

**SERVICES AGREEMENT**  
**City of Minot and JERRY SCHAEFER**

This Agreement is entered into on this 16<sup>th</sup> day of May, 2022, by and between the City of Minot (hereinafter "City") and Jerry Schaefer (hereinafter "Provider").

WHEREAS, the Provider has agreed to harvest hay at the Minot International Airport (MOT); and

WHEREAS, the City desires to retain Provider, who will pay the City the sum of \$21.20/ton for all hay cut and removed from MOT under this Agreement.

NOW, THEREFORE, it is hereby agreed by and between the Parties as follows:

1. Term. The term of this Agreement shall be for one year, commencing on May 1, 2022 and terminating on May 1, 2023. This Agreement may be extended by Provider executing the Option to Renew described below.
  - a. Option to Renew. The Parties shall have an annual option to renew this Agreement for up to three (3) additional one year terms. Provider may execute their option to renew by giving written notice to City on or before March 1 before the end of the initial term or each renewal term. If Provider executes their option to renew, and City accepts their option to renew, all of the terms and conditions of this Agreement shall apply during the renewal term. If Provider fails to execute their option to renew by March 1, this option to renew shall lapse and this Agreement will terminate the following May 1.
2. Scope of Services. Provider agrees to provide the services outlined in the Request for Bids, 2022 Airport Hay Harvesting Agreement, which is attached and incorporated into this Agreement by reference as Exhibit A.
  - a. The figure attached to the Request for Bids (Exhibit A) pictures the designated haying area in detail. If Provider is unsure if they are permitted to hay an area, they must consult with the MOT Airport Operations Manager prior to proceeding to access and harvest the hay in the questioned area.
  - b. Provider shall cut and harvest all available hay on the MOT property. At no time shall hay be left in bales or stacked in any form within 250 feet of runways or 90 feet of taxiways. Provider shall immediately move all hay bales to the perimeter fence as soon as is practical after baling and shall remove the bales from MOT property no later than October 1 of each year.

- c. Provider shall obtain access to MOT premises only through gates designated by the Airport Security Coordinator and must abide by all security regulations pertaining to the safe operation of MOT. Keys will be provided to Provider to access the gate, and the keys must be returned to MOT upon the conclusion of this Agreement. All gates must remain tightly locked at all times unless Provider is entering or exiting the gate. Provider shall only access the MOT premises during the haying season for the purpose of harvesting hay on the property, and is not permitted under this Agreement to access the MOT premises for any other purpose without first seeking permission from the MOT Airport Operations Manager.
  - d. Provider and any employees anticipated to work under this Agreement on the MOT premises agrees to schedule a meeting with MOT Airport Operations and Administration to discuss Airport safety and security prior to commencing haying operations.
  - e. Provider must complete all haying operations on October 1 of each year, and payment made to the City of Minot no later than October 31 of each year. A certified weight should be provided by a weigh station or similar method. Any hay not removed from the MOT premises by October 1 shall become the property of the City, and the City may make arrangements to sell and remove the same from the MOT premises.
  - f. Provider agrees to comply with all applicable Federal laws, regulations, executive orders policies, guidelines, and requirements as they relate to their operations on the MOT premises. These federal requirements may be amended from time to time and a copy of the latest requirements are attached hereto as Exhibit B.
3. Reservation to City of Minot for Necessary Maintenance. The City reserves the right to cut certain areas of the hay land for an air show, ongoing storm water and drainage projects, and other City activities. Provider understands that the land available for haying may change as a result of the City performing the necessary maintenance for these projects. City is not required to give notice to Provider prior to completing any maintenance for its ongoing projects or activities.
4. Compensation. Provider agrees to pay the City the sum of **\$21.20/ton** for all hay harvested and removed from the MOT property no later than October 31 each haying season.
5. Authority to Contract. No part of this Agreement shall be construed to grant to Provider any authority to contract for, on behalf of, or incur obligations on behalf of the City.

6. Termination.

- a. Termination by Mutual Agreement. This Agreement may be terminated by mutual consent of both parties executed in writing.
- b. Termination Without Cause. This Agreement may be terminated by either party upon thirty (30) days' written notice to the other party of the terminating party's intent to terminate before the expiration of this Agreement.
- c. Termination for Cause. City may terminate this Agreement effective upon delivery of written notice to Provider, or any later date stated in the notice:
  - i. If Provider fails to provide Services required by this Agreement within the time specified or any extension agreed to by City; or
  - ii. If Provider fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms; or
  - iii. Specifically, if Provider uses the MOT premises for purposes other than harvesting hay or has failed to pay agreed upon rates.
- d. The rights and remedies of City provided in this Section 6 are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

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

| City:              | Provider:                  |
|--------------------|----------------------------|
| City of Minot      | Jerry Schaefer             |
| c/o Maria Romanick | 210 5 <sup>th</sup> Ave SE |
| P.O. Box 5006      | Des Lacs, ND               |
| Minot, ND 58702    | 58733                      |
| (701) 420-4503     | (701) 720-2061             |

8. Independent Entity. Provider is an independent entity under this Agreement and is not a City employee for any purpose.
9. Compliance with Law. Provider agrees to comply with all applicable federal, state, and local laws, rules, and policies, including those relating to nondiscrimination, accessibility, and civil

rights. Provider's failure to comply with this section may be deemed a material breach by Provider entitling the City to terminate in accordance with the Section 6(c) of this Agreement.

