURPOSES ONLY

Attachment A Civil Rights Provisions

1. Airport and Airway Improvement Act of 1982, Section 520 - General Civil Rights Provisions

The contractor agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

This provision also obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon.

In these cases the provision obligates the party or any transferee for the longer of the following periods:

- A. The period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
- B. The period during which the airport sponsor or any transferee retains ownership or possession of the property.

2. Civil Rights Act of 1964, Title VI – Contractor Contractual Requirements

A. Title VI Solicitation Notice

(Source: Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

B. Title VI Solicitation Notice:

The City of Bismarck, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

3. Title VI Clauses for Compliance with Nondiscrimination Requirements

(Source: Appendix A of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

Compliance with Nondiscrimination Requirements

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- A. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- B. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- C. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
- D. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- E. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the contractor under the contract until the contractor complies; and/or

b. Cancelling, terminating, or suspending a contract, in whole or in part.

F. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

4. Title VI List of Pertinent Nondiscrimination Authorities

(Source: Appendix E of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

5. **Clauses for Deeds Transferring United States Property**

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.

NOW THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the (*Title of Recipient*) will accept title to the lands and maintain the project constructed thereon in accordance with the Uniform Administrative Requirement, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200), the regulations for the administration of the University Transportation Centers Program, and the policies and procedures prescribed by the Office of the Secretary of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim, and convey unto the (*Title of Recipient*) all the right, title and interest of the U.S. Department of Transportation in and to said lands.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto *(Title of Recipient)* and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the *(Title of Recipient)*, its successors and assigns.

The *(Title of Recipient)*, in consideration of the conveyance of said lands and interest in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the *(Title of Recipient)* will use the lands and interests in lands and interest in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].

6. Clauses For Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the *(Title of Recipient)* pursuant to the provisions for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program.

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, (*Title of Recipient*) will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the (*Title of Recipient*) will have the right to enter or re-enter the lands and

facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the (*Title of Recipient*) and its assigns.

7. Clauses for Construction/Use, Access to Real Property Acquired Under the Activity, Facility or Program

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by (Title of Recipient) pursuant to the provisions for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits or, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above of the above Non-discrimination covenants, (*Title of Recipient*) will have the right to terminate the (license, permits, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, (*Title of Recipient*) will there upon revert to and vest in and become the absolute property of (*Title of Recipient*) and its assigns.

Federal Fair Labor Standards Act (Federal Minimum Wage)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or

regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Federal Agency with Enforcement Responsibilities	Requirement
U.S. Department of Labor – Wage and Hour Division	Federal Fair Labor Standards Act (29 USC 201)

Occupational Safety and Health Act of 1970

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Occupational Safety and Health Act of 1970 (20 CFR Part 1910)	U.S. Department of Labor – Occupational Safety and Health Administration