

**DEVELOPMENT AGREEMENT**

**between**

**STEVENS WELDING AND MACHINE LLC**  
**a North Dakota Corporation**  
**502 County Rd South**  
**Glenburn, ND 58740**

**and**

**CITY OF MINOT**  
**a North Dakota Municipal Corporation**  
**PO Box 5006**  
**515 2nd Avenue SW**  
**Minot, North Dakota 58702-5006**

**STATE OF NORTH DAKOTA**

**DEVELOPMENT AGREEMENT**

**COUNTY OF WARD**

This Development Agreement (the “**Agreement**”) is executed and made effective **<effective date>**, 2021, by and between

**STEVENS WELDING AND  
MACHINE LLC**  
502 County Rd South  
Glenburn, ND 58740

and

**CITY OF MINOT**  
PO Box 5006  
515 2nd Avenue SW  
Minot, North Dakota 58702-5006

**RECITALS**

WHEREAS, STEVENS WELDING AND MACHINE LLC (hereafter “**Stevens Welding**”) is a North Dakota limited liability company. Stevens Welding has operated in Glenburn, North Dakota for over 60 years, providing hydraulic, fabrication, welding and repair services to the agricultural and energy industry. Current ownership plans a business expansion that would not only retain the seven (7) full-time employees currently working for Stevens Welding but add more than eight (8) new employees.

WHEREAS, Stevens Welding has been approved by First Western Bank and Trust and the Bank of North Dakota for a PACE loan (the “**PACE Loan**”). Part of the Partnership in Assisting Community Expansion (PACE) Program, PACE loans help communities expand their economic base by providing financing for primary sector businesses. The PACE program allows money from the PACE Fund to be combined with the resources of the local community to fund interest buydowns, making industry loans more affordable.

WHEREAS, CITY OF MINOT (hereafter “**Minot**”) is a Home Rule municipal corporation. Minot established the Minot Area Growth by Investment and Cooperation (MAGIC) Fund in 1990 to provide financing incentives to businesses that wish to establish a new business in the greater Minot trade area or to relocate or expand an existing business in the greater Minot trade area. The MAGIC Fund is intended to facilitate the creation of new jobs, save existing jobs, expand the local tax base, increase capital investment, and improve the entrepreneurial climate of the region.

WHEREAS, the economy of the Minot area benefits from expansion of businesses, such as Stevens Welding, that create employment opportunities for local residents, expand the primary sector financial base of the Minot Trade Area and expand the local tax base.

WHEREAS, Minot proposes to provide financial support to Stevens Welding in the form of a grant in the total amount of One Hundred Twenty-eight Thousand Five Hundred Seventy-one and 49/100 Dollars (\$128,571.49) to fund the community portion of an interest buy-down for a PACE loan to Stevens Welding.

NOW, THEREFORE, in consideration of the Parties' promises and other valuable consideration, the receipt and adequacy of which are acknowledged by each Party to the other, Stevens Welding and Minot AGREE, as follows:

