



Bismarck Airport

DATE: June 15, 2022
FROM: Gregory Haug, Airport Director
ITEM: Consider Amendment 2 to Jeff Dick/ Mary Selzler Ground Lease.

REQUEST:

Consider Amendment 2 to the October 29, 2009 Jeff Dick/ Mary Selzler Ground Lease

Please place this item on the June 28, 2022, City Commission meeting agenda.

BACKGROUND INFORMATION:

The Board approved a October 29, 2009 ground lease with Duane Dick and David Dick for the Runway Express Mart. The Board approved a subsequent lease Amendment 1 and two lease assignments resulting in Jeff Dick and Mary Selzler becoming the Lessee's. Jeff Dick and Mary Selzler desire to sell the business to Tri-Energy Cooperative and have the ground lease assigned to Tri-Energy Cooperative. Tri-Energy Cooperative requests the assignment and asks that the two years and 5 months remaining on the lease be extended so there is to total of 7 years remaining in the lease. The lease extension is to satisfy financing requirements for the transition and to amortize investments in petroleum equipment needed to stay ahead of compliance requirements (Enclosure 1).

Amendment 2 will make Tri-Energy Cooperative the lessee, extend the lease term to June 30, 2029 and require not less than \$120,000 of investment in petroleum equipment and building remodeling. Except as specifically amended in Amendment 2 all other terms and conditions of the Ground lease and Amendment 1 remain in force.

RECOMMENDED CITY COMMISSION ACTION:

Approve Amendment 2 to the October 29, 2009 Jeff Dick/ Mary Selzler Ground Lease at Enclosure 2.

STAFF CONTACT INFORMATION:

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

Enclosure

1. Tri-Energy Letter dated May 17, 2022.
2. Amendment 2



PO Box 2317
219 North 20th Street
Bismarck, ND 58501
701-223-8707

May 17, 2022

Timothy Thorson, Assistant Airport Director
Bismarck Airport
PO Box 991
Bismarck, ND 58502

Mr. Thorson,

I'm writing to you about a ground lease agreement between the City of Bismarck (LESSOR) and Jeff Dick and Mark Selzler, owner/operators of Runway Express Mart (LESSEES). This lease is comprised of a 1.198 acre parcel in the northwest quadrant of the Airport (the Bismarck Airport Addition, Lot 1 Block 10).

Mr. Dick and Ms. Selzler have come to an arrangement to sell their business to Tri-Energy Cooperative. On behalf of the lessees and Tri-Energy, I'm requesting an assignment of the current lease to Tri-Energy Cooperative. In addition to the lease assignment, I'm also requesting a 7-year extension to the lease to satisfy financing requirements on the transaction and the anticipated improvements listed below.

In an effort to remain ahead of compliance standards on petroleum equipment, we anticipate the following changes will need to be made this year:

1. Remove & replace fueling island dispensers with EMV-compliant, RFID-enabled dispensers (est \$110,000)
2. Remove & replace single-wall spill buckets around the UST fill ports with double-wall spill buckets (This provides secondary containment in the event of accidental discharge outside the fill port into the primary containment area.) (est \$15,000)
3. Remove & replace UST tank monitor and tank probes to enable continuous pressurized line leak detection & reporting (est \$35,000)
4. Remove & replace security systems, cameras and NVR (est \$15,000)

Though no commitments have been made yet, we are also exploring options to remodel the store in the next couple of years.

Would you please let me know if there's any other information that will help to facilitate our request for the lease assignment and extension?

Thank you for your consideration,

A handwritten signature in black ink, appearing to read "Denley Vennes", with a small "CEO" written below it.

Denley Vennes
CEO
Tri-Energy Cooperative

ENCL 1

AMENDMENT 2

TO THE

GROUND LEASE AGREEMENT

BY AND BETWEEN

THE CITY OF BISMARCK, ND

AND

Jeffrey D. Dick and Mary J. Selzer

June 20, 2022 Final

WHEREAS, The City is the owner and operator of the Bismarck Airport, hereinafter the "Airport", located in Bismarck, North Dakota, and operates the Airport for the promotion, accommodation and development of air commerce and air transportation; and

WHEREAS, the City and the Lessee entered into a Lease Agreement dated October 29, 2009, effective November 15, 2009, the "original Agreement", for a term of five (5) years and sixteen (16) days, expiring November 30, 2014, with two separate five (5) optional year extensions each of which were exercised by notice to the City by the Lessee and approved by the City; and