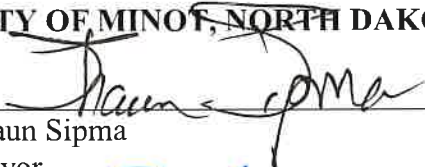
10. Retention of Records and Audits. Provider agrees to retain financial and program records in accordance with the State of North Dakota's Retention of Records Policy. In the event Provider's records are audited by a third party, Provider shall provide the City with the results of the audit within 30 days of receipt.
11. Compliance with Public Records Laws. Provider understands that, City must disclose to the public upon request any records it receives from Provider. Provider further understand that any records obtained or generated by Provider under this Agreement, may, under certain circumstances, be open to the public upon request under the North Dakota public records law. Provider agrees to contact City promptly upon received a request for information under the public records law and, at no additional expense to City, comply with City's instructions on how to respond to the request.
12. Indemnification. Provider agrees to defend, indemnify, and hold harmless the City, its officers, and employees, from and against any all claims, loss, damage, expense, and liability for injuries to persons and property, claimed or alleged to be caused for any reason while performing Services pursuant to this Agreement. Provider also agrees to reimburse the City for all costs, expenses, and attorneys' fees incurred if the City prevails in an action against Provider in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this Agreement.
13. Insurance. At its sole cost, Provider shall secure and keep in force during the term of this Agreement, from insurance companies authorized to do business in the state of North Dakota, the following insurance coverages: (1) commercial general liability, including premises or operations, contractual, and products or completed operations coverages, with minimum liability limits of \$1,000,000 per occurrence; (2) automobile liability, including owned (if any), hired, and non-owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence; and (3) workers' compensation coverage meeting all statutory requirements. The City, its agent, officers, and employees shall be endorsed on the commercial general liability policy on a primary and noncontributory basis, as an additional insured. The Provider's duty to defend, indemnify,

and hold harmless the City under this Agreement shall not be limited by the insurance required in this Agreement. Provider shall furnish a certificate of insurance evidencing the required coverages are in effect prior to commencement of this Agreement. Failure to provide or to maintain insurance as required in this Agreement is a material breach of contract entitling City to terminate this Agreement pursuant to Section 6(c).

14. Successors in Interest. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective successors and assignees.
15. Assignment. Neither Party may not assign, sublet, or otherwise transfer or delegate any right or duty without the other party's express written consent.
16. Force Majeure. Neither Party to this Agreement will be liable to the other Party for delays, or direct and indirect costs resulting from any causes beyond the reasonable control or contemplation for either Party.
17. Severability. If any term of this Agreement is declared by a court having jurisdiction to be illegal or unenforceable, 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 the Agreement did not contain that term.
18. Counterparts. The parties may execute this contract in any number of counterparts, each of which, when executed shall have the force and effect of an original, but all such counterparts shall constitute one and the same agreement. For purposes of this contract, a facsimile or electronic signature shall be deemed the same as an original.
19. Attorneys' Fees. In the event a lawsuit is initiated by City to obtain performance due under this Agreement, and City is the prevailing party, Provider shall, except if specifically prohibited by law, pay City's reasonable attorneys' fees and costs in connection with the lawsuit.
20. Authority to Execute Agreement. Each party represents and warrants that this Agreement has been duly authorized, executed and delivered by it; that the undersigned representatives are fully authorized to sign this Agreement on behalf of the party for whom they are signing and whom they represent; that performance of all the actions contemplated thereby have been duly authorized by all requisite action and that this Agreement constitutes a valid and binding obligation, enforceable against each party, its successors and assigns in accordance with its terms.

21. Governing Law and Venue. This Agreement shall be construed and interpreted both as to the validity and performance of the Parties in accordance with the laws of the State of North Dakota. In the event of any dispute hereunder the forum shall be in District Court, Ward 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.
22. Entire Agreement and Modification. This Agreement, including the Attachments, constitutes the entire agreement between the Parties. There are no understandings, agreements, or representations, oral or written, not specified in this Agreement. This Agreement may not be modified, supplemented, or amended, in any manner, except by written agreement signed by both Parties.
23. Effectiveness of Agreement. This Agreement is not effective until fully executed by both Parties.

**CITY OF MINOT, NORTH DAKOTA**

  
Shaun Sipma  
Mayor

  
David Lakefield  
Finance Director

**PROVIDER**

  
JERRY SCHAEFFER

## EXHIBIT B: FEDERAL REGULATIONS

### CIVIL RIGHTS PROVISION

Supplier agrees to 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 disability be excluded from participating in any activity conducted with or benefitting from Federal assistance.