## ARTICLE 1 GRANT

- 1.1 Minot agrees to fund the community portion an interest-buy-down of the PACE Loan to Stevens Welding by extending a grant to Stevens Welding in the amount of One Hundred Twenty-eight Thousand Five Hundred Seventy-one and 49/100 Dollars (\$128,571.49) (the "**Grant**").
- 1.2 Grant proceeds shall be used for the *exclusive* purpose of funding the community portion of an interest buy-down of the PACE Loan to Stevens Welding.
- 1.3 Minot's obligation to distribute Grant funds to Stevens Welding under this Agreement is subject to the following conditions precedent which must all be satisfied by Stevens Welding or waived by Minot in writing, except as specifically provided herein:
  - (a) Stevens Welding shall duly execute and deliver this Agreement to Minot.
  - (b) The execution and delivery of this Agreement and the consummation of the transactions contemplated herein shall have been duly authorized by all requisite action on the part of Stevens Welding, its lenders or lien holders, and this Agreement constitutes a valid and binding agreement of Stevens Welding in accordance with its terms.
  - (c) Stevens Welding shall not be in default of any of its obligations, representations, or promises incorporated in this Agreement or have been adjudicated by a court of competent jurisdiction as being in default of any of its obligations, representations, or promises to the State of North Dakota, any city, county or political subdivision of the State of North Dakota or any other entity located in the State of North Dakota.
  - (d) Stevens Welding shall be and remain in good standing and duly qualified to do business in the State of North Dakota and have the power and authority fully perform its obligations under this Agreement.
  - (e) There shall be no violation or default by Stevens Welding under any provision of its Articles of Organization or its Operating Agreement, nor shall Stevens Welding take or fail to take any action that could cause Minot or any lender of Stevens Welding to have reason to deem itself commercially insecure, under any indenture, contract, mortgage, lien, agreement, lease, loan agreement, note, order, judgment, decree, or other instrument of any kind or character to which Stevens Welding is a party and by which it is bound, or to which it or any of its assets are subject. Stevens Welding agrees and represents that the terms, conditions, and provisions of this Agreement do not conflict with and will not result in or constitute a breach of or default by Stevens Welding under any of the foregoing, wherein default, breach, or violation would materially and adversely affect any of the transactions contemplated by or the validity of this Agreement.

- (f) Stevens Welding shall not be subject to any charging order or judgment which could deprive it of the use of its assets or materially impair its ability to perform its obligations under this Agreement.
- (g) Stevens Welding shall not have commenced or been the subject of a case or proceeding under any applicable bankruptcy, insolvency, reorganization, or other similar law; shall not have been adjudicated bankrupt or insolvent; or have acknowledged its inability to pay its debts generally as they become due.
- (h) Stevens Welding shall comply with applicable federal, state, and local laws, which include, without limitation, regulations, rules, ordinances, codes, decrees, and shall obtain all necessary permits in connection therewith subject to the provisions of this Agreement.

## ARTICLE 2      EMPLOYMENT CONDITIONS

2.1 Stevens Welding shall employ full-time employees (or full-time equivalents (FTEs)) in the Minot Trade Area (as defined by this Agreement) as follows (the “**Employment Conditions**”):

- |          |   |
|----------|---|
| (a) 2021 | 7 full-time employees or FTEs, Avg. Salary of \$35/hr.  |
| (b) 2022 | 10 full-time employees or FTEs, Avg. Salary of \$35/hr. |
| (c) 2023 | 15 full-time employees or FTEs, Avg. Salary of \$35/hr. |
| (d) 2024 | 15 full-time employees or FTEs, Avg. Salary of \$35/hr. |
| (e) 2025 | 15 full-time employees or FTEs, Avg. Salary of \$35/hr. |

A “full time employee” or FTE shall be defined as an employee who is paid an average of forty (40) hours per week in a two-week period. Employment Conditions will be verified by audit by Minot or its representative at its expense. For purposes of verifying compliance with the Employment Conditions, Minot shall have access to all Stevens Welding documentation filed with the State of North Dakota for employment taxes as well as personnel records and payroll records. If Minot does not agree that Stevens Welding has fulfilled the Employment Conditions for calendar year, Minot shall notify Stevens Welding in writing.

2.2 If Stevens Welding fails to comply with the Employment Conditions for a calendar year, it shall repay a prorata portion of the Grant, determined as follows:

- (a) The number of full-time employees or FTEs actually employed will be subtracted from the required number of employees or FTEs required for that calendar year.
- (b) The difference will be divided by the number of employees or FTEs required for that calendar year.
- (c) The resulting quotient will be multiplied by \$25,714.30 (one-fifth of the Grant), and the product will be the amount of the payment due from Stevens Welding.

For example, if Stevens Welding employs 10 employees or FTEs in 2023, the repayment due Minot would be \$15,428.58, calculated as follows:

- (a) 15 required full-time employees or FTEs minus 10 actually employed full-time employees or FTEs equals 5 employees or FTEs
- (b) 5 employees or FTEs divided by 15 required full-time employees or FTEs equals 0.3333333 (33.33333%).
- (c) \$25,714.30 multiplied by 0.3333333 (33.33333%) equals \$8,571.43.