WHEREAS, David Dick sold his interest in the convenience store/gas station on the leased premises to Duane Dick and Margerie Dick and the City agreed to Amendment 1 dated September 30, 2013 removing David Dick as a party and added Margerie Dick as a party; and

WHEREAS, Margerie Dick passed away, on December 8, 2020 the City approved the assignment of the Lease to Duane Dick who since passed away and on December 22, 2020 approved assignment of the Lease from the Duane Dick Estate to Mary J. Selzler, an undivided 49% and Jeffry Dick, an undivided 51%; and

WHEREAS, the Lessee now desires to sell the business and amend the lease to assign their right, title, and interest in the Ground Lease Agreement to the new owner Tri-Energy Cooperative, Bismarck, ND; and

WHEREAS, the Lessee now desires to extend the current lease Term for an additional 4 ½ years in consideration for equipment investment; and

WHEREAS, the parties hereto desire to enter into this Amendment 2 to the Ground Lease granting additional term and changing the party of the lease premises and the use, together with others, of the Airport and its appurtenances;

NOW, THEREFORE, in consideration of the premises provided herein, the rights and privileges and the mutual covenants and agreements hereinafter contained and other valuable consideration, the parties hereto agree, for themselves, their successors and assigns, as follows:

1. Introductory (first) paragraph on Page 1 is deleted and replaced with the following:

Contingent upon the closing of the sale of Runway Express Mart, Inc.'s assets to Tri-Energy Cooperative on or about June 30, 2022 and also contingent upon the closing of the sale of the building located at 1730 and 1740 Airport Road, Bismarck, ND which is owned by Jeffrey D. Dick and Mary J. Selzler to Tri-Energy Cooperative on or about June 30, 2022, this Agreement, is made and entered into by and between the City of Bismarck, a municipal corporation, hereinafter the "City" and Tri-Energy Cooperative, hereinafter the "Lessee".

2. Article 1. A., of the Ground Lease Agreement shall be amended to read as follows:

1. TERM

- A. The Term of this agreement shall be for nineteen (19) years, five (5) months and Sixteen (16) days, commencing on November 15, 2009 and ending June 30, 2029, unless sooner terminated as provided for herein.

3. Article 3, Paragraph 3C, of the Ground Lease Agreement shall be amended to read as follows:

3. RENT, FEES AND CHARGES

- C. As additional rent, the Lessee shall construct the initial improvements generally in accordance with Article 2 and Exhibit B, as modified, supplemented or amended pursuant to the City's review and approval process, the "initial improvements". Additionally, Lessee shall invest not less than \$120,000 for pumps, tank containment and active tank monitoring, signage and building remodeling. Promptly upon the execution of this agreement, Lessee shall submit plans and specifications to the City and shall complete construction of

such improvements by June 30, 2023. Lessee's failure to construct the Initial improvements and additional improvements shall be a material breach of this agreement.

4. Article 36 of the Ground Lease Agreement shall be amended to read as follows:

36. NOTICES

All payments, demands, and notices required herein shall be deemed to be properly served if hand delivered or if sent by certified or registered mail, postage prepaid, or courier, via DHL, FedEx, UPS to the last address previously furnished by the parties hereto. Until hereafter changed by the parties, in writing, notices shall be addressed as follows:

City:	Airport Director	Lessee:	Tri-Energy Cooperative
	Bismarck Airport		Attn: Denley Vennes, CEO
	P.O. Box 991		219 N. 20th St.
	Bismarck, ND 58502		Bismarck, ND 58501

or

2301 University Drive
Building 17, Suite 225B
Bismarck, ND 58504

Except as specifically amended in this Amendment 2, all other terms and conditions of the Ground Lease Agreement, Amendment 1, remain in full force and effect.

IN TESTIMONY WHEREOF, witness the signature of the parties hereto the day and year written.

RECOMMENDED APPROVAL
TERMS AND CONDITIONS BY:

APPROVED AS TO FORM AND
LEGALITY BY:

Gregory B. Haug
Airport Director

Jannelle Combs
City Attorney

ATTEST:

CITY OF BISMARCK, NORTH DAKOTA

Keith J. Hunke
City Administrator

Michael T. Schmitz
President, Board of Commissioners
Date: _____

Lessee

Name: Jeffrey D. Dick
Title: Owner
Date: _____

Name: Mary J. Selzer
Title: Owner
Date: _____

Tri-Energy Cooperative

Name: Denley Vennes
Title: CEO
Date: _____