



## **MINOT AREA GROWTH BY INVESTMENT AND COOPERATION (MAGIC) FUND GUIDELINES**

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## **HISTORY AND GENERAL PURPOSE**

In 1990, the voters of the City of Minot approved a portion of the 1-percent City sales tax for use in economic and industrial development. The funds accumulated for this purpose shall be called the Minot Area Growth by Investment and Cooperation (MAGIC) Fund. The MAGIC Fund is intended to provide financing incentives to businesses that desire to expand or locate in the greater Minot trade area.

These Guidelines are designed to assist the City Council, City staff, the MAGIC Fund Steering Committee, and City consultants and agents with selecting economic development projects that are financially viable and will result in the most effective use of MAGIC Funds.

The eligible uses of the Fund are:

1. Program Administration, Partnerships, and Tools;
2. Primary Sector Business Program;
3. State of North Dakota Program Initiatives- PACE/Flex PACE;
4. City of Minot Community Development Projects;
5. Non-Primary Sector Small Business Program;
6. Flood Control Projects.

These eligible uses, their limits, and fiscal controls are described in further detail on pages 2-6 of these guidelines.

All uses of the MAGIC Fund must support one or more of the following goals:

- Create new jobs;
- Save existing jobs;
- Expand the local tax base;
- Increase capital investment;
- Improve the economic climate of the region;
- Enhance workforce solutions.

As part of the annual City of Minot budgeting process, the Minot City Manager will consult with the Minot Area Chamber EDC President | CEO for a recommendation regarding the level of funding to be allocated to each eligible use. The funding recommendation shall be acted upon by the Minot Area Chamber EDC Board of Directors and a recommendation from the Minot Area Chamber EDC Board of Directors shall be considered by the Minot City Council.

Funds shall be allocated in accordance with the funding schematic attached to these Guidelines as Exhibit 1.

## **DEFINITIONS**

As used in these guidelines, unless the context otherwise requires:

“Lead Agency” shall as established in the program description of each Magic Fund Program.

“MACEDC” shall mean the Minot Area Chamber Economic Development Corporation.

“MAGIC Funds” means funds that have been allocated by the City of Minot’s sales tax ordinance.

“Minot Trade Area” means any location that contributes to the economic and/or population growth of the City of Minot.

“Non-Primary Sector Small Business” any business that does not fall under the definition of Primary Sector Business and is not otherwise excluded under these Guidelines.

“Permanent Financing” means financing that commences when principal and interest payments start.

“Primary Sector Business” shall have the same definition as set forth in North Dakota Century Code § 1-01-49(13).

“Small Business” shall have the same definition as the U.S. Small Business Administration (SBA)’s definition of a small business.

“Temporary Financing” means financing that commences before principal and interest payments start, to include short term, bridge, interim, or construction loans.

## **FUND USES, LIMITS, AND FISCAL CONTROLS**

### **A. FUND USES AND LIMITS**

MAGIC Funds may be used for the administrative costs to administer the MAGIC Fund, the Primary Sector Business Program, City of Minot Community Development Projects, State of North Dakota Programs that support economic development, the Non-Primary Sector Small Business Program, and Flood Control Projects.

Non-profit organizations will be considered for funds only when it can be determined that the non-profit venture meets a purpose and goal for which the MAGIC Fund can be used based on these guidelines.

#### **1. Program Administration, Partnerships, and Tools**

MAGIC Funds may be used to finance economic program administration costs, including

the cost of the City's consultant contracts for MAGIC Fund Administration, economic retention and protection programs such as Task Force 21, and programs to provide insight into the economic climate of the Minot Trade Area, such as Retail Coach and Location One Information System (LOIS).

An agreement shall be made between the City of Minot and Souris Basin Planning Council which governs the use of MAGIC Funds for capitalization of a revolving loan fund for small businesses who qualify for the Bank of North Dakota's FlexPACE Buydown program, administered by Souris Basin Planning Council.

For contracts with consultants and service providers (such as the Minot Area Chamber EDC), there should be expectations and performance standards built into the contract. The return from the service providers and consultants should be proportionate to the money they receive. An audit on the use of these funds may be required as part of the contract.