### ARTICLE 3      **DEFAULT**

- 3.1 If the terms of this Agreement are materially breached by Stevens Welding, Minot shall provide written notice to Stevens Welding identifying the breach(es). Stevens Welding agrees that Minot may terminate this Agreement unless the breach(es) identified in Minot’s notice is not cured within ten (10) days of Stevens Welding’s receipt of Minot’s notice or, if the breach, by its nature, cannot be reasonably cured within ten (10) days, such additional time to cure as Minot, in its reasonable good faith judgment, deems appropriate provided Stevens Welding immediately commences action to cure the default and diligently continues its efforts to cure.
- 3.2 If a material breach is not cured by Stevens Welding following notice as provided by Section 3.1, Minot may elect to terminate this Agreement and its participation in the interest buy-down for the PACE Loan. If Minot so elects, it shall notify the Bank of North Dakota and Originating Lender(s) of the PACE Loan of its decision to terminate its participation in the PACE Loan and request that the Escrow Agent discontinue Interest Rate Reduction Payments as provided by the PACE Promissory Note and Addendum to Promissory Note, the PACE Interest Buydown Agreement and the PACE Escrow Agreement. Stevens Welding acknowledges and agrees that, upon termination by Minot, the Escrow Agent will disburse any remaining amounts held under the Escrow Agreement to Minot and the PACE Fund according to their respective shares of the remaining balance and that all continuing obligations of Minot under the PACE Interest Buydown Agreement will be extinguished. Stevens Welding further acknowledges and agrees that, in the event of termination by Minot, Stevens Welding will be responsible for the entire interest payment of its PACE Loan(s).
- 3.3 For purposes of this Article 3, terms not otherwise defined in this Agreement shall have those meanings given by that certain “Interest Buydown Agreement PACE Program” by and between Minot, the Bank of North Dakota, First Western Bank & Trust and Stevens Welding in connection with the PACE Loan.

### ARTICLE 4      **MISCELLANEOUS**

- 4.1 Continued Operations Commitment. Stevens Welding irrevocably commits to continue its operations in the Minot Trade Area for not less than five (5) years after disbursement of the Grant funds. The term “Minot Trade Area” shall mean the City of Minot, North Dakota and communities within a sixty-five (65) mile radius of the City of Minot, North Dakota or such other area as the parties may agree, in writing. Failure of Stevens Welding to continue its operations in the Minot Trade Area and to satisfy the Employment Conditions set forth in Article 2 of this Agreement for five (5) years after

disbursement of the Grant funds will be deemed to be a material breach of the terms and provisions of this Agreement.

- 4.2 Further Assurances. Stevens Welding shall, upon request of Minot, execute and deliver all further instruments and cause to be done all further acts that may be necessary and/or proper to carry out the provisions and purposes of this Agreement.
- 4.3 Amendments. This Agreement may be amended only by mutual agreement of the parties, evidenced in writing, and signed by both parties to this Agreement.
- 4.4 Survival. The terms and conditions of this Agreement shall survive execution of any additional documents contemplated by this Agreement unless the subsequent documents clearly reference this Agreement and contain a statement or statements that the terms and conditions of this Agreement are amended or are superseded.
- 4.5 Assignment of this Agreement. Stevens Welding may not transfer, assign or delegate to any other person or entity all or any part of its rights or obligations arising under this Agreement without the prior written consent of Minot.
- 4.6 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 duly 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 Stevens Welding, its successors and assigns in accordance with its terms.
- 4.7 Joint Drafting. This Agreement shall be deemed to have been prepared jointly by the parties, and any uncertainty or ambiguity existing herein shall not be interpreted against any party by reason of its drafting of this Agreement, but shall be interpreted according to the application of the general rules of interpretation for arm's length agreements.
- 4.8 Notices. All notices, certifications, or communications permitted or required by this Agreement shall be given in writing and shall be deemed delivered when personally served, or when received if by facsimile transmission with a confirming copy mailed by registered or certified mail, postage prepaid, return receipt requested, or delivered by a recognized overnight delivery service, prepaid, addressed to the respective parties, as follows:

To Minot:                   CITY OF MINOT  
                                  Attention: Mayor  
                                  515 2nd Avenue SW  
                                  Minot, North Dakota 58702-5006  
                                  Fax #: 701-857-4751

Copy to:                    City Attorney

515 2nd Avenue SW  
Minot, ND 58702-5006  
Fax #: 701-857-4751

To Stevens Welding: Stevens Welding and Machine LLC  
9035 County Road 17B  
Phone #: 701-362-7419  
Fax #: 701-362-7562

- 4.9 Complete Agreement. This Agreement, including the exhibits hereto, contains all agreements between the Parties. There are no other representations, warranties, promises, agreements, or understandings, oral, written, or implied, among the Parties, except to the extent reference is made thereto in this Agreement.
- 4.10 Recitals. The recitals set forth at the beginning of this Agreement are deemed incorporated in this Agreement, and the parties represent that they are true and correct.
- 4.11 Captions. The captions and headings in this Agreement are for convenience only and do not limit, define, or describe the scope or intent of any provision of this Agreement.
- 4.12 Applicable Law and Jurisdiction. This Agreement shall be governed in all respects, whether as to validity, construction, performance, or otherwise, by the laws of the State of North Dakota. All parties agree the proper forum for the resolution of any dispute or claim pursuant to this Agreement shall be the District Court of Ward County, North Dakota or a federal district court located in the State of North Dakota of competent jurisdiction, and irrevocably consent to the jurisdiction of these courts, waiving all defenses of inconvenient forum or otherwise.
- 4.13 Binding Effect. This Agreement shall be binding upon the Parties hereto and upon their respective successors and assigns.
- 4.14 Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all parties had signed the same document. All counterparts shall be construed together and shall constitute one agreement. However, notwithstanding any other provision of this Agreement, this instrument will not be binding on or constitute evidence of a contract between the parties until each party has duly executed a counterpart and a copy thereof delivered to each other party to this Agreement. Delivery of signatures by facsimile, in portable document format (.pdf) or other electronic means shall be as effective as delivery of original signatures.

**END OF PAGE**

**IN WITNESS WHEREOF**, the City of Minot has caused this Agreement to be duly executed and delivered as of the date first written above.

Attest:

**CITY OF MINOT**  
a North Dakota Municipal Corporation

\_\_\_\_\_  
By: Mikayla McWilliams  
City Clerk

\_\_\_\_\_  
By: Shaun Sipma  
Mayor

**ACKNOWLEDGMENT**

**STATE OF NORTH DAKOTA**

**Corporate Signature**

**WARD COUNTY**

I, a Notary Public of the County and State aforesaid, certify that Kelly Matalka personally appeared before me this day and acknowledged that she is City Clerk of CITY OF MINOT, a North Dakota municipal corporation, and that by authority duly given and as an act of the corporation, the foregoing instrument was signed in its name by Shaun Sipma, its Mayor, and attested by Kelly Matalka, as its City Clerk.

Witness my hand and official stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public  
For the State of North Dakota  
My commission expires: \_\_\_\_\_



IN WITNESS WHEREOF, Stevens Welding, Inc. has caused this Agreement to be duly executed and delivered as of the date first written above.

Stevens Welding and Machine LLC  
a North Dakota limited liability company

  
By: Steven Farden

**ACKNOWLEDGMENT**

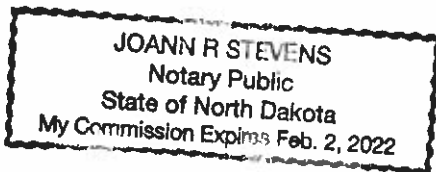
**STATE OF NORTH DAKOTA**


**Corporate Signature**

Bottineau COUNTY

I, a Notary Public of the County and State aforesaid, certify that Steven Farden personally appeared before me this day and acknowledged that he is president of Stevens Welding and Machine LLC and, pursuant to authority duly given and as an act of the company, he executed the foregoing instrument on its behalf.

Witness my hand and official stamp or seal, this 28<sup>th</sup> day of December, 2021.



  
Notary Public  
For the State of North Dakota  
My commission expires: 2-2-2022