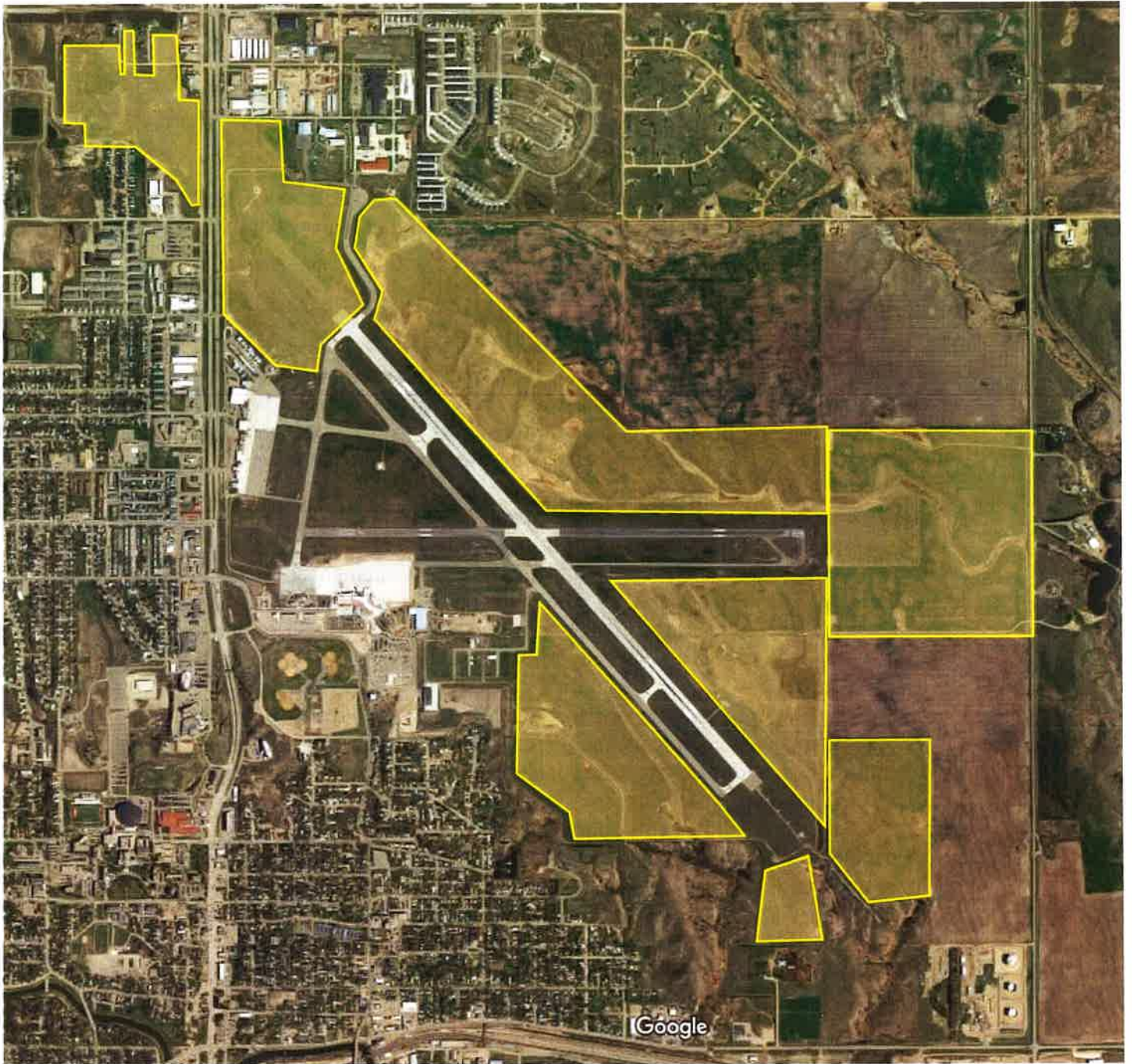
This provision binds the Supplier and subtier suppliers from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

### COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

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

1. **Compliance with Regulations:** The Supplier (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The Supplier, 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 Supplier will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Supplier 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 Supplier of the Supplier's obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Supplier 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 Nondiscrimination Acts And Authorities and instructions. Where any information required of a Supplier is in the exclusive possession of another who fails or refuses to furnish the information, the Supplier 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.
5. **Sanctions for Noncompliance:** In the event of a Supplier's noncompliance with the Nondiscrimination provisions of this contract, the Airport will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

## EXHIBIT A



**Designated Haying Area = Approximately 700 Acres**

- 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.
6. **Incorporation of Provisions:** The Supplier 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 Supplier will take action with respect to any subcontract or procurement as the Airport or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Supplier becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Supplier may request the Airport to enter into any litigation to protect the interests of the Airport. In addition, the Supplier may request the United States to enter into the litigation to protect the interests of the United States.

#### **FEDERAL FAIR LABOR STANDARDS ACT**

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. The Supplier has full responsibility to monitor compliance to the referenced statute or regulation. The Supplier must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

#### **OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Supplier must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Supplier retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Supplier must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

#### **TITLE V LIST OF PERTINENT NONDISCRIMINATION ACTS & AUTHORITIES**

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 nondiscrimination 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 non-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 the 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 discrimination because of sex in education programs or activities (20 U.S.C. 1681 et seq).