The lead agency administering the Program Administration program shall be the City of Minot.

## **2. Primary Sector Business Program**

The goal of the Primary Sector Business Program is to facilitate the growth of primary sector businesses in the Minot Trade Area. Businesses with certificates from the North Dakota Department of Commerce Division of Economic Development and Finance certifying them as Primary Sector businesses or Tourism Primary Sector businesses are eligible for funding under this program.

Funds available to Primary Sector businesses may be used to provide temporary or permanent financing of any cost related to the eligible project. Temporary financing may only be in the form of a non-forgivable loan. Permanent financing may be in the form of a non-forgivable loan or combination of forgivable loan and non-forgivable loan with a forgivable loan being no more than 20 percent of total project financing from all sources, both public and private. If an applicant can demonstrate through detailed financial documentation that project feasibility requires a forgivable loan greater than 20 percent of total project financing, the application may be approved with a supermajority of the Minot City Council. The MAGIC Fund may not be used for restructuring existing debt, unless it can be demonstrated that the restructuring will create definable, measurable benefits for the greater Minot Trade Area that meet at least one of the MAGIC Fund goals.

The lead agency administering the Primary Sector Business Program will be MACEDC.

## **3. State of North Dakota Program Initiatives – PACE/Flex PACE**

The MAGIC Fund may be considered to satisfy the local match requirements associated with state programs that support economic and industrial development and encourage and assist in the development of employment, including the Bank of North Dakota's

PACE and Flex PACE programs. MAGIC Funds awarded under this program can be in the form of a forgivable or non-forgivable loan, or any combination of the two loans. The lead agency administering State of North Dakota program initiatives will be MACEDC.

Flex PACE applications shall be reviewed, considered, approved, and administered exclusively by the Souris Basin Planning Council (SBPC). The lead agency administering the Flex PACE Program will be SBPC.

Capitalization of the SBPC Business Accelerator Fund can be funded through this program once per calendar year. SBPC cannot be funded more than 25% of the available funds in the MAGIC Fund account for State of North Dakota Program Initiatives. Pending applications for State of North Dakota Program Initiative funding shall not be used for calculating available funding for capitalization of the SBPC Business Accelerator Fund. MACEDC shall be the lead agency for capitalization requests from SBPC for the Business Accelerator Fund.

#### **4. City of Minot Community Development Projects**

MAGIC Funds may be used to finance economic development projects authorized by the City of Minot's City Council.

The lead agency administering City of Minot Community Development Projects will be the City of Minot.

#### **5. Non-Primary Sector Small Business Program**

The goals of the Non-Primary Sector Small Business Program are to support economic development through the growth of new, non-primary sector businesses, enhance the entrepreneurial climate of the Minot Trade Area, and expand the local tax base.

Funds available through the MAGIC Fund Non-Primary Sector Small Business Program may be used to capitalize and address the financial needs of non-primary sector businesses not available through traditional financing institutions. Applicants are encouraged to provide letters of support from a Primary Sector industry along with their application.

Financial assistance will not be approved for any new or existing business that gives the applicant an unfair business advantage over other like or similar businesses through the use of the financing from the MAGIC Fund unless the location is in an area the city has identified as requiring new investment such as the downtown district and/or is through a capitalized revolving loan fund serving a rural area of the Minot Trade Area which does not have products, services, or other benefits otherwise accessible in such area.

MAGIC Funds awarded under this program can be in the form of a forgivable or non-forgivable loan, or any combination of the two loans.

The lead agency administering the Non-Primary Sector Small Business program shall be MACEDC.

Limits in relation to Non-Primary Sector Small Business Program:  
Businesses that do not qualify for funding under this program include the following: gaming establishments, retail trade, adult entertainment, public administration, food and beverage establishments, and hotels (lodging).

## **6. Flood Control Projects**

MAGIC Funds can be used to finance Flood Control projects. The lead agency administering the Flood Control projects will be the City of Minot.

### **B. THE FUNDING SCHEMATIC ('The Bucket Chart')**

MAGIC Funds shall be distributed in accordance with the funding schematic attached to these Guidelines as Exhibit 1.

The City Council shall dedicate the MAGIC Funds necessary for Program Administration through its annual budget ordinance or amendments thereto.

The City Council, through its annual budget ordinance, may dedicate funds to the Primary Sector Business Program Fund. The City Council shall make every effort to maintain a minimum balance of 3 million dollars in the Primary Sector Business Program Fund. The Primary Sector Business Program Fund shall not exceed 10 million dollars. Should the Primary Sector Business Program Fund balance fall below 3 million dollars, this fund shall become the priority fund to receive MAGIC Funds for future fiscal years until the fund balance reaches the 3 million dollars.

Following funding of the Program Administration and Primary Sector Business Program Funds, MAGIC Funds will be allocated into the remaining programs as recommended by the MACEDC President | CEO and City Manager and approved by the City Council.

Once all other funds are fully funded at their maximum thresholds, any additional MAGIC Fund dollars will be placed in a fund for local flood control projects.

### **Revenue Projection Variations**

The City's Finance Department shall advise the City Manager and MACEDC President | CEO of any significant revenue projection variations during the fiscal year.

Upon receipt of notice of any anticipated funding shortfall, the City Manager will meet and confer with the MACEDC President | CEO to discuss and make a recommendation to the City Council on how address the funding shortfall. Any anticipated surplus shall be rolled over into the following fiscal year.

### **Changing the Thresholds**

The City Council may change the program fund thresholds by amending its annual budget ordinance, a simple majority vote is required.

### **C. FISCAL CONTROLS**

MAGIC Funds shall not be transferred from one program to another without first receiving approval from a supermajority of the City Council. Transfers from Primary Sector Business program will only be permitted to the State of North Dakota Program Initiative program, such transfers can not reduce the balance in the Primary Sector program to less than 3 million dollars and those funds cannot be further transferred to any other fund.

Expenditures from the MAGIC Fund must be listed with the monthly bills approved by the City Council before payment is made. To the extent applicable to the features of a particular project, as part of such process, detailed invoices and receipts must be provided to the City.

Any proposal to obligate MAGIC Fund money beyond what is currently available, plus what is expected to accrue by the end of the current fiscal year, will be clearly stated to the public during a public hearing prior to City Council action.

A public hearing is required prior to City Council action when the proposed use of the MAGIC Funds is for infrastructure related projects. The MAGIC Fund Screening Committee will specifically address and communicate to the City Council when the proposal is for infrastructure and the basis of the infrastructure project connected to job creation/retention, retention of existing business/industry, and/or creation of new business/industry consistent with the MAGIC Fund guidelines.

MAGIC Fund recipients are required to enter into a Development Agreement. A previous MAGIC Fund recipient that meets or exceeds its obligations under a previous Business Incentive Agreement may be eligible for additional funding from the MAGIC Fund for new or expansion initiatives.

### **MAGIC FUND SCREENING COMMITTEE**

The MAGIC Fund Screening Committee, appointed by the Mayor and confirmed by the City Council, will have flexibility in the types of financing tools available to it to pursue general economic and industrial development goals guided by the following examples: unsecured loans, mortgages or secured financial instruments, equity positions, equipment and building purchase and lease-back, interest buy-downs, grants, and other financing vehicles as may be necessary and appropriate. All methods of financing which are utilized must be supported by vetted and verified applicant financials, business plan, and clearly measurable performance benchmarks.

Members will be appointed to retain expertise on the Committee in the following areas:

<u>Number</u>	<u>Expertise/Profession/Background</u>
1	Professional
2	Labor
1	Business
1	Trade Area
2	Finance

The MAGIC Fund Screening Committee will make an annual written report to the City Council, which the Council may choose to be supplemented or superseded by a report prepared by an independent private consultant. The chairperson of the Committee will make an oral report to the Council and answer questions from both the Council and the public. The oral report will be made concurrent with the public release of the written report. The annual report shall include:

- (1) City of Minot Finance Department shall provide a financial accounting for all tax money spent during the reporting period from the economic development portion of City of Minot sales tax by category of spending. This portion of the report will include MAGIC Fund balance information as of the report closing date.
- (2) An assessment of the performance of each program funded through the MAGIC Fund using the "Project Tracking" guidance found in these guidelines. The assessment shall include:
  - An assessment of each program fund, including demand and performance; and
  - A compliance report regarding the outstanding contracts funded through the MAGIC Fund.
  - A list of all applications that were not approved by the MAGIC Fund Screening Committee.
- (3) An assessment of the financial and management health of the MAGIC Fund, including any recommendations to amend or redefine these guidelines.

#### **CONFLICTS OF INTEREST**

Officers, directors, members or employees of the City of Minot, Minot Area Chamber EDC, MAGIC Fund Screening Committee or Minot City Council that have a direct and substantial personal or pecuniary interest in a matter before the board, council, commission, or other body, must disclose that fact to the body of which that person is a member. The disclosure shall be made in a written letter or email to the corresponding

board, committee, or city council and announced verbally before the item is considered by the corresponding board, committee or city council.

A board member, committee member, or city council member shall not vote on any matter in which they have a conflict of interest, nor shall they participate in any activities to evaluate or debate the merits of an application to the MAGIC Fund in which they have a conflict.

## **APPLICATION PROCESSES**

The City of Minot and MACEDC shall develop application procedures and administrative processes that are comprehensive enough to protect the community interests, assuring prudent and accountable use of all funds, but are streamlined enough so as not to discourage potential applicants from seeking financial assistance.

Depending on the program applied for, applicants may be required to submit a complete business plan, financial statements (if an existing concern), and identification of all sources and uses of funds for the proposed project. If the lead agency believes that the application has merit, it may negotiate financial terms with the applicant to include performance and measurable benchmark standards. The MAGIC Fund Screening Committee may contract for professional advice/services to assist in its deliberations, in addition to the Minot Area Chamber EDC which by contract with the City of Minot shall provide specified services and support to the MAGIC Fund Screening Committee. Any such procurements should follow the City of Minot's procurement policies and procedures.

At least one authorized representative of the applicant must present the application to the MAGIC Fund Screening Committee and respond to questions about their application. All applications and attendant paperwork must be submitted in sufficient time (according to the schedule adopted annually by the MAGIC Fund Screening Committee) to allow the MAGIC Fund Screening Committee to do its due diligence work.

Applicants requesting marketing funding shall submit an application, adequately outlining how the marketing directly supports the goals and purposes of the MAGIC Fund, and others sources of funds to match the requested amount. Applicants shall also specify the timeline for such use, measurable outcomes, and intended uses. An applicant must commit that, when the project is completed, a report will be issued by it to the MAGIC Fund Screening Committee, noting the completion.

The Committee may jointly participate with other political subdivisions in extending assistance to applicants. The MAGIC Fund Screening Committee shall consider impact to the Minot Trade Area when considering applications from political subdivisions.

At each level of review a MAGIC Fund application may have additional obligations or stipulations added by the reviewing parties, including proposing a different funding level not to exceed the initial requested amount.

Unless provided otherwise in these Guidelines, the City Council will review and consider all applications recommended for funding through the MAGIC Fund.

While reasonable, good-faith efforts will be made to maintain confidentiality of information submitted in connection with an application for MAGIC funds, no absolute or unconditional guarantee of confidentiality can be made and the obligations of the Minot Area Chamber EDC, MAGIC Fund Screening Committee and Minot City Council will, at all times, remain subject to North Dakota's Open Records Laws.

## **APPLICATION REVIEW GUIDANCE**

The following guidelines are intended to serve as a source of general guidance for application reviewers (Minot Area Chamber EDC staff and board of directors, City of Minot staff, MAGIC Fund Screening Committee, Minot City Council, etc.) in the administration of the MAGIC Fund. It is important to note that the economic development needs of the area are such that a large degree of procedural flexibility may be necessary to capitalize on windows of opportunity. In that context, administration of the MAGIC Fund must be dynamic enough to ensure that the monies made available to the MAGIC Fund are prudently applied to the economic development needs of the area consistent with the MAGIC Fund Guidelines, which are regularly reviewed and updated by the Minot City Council.

The acid test of the value of an application will be the relative positive "impact mix" of the business on the economy of the region. "Impact mix" is defined in general terms as the number of jobs created or saved; quality of those jobs in terms of salary/benefit levels and the expected length of time the job will be viable; expansion of the tax base; financial mix—to include the appropriate level of owner's equity required to make the venture successful; organizational growth potential of the venture; environmental impact; uses of regional materials in the production process; the amount of third-party participation in the venture; and the amount of primary money generated by the project. The Committee will look for these factors in determining the relative worth of an applicant's venture to the economy of our region consistent with the uses defined and allowed with the MAGIC Fund.

Regardless of the factors upon which any recommendation in connection with an application is based, there must be clear, measurable performance benchmarks which can be used to regularly monitor compliance and performance.

MAGIC Fund administration may consider the applicant's previous MAGIC Fund applications when considering whether to award funding, and in what amount, if any. Applicants must disclose business principals, investors, managers, and any other associations if requested by MAGIC Fund administration. The applicant's business performance and affiliations may be considered by MAGIC Fund administration in reviewing their application and making funding recommendations.

The ratio of public-supported funding versus private-supported funding on each project should be carefully scrutinized so that the MAGIC Fund does not take a disproportionate

equity position in any particular project. All funds (MAGIC Fund and matching funds) authorized for the project and activity must be documented and verifiable. If an applicant can demonstrate through a justifiable business plan with clear minimum five-year growth projections that it needs a higher contribution of MAGIC Fund participation than established through these MAGIC Fund Guidelines to assure project feasibility, then consideration can be given by the application reviewers. Final approval by supermajority (5 members) of the full City Council is necessary for projects which request a higher contribution of MAGIC Funds than established through these MAGIC Fund Guidelines.

Interest rates need not be fixed but, rather, may be based upon the relative risk involved, the desirability of the project to the area, and the immediate and long-term growth potential of the business. It is important that, to the greatest extent possible, financial packages be tailored to meet the needs of the applicant, balanced with protecting the integrity and sustainability of the MAGIC Fund as well as clearly carrying out the intent and purposes of the Fund. Repayment schedules that provide a significant increase in the probability of project success may be considered, provided that the economic development potential of such arrangement justifies the non-traditional repayment arrangement.

Projects that call for expenditures by the MAGIC Fund to be made over a period of time, and then conditioned upon certain performance benchmarks being reached by the project, are to be preferred over projects that make heavy "up front" expenditure demands. Any project that is heavily front-ended must demonstrate offsetting desirable features not found in the average project. Any project involving front-ended distribution of the MAGIC Fund share prior to Applicant's contribution shall require Applicant guarantees offering reasoned and reasonable repayment of the MAGIC Fund contribution should all obligations not be met, and three years of certified, audited financial statements from the Applicant in the immediate three years prior to date of Application.

## **PROJECT TRACKING AND DEVELOPMENT AGREEMENTS**

The Development Agreement shall specify project tracking procedures for each project approved. The procedures for tracking will provide periodic feedback from the company receiving job creation/retention funding on the status of business operations. The Development Agreement shall establish the specific frequency, content, and manner of presentation of these reports prior to funding disbursement and be made enforceable.

Standard Form (i.e. fillable blank) Development Agreements (or equivalent if Business Incentive Agreements are not applicable) shall be developed by the program's Lead Agency for the following programs to simplify and expedite the contracting process (i.e. Bank of North Dakota PACE Buydown Match). Each Development Agreement will still need to be presented to the City Council. An audit on the use of these funds may be required as part of the development agreement. To the extent appropriate under the circumstances of a particular project, its development agreement shall call for the provision of detailed receipts and invoices as a precondition of the expenditure of funds

by the City pursuant to the contract. Development Agreements shall provide for suitable collateral or security to protect the City's interests and, in addition (or when necessary in lieu thereof), "claw-back" provisions. Development Agreements shall prescribe specific reporting requirements to be met by the recipient of funds.

The Lead Agency shall work with City staff and legal counsel to structure each development agreement. Any deviation from a standard form agreement must be described to the City Council.

Applicants for Flex PACE program funds shall enter into a standard form agreement with Souris Basin Planning Council which meets the requirements of the Bank of North Dakota and the City of Minot.

City staff should verify compliance with the contract requirements